

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

BRUCE S. POLLAK,)
)
)
 Plaintiff,)
)
 v.) C.A. No. 15-118 S
)
 FEDERAL INSURANCE COMPANY,)
)
 Defendant.)

ORDER

WILLIAM E. SMITH, Chief Judge.

Before the Court is Plaintiff's Motion for Voluntary Dismissal of his Complaint Pursuant to Federal Rule of Civil Procedure 41(a)(2). (ECF No. 14.) Defendant filed an opposition, arguing that this Court should either deny Plaintiff's motion outright, dismiss his claim with prejudice, or, at a minimum, condition dismissal without prejudice on Plaintiff paying Defendant's attorneys' fees and costs. (ECF No. 15.) Plaintiff filed a Reply. (ECF No. 16.) For the reasons that follow, the Court grants Plaintiff's Motion for Voluntary Dismissal.

Fed. R. Civ. P. 41(a)(2) provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. . . . Unless the order states otherwise, a dismissal under [Rule 41(a)(2)] is without prejudice." The decision to grant or deny a motion for voluntary

dismissal under Rule 41(a)(2), and whether to award attorneys' fees or costs, is in the discretion of the district court. Doe v. Urohealth Sys., Inc., 216 F.3d 157, 160 (1st Cir. 2000). In considering a Rule 41(a)(2) motion, courts generally examine "the defendant's effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and the fact that a motion for summary judgment has been filed by the defendant." Id. (quoting Pace v. S. Express Co., 409 F.2d 331, 334 (7th Cir. 1969)). However, "courts need not analyze each factor or limit their consideration to these factors." Id.

In this case, Defendant argues that the Court should deny Plaintiff's motion because "[t]he record shows a remarkable lack of diligence on Pollak's part in prosecuting this action and that he has no legitimate explanation for his conduct." (Def.'s Opp'n 2, ECF No. 15.) Defendant contends that Plaintiff's voluntary motion to dismiss is merely "an attempt to avoid a 'near-certain adverse ruling' on Federal's Motion to Dismiss." (Id. at 3 (citing BP West Coast Products LLC v. SKR Inc., 989 F. Supp. 2d 1109, 1116 (W.D. Wash. 2013).) Plaintiff's characterization of his actions is, unsurprisingly, starkly different. According to Plaintiff, his request for dismissal is simply an effort to promote judicial

efficiency, as a bankruptcy Trustee is bringing "virtually identical claims" in a different jurisdiction. (Pl.'s Reply 3, ECF No. 16.) Plaintiff makes clear that he "does not concede that any of his claims in this action would have been dismissed as a result of Defendant's Motion to Dismiss." (Id. at 5.)

The bottom line is that Defendant simply has not convinced the Court that Plaintiff has engaged in "excessive delay and lack of diligence" that would warrant denial of his Motion for Voluntary Dismissal, or a grant of attorneys' fees or costs, at this early stage.¹ See Urohealth, 216 F.3d at 160. By contrast, in BP West Coast Products, on which Defendant relies, the court denied a motion to voluntarily dismiss counterclaims that was "filed nearly a year and a half after the counterclaims were initially brought . . . , and after the Court ruled on several motions related to them." 989 F. Supp. 2d at 1116. Moreover, in that case, the court noted that "the motion to voluntarily dismiss appears disingenuous" because "[t]he sole reason Defendants provide to justify voluntary dismissal is abandonment by their counsel, and counsel later moved to amend the motion such that it would be considered brought by counsel." Id. Here, however, Plaintiff

¹ As far as the Court is aware, discovery has not commenced in this case. Defendant filed a motion to dismiss (ECF No. 9); Plaintiff has not filed a response, and instead, filed the instant motion.

claims that his motion for voluntary dismissal is an effort to promote judicial efficiency by bringing his claims in a different jurisdiction. While Defendant doubts the sincerity of that explanation, the Court does not have sufficient reason to believe that Plaintiff is acting in bad faith. Thus, in weighing the factors outlined in Urohealth, 216 F.3d at 160, the Court finds that, particularly given the early stage of this case, Plaintiff's motion should be granted.

For the foregoing reasons, Plaintiff's Motion for Voluntary Dismissal of his Complaint Pursuant to Rule 41(a)(2) is hereby GRANTED and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. Defendant's request for attorneys' fees and costs is DENIED.

IT IS SO ORDERED.



William E. Smith
Chief Judge
Date: January 6, 2016