

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

OPINION

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

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 Windy Cove, Inc. v. Circle K Stores, Inc., Case No.
12 3:21-cv-01416-MMA (DEB) California corporation, dba

13 UNIVERSITY CITY MOBIL AND

14 SOUTH BAY; S & G ZAVARO, INC., ORDER DENYING JOINT MOTION

15 TO DISMISS COUNTERCLAIM

16 MIRAMAR MOBIL; NEWKIRK'S NOS. 1, 3, 4, AND 5 PURSUANT TO

17 14 SANTA FE SERVICE, INC., a FEDERAL RULE OF CIVIL

18 California corporation; OCEANSIDE PROCEDURE 41(a)(1)(A)(ii) 19 AKAM OIL, INC., a
20 California 21 c Mo Arp Nor Aat Gio En M; ENTS T GA RFF OI UN PG , INCA .,N D a [Doc.
22 No. 110] California corporation, dba KAZMO, 23 LLC.; and HB FUEL, INC., a California
24 corporation, 25 18 19 Plaintiffs, vs. 20 21 CIRCLE K STORES, INC., a Texas corporation; and
22 DOES 1 through 20, 22 inclusive, Defendants.

23 AND RELATED COUNTER CLAIM

24 25 26 27 28 1 Plaintiffs and Counterclaim-Defendants Windy Cove, Inc. ("Windy Cove"), 2
Staffing & Management Group, Inc. ("Staffing") and HB Fuel, Inc. ("HB Fuel"); 3 and
Counterclaim-Defendants KAZMO, LLC ("KAZMO"), Sun Rise Property, 4 LLC, ("Sun Rise"),
Mohammad Bahour, and Hamid Kalhor (collectively, the 5 "Remaining Dealers"), and Defendant
and Counter-Complainant Circle K Stores 6 Inc. ("Circle K"), jointly move to dismiss Circle K's
first, third, fourth, and fifth 7 counterclaims for (1) Declaratory Relief – Brand Covenant Within
Circle K Grant 8 Deeds; (3) Declaratory Relief – Brand Covenant Within ExxonMobil Grant Deed
9 (Windy Cove); (4) Declaratory Relief – Use Covenant Agreements; and 10 (5) Injunctive Relief
against Windy Cove, Staffing, HB Fuel, KAZMO, Sun Rise, 11 Mohammad Bahour, and Hamid
Kalhor. Doc. No. 110. The parties cite Federal 12 Rule of Civil Procedure 41(a)(1)(A)(ii) as the
basis for dismissal. See id.

13 Rule 41(a) applies only to voluntary dismissal of "an action," not to certain

14 claims within an action. See Fed. R. Civ. P. 41(a). “Federal Rule of Civil
15 Procedure 15(a) is the appropriate mechanism where a plaintiff desires to eliminate
16 an issue, or one or more but less than all of several claims, but without dismissing 17 as to any
of the defendants.” *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1392 18 (9th Cir. 1988)
(citations and internal quotation marks omitted); see also *Hells 19 Canyon Pres. Council v. U.S.
Forest Serv.*, 403 F.3d 683, 687 (9th Cir. 2005) 20 (“[W]ithdrawals of individual claims against a
given defendant are governed by 21 Fed. R. Civ. P. 15, which addresses amendments to
pleadings.”) (citation omitted); 22 *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d
1500, 1513 (9th Cir. 23 1995) (“[W]e have held that Rule 15, not Rule 41, governs the situation
when a 24 party dismisses some, but not all, of its claims.”) (citations omitted). Here, 25 dismissal
of Circle K’s first, third, fourth, and fifth counterclaims would not 26 dismiss all of Circle K’s
claims against all Remaining Dealers: Circle K’s sixth 27 counterclaim for declaratory relief
would remain against Windy Cove, Staffing, 28 Mohammad Bahour, Hamid Kalhour, and HB
Fuel. See Doc. No. 28 4] 109-15; 2!) Doc. No. 110 at 3; see also Doc. Nos. 72, 84. Thus, dismissal
pursuant to Federal Rule 41(a) is improper as to Windy Cove, Staffing, Mohammad Bahour,
Hamid 4] Kalhour, and HB Fuel. See *Gen. Signal Corp.*, 66 F.3d at 1513 (“Rule 41 is reserved for
circumstances in which the result of the alleged dismissal is that one or all of the defendants are
released from the action.”). Accordingly, the Court 7 DENIES the parties’ joint motion in its
entirety without prejudice. 8 IT IS SO ORDERED. ?|| Dated: March 2, 2023 10 a LN, hk Le □□
tol

HON. MICHAEL M. ANELLO

United States District Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28