

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE VIRGIN ISLANDS, DIVISION OF ST. CROIX

Aubin Scotland v. Kmart Corporation

Scotland · No. Civil Action No. 2018-0007 · Decided February 15, 2026

SUMMARY

The District Court of the Virgin Islands construed Plaintiff Aubin Scotland’s notice indicating that he was amenable to dismissal as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i). Because no answer or motion for summary judgment had been filed, the court held that the dismissal was automatic and immediate, dismissed the action without prejudice, denied Kmart Corporation’s motion to dismiss as moot, and directed the Clerk to close the case.

CASE DETAILS

COURT	United States District Court for the District of the Virgin Islands, Division of St. Croix
WRITING FOR THE COURT	Wilma A. Lewis
JURISDICTION	District Court of the Virgin Islands, Division of St. Croix
DECIDED	February 15, 2026
DOCKET	Civil Action No. 2018-0007
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff responded to an order directing him to state whether he intended to proceed after Defendant Kmart was permitted to withdraw because of its bankruptcy-plan confirmation. The court construed Plaintiff's notice stating that he was amenable to dismissal without prejudice as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i).
PRECEDENTIAL VALUE	Unknown; memorandum opinion and order from a federal district court

TOPICS

- civil procedure
- motions to dismiss
- bankruptcy

PRACTICE AREAS

- civil procedure
- bankruptcy

QUESTIONS PRESENTED

1. Whether Plaintiff's notice stating that he was amenable to dismissal without prejudice constituted a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i).
2. Whether Kmart's pending motion to dismiss should be resolved after the voluntary dismissal.

HOLDINGS

1. When a plaintiff's filing plainly indicates that the plaintiff no longer intends to pursue the action, the court may construe it as a notice of voluntary dismissal. Because no answer or motion for summary judgment had been served, Plaintiff's notice automatically and immediately dismissed the action without prejudice under Rule 41(a)(1)(A)(i).
2. Because Plaintiff's notice had already dismissed the action, Kmart's motion to dismiss was moot.

KEY QUOTATIONS

“The effect of such a notice is “automatic: the defendant does not file a response, and no order of the district court is needed to end the action.””

“Because no answer or motion for summary judgment was filed in the instant action, the effect of Plaintiff Scotland’s Notice was “automatic” and “immediate” upon its filing, and served to dismiss the instant case.”

FACTUAL BACKGROUND

Kmart was included among the debtors in a confirmed Chapter 11 plan for Sears Holding Corporation and its debtor affiliates. The plan provided that holders of general unsecured claims, such as Plaintiff's claim, would receive only pro rata distributions and that no recovery was anticipated for general unsecured claims. After Kmart was permitted to withdraw, Plaintiff stated that he was amenable to dismissal without prejudice because recovery appeared unlikely.

PROCEDURAL HISTORY

Kmart moved to withdraw after confirmation of the Modified Second Amended Joint Chapter 11 Plan of Sears Holding Corporation and its debtor affiliates, including Kmart. The magistrate judge granted Kmart's motion to withdraw and directed Plaintiff to state how or whether he would proceed. Plaintiff filed a notice indicating that he was amenable to dismissal without prejudice because recovery through the bankruptcy distribution appeared unlikely. The district court deemed the notice an effective voluntary dismissal, denied Kmart's motion to dismiss as moot, and directed the clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- Redman v. United States, 2023 WL 8519210, at *2 (3d Cir. Dec. 8, 2023)
- Anago Franchising, Inc. v. Shaz, LLC, 677 F.3d 1272, 1276 (11th Cir. 2012)

- In re Bath & Kitchen Fixtures Antitrust Litig., 535 F.3d 161, 165 (3d Cir. 2008)

OPINION

DISTRICT COURT OF THE VIRGIN ISLANDS DIVISION OF ST. CROIX AUBIN SCOTLAND,)) Plaintiff,) Civil Action No. 2018-0007) v.)) KMART CORPORATION,)) Defendant.) _____) Appearances: Lee J. Rohn, Esq. St. Croix, U.S.V.I.

For Aubin Scotland MEMORANDUM OPINION AND ORDER THIS MATTER comes before the Court on Plaintiff Aubin Scotland’s (“Plaintiff Scotland”) “Notice Pursuant to Court’s December 18, 2023 Order” (“Notice”) (Dkt. No. 34). Magistrate Judge Emile A. Henderson III previously permitted Defendant Kmart Corporation (“Kmart”) to withdraw from the case and ordered Plaintiff Scotland to file a notice “informing the Court how or if he plans to proceed in this action.” (Dkt.

No. 33 at 3). Kmart moved to withdraw in the instant case due to the Bankruptcy Court for the Southern District of New York’s confirmation of the Modified Second Amended Joint Chapter 11 Plan of Sears Holding Corporation and its Debtor Affiliates, of which Defendant Kmart was included as one of the debtors. *Id.* The Plan provided that “the exclusive remedy for holders of general unsecured claims”—such as those of Plaintiff Scotland—is “receipt of pro rata shares of the assets distributed to creditors by each relevant debtor under the share.” *Id.* Because it was “not anticipated that any recovery will be available for distribution on account of any general unsecured claims,” the Liquidating Trustee requested that attorneys withdraw from actions such as this one.

Id. Accordingly, Judge Henderson granted Kmart’s “Motion to Withdraw” (Dkt. No. 30) and ordered that “Plaintiff Aubin Scotland shall file a notice informing the Court how or if he plans to proceed in this action.” *Id.* at 3.

The instant Notice is such notice. (Dkt. No. 34). Plaintiff Scotland states that “he is amenable to this matter being dismissed, without prejudice,” and “[t]he basis for that decision is that it appears that Plaintiff is unlikely to receive any compensation for his damages in this matter but through a distribution through the bankruptcy court, which distribution to him, a general unsecured creditor, also appears unlikely.” (Dkt.

No 34 at 1). The Court construes this statement as a notice of dismissal because the Plaintiff’s intent to no longer pursue the case is clear. See *Redman v. United States*, 2023 WL 8519210 at *2 (3d Cir. Dec. 8, 2023), cert. denied, 144 S. Ct. 2586 (2024), reh’g denied, 145 S. Ct. 366 (2024) (“When she filed the Notice a week later plainly indicating that she did not intend to continue with the matter, the District Court properly deemed it a voluntary dismissal.”); see also *Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1276 (11th Cir.

2012) (in determining whether party intended to voluntarily dismiss an action, “the best indication of [a party’s] intent is the document itself”). Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, a plaintiff may dismiss an action “without a court order” by filing “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” The effect of such a notice is “automatic: the defendant does not file a response, and no order of the district court is needed to end the action.” *In re Bath & Kitchen Fixtures Antitrust Litig.*, 535 F.3d 161, 165 (3d Cir.

2008). Such a dismissal is also “immediate.” *Id.* Because no answer or motion for summary judgment was filed in the instant action, the effect of Plaintiff Scotland’s Notice was “automatic” and “immediate” upon its filing, and served to dismiss the instant case. UPON CONSIDERATION of the foregoing, it is hereby ORDERED that Plaintiff Aubin Scotland’s “Notice Pursuant to Court’s December 18, 2023 Order” (Dkt.

No. 34) serves to DISMISS WITHOUT PREJUDICE the instant action, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i); and it is further ORDERED that Defendant Kmart Corporation’s “Motion to Dismiss Plaintiff’s Complaint []” (Dkt. No. 2) is DENIED AS MOOT; and it is further ORDERED that the Clerk of Court is directed to mark this case CLOSED. SO ORDERED. Date: February 15, 2026 ____/s/____ WILMA A. LEWIS Senior District Judge