

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA

Windy Cove, Inc. v. Circle K Stores, Inc.

Windy Cove · No. 3:21-cv-01416-MMA (DEB) · Decided March 2, 2023

SUMMARY

The United States District Court for the Southern District of California denied without prejudice a joint motion to dismiss several counterclaims under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). The court held that Rule 41 does not permit dismissal of fewer than all claims against certain defendants and that Rule 15 is the appropriate procedural mechanism.

CASE DETAILS

|                       |                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Southern District of California                                                                                        |
| WRITING FOR THE COURT | Michael M. Anello                                                                                                                                           |
| JURISDICTION          | United States District Court for the Southern District of California                                                                                        |
| DECIDED               | March 2, 2023                                                                                                                                               |
| DOCKET                | 3:21-cv-01416-MMA (DEB)                                                                                                                                     |
| DISPOSITION           | dismissed                                                                                                                                                   |
| PROCEDURAL POSTURE    | The plaintiffs and counterclaim-defendants jointly moved under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) to dismiss four of Circle K's counterclaims. |
| PRECEDENTIAL VALUE    | Unknown                                                                                                                                                     |

TOPICS

- civil procedure
- motion to amend
- pleadings
- commercial litigation

PRACTICE AREAS

- Civil procedure
- Commercial litigation

QUESTIONS PRESENTED

1. Whether Federal Rule of Civil Procedure 41(a)(1)(A)(ii) permits the parties to dismiss fewer than all of Circle K's counterclaims while leaving another counterclaim pending against some of the same defendants.

2. Whether Federal Rule of Civil Procedure 15, rather than Rule 41, is the proper procedural mechanism for eliminating individual claims without dismissing the action as to the defendants.

## HOLDINGS

1. Rule 41(a) applies to voluntary dismissal of an action, not to dismissal of fewer than all claims when other claims remain pending against the same defendants.
2. Federal Rule of Civil Procedure 15, rather than Rule 41, is the appropriate mechanism when a party seeks to eliminate an issue or fewer than all claims without dismissing the action as to the defendants.

## KEY QUOTATIONS

*“Rule 41(a) applies only to voluntary dismissal of “an action,” not to certain claims within an action.”*  
(Opinion at 1)

*“Accordingly, the Court DENIES the parties’ joint motion in its entirety without prejudice.”* (Opinion at 2)

## FACTUAL BACKGROUND

Circle K asserted six counterclaims arising from covenants and related obligations involving the parties' fuel-station businesses and properties. The parties sought to dismiss Circle K's first, third, fourth, and fifth counterclaims while leaving the sixth counterclaim pending against several of the same counterclaim-defendants. Because the proposed dismissal would not release all claims against all of the relevant defendants, the court concluded that Rule 41(a) was unavailable.

## PROCEDURAL HISTORY

Circle K asserted six counterclaims against the plaintiffs and other counterclaim-defendants. The parties jointly sought dismissal of Circle K's first, third, fourth, and fifth counterclaims, but Circle K's sixth counterclaim would remain against several of the same parties. The district court denied the joint motion in its entirety without prejudice because Rule 41(a) did not provide the proper mechanism for dismissing fewer than all claims against the relevant defendants.

## DISPOSITION

dismissed

## CASES CITED

- *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1392 (9th Cir. 1988)
- *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 687 (9th Cir. 2005)
- *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1513 (9th Cir. 1995)