

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)

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