

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JERALD HANSON,

Civil No. 04-3059-CO

Plaintiff,

FINDINGS AND RECOMMENDATION

v.

NCO FINANCIAL SYSTEMS, INC.; and
BANK OF AMERICA, NA,

Defendants.

COONEY, Magistrate Judge:

Plaintiff has filed a motion for voluntary dismissal (#19) of defendant NCO Financial Systems, Inc. The time for response to the motion has passed, and defendant has not advised the court of any objection to the dismissal.

I. DISCUSSION

After a defendant has filed an answer or motion for summary judgment, an action may be dismissed voluntarily at plaintiff's request only by order of the court and "upon such terms and conditions as the court deems proper." Fed. R. Civ. P. 41(a)(2). In the Ninth Circuit, "Although costs and attorney fees are often imposed upon a plaintiff who is granted a voluntary dismissal under Fed.R.Civ.P. 41(a)(2), no circuit court has held that payment of the defendant's costs and attorney fees is a prerequisite to an order granting voluntary dismissal." Stevedoring Servs. of Am. v. Armilla

Int'l B.V., 889 F.2d 919, 921 (9th Cir. 1989) (and cases cited); P.R. Maritime Shipping Auth. v. Leith, 668 F.2d 46, 51 (1st Cir. 1981) (cited with approval by Stevedoring Services) [district court did not abuse its discretion in granting voluntary dismissal without imposing costs and attorney's fees]; 9 Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 2366 (2d ed. 1995). Plain legal prejudice does not result to a defendant from the prospect of a second lawsuit or from a missed opportunity for a legal ruling on the merits, but may be shown where actual legal rights are threatened or where monetary or other burdens appear to be extreme or unreasonable. Watson v. Clark, 716 F. Supp. 1354, 1355-56 (D. Nev. 1989), aff'd, 909 F.2d 1490 (1990) (and cases cited).

Here, plaintiff states in his motion that dismissal shall be with prejudice to refiling. He requests that the action be dismissed as to defendant NCO Financial Systems, Inc., with prejudice and without fees or costs to either party.

The court finds that, in the circumstances, this action should be dismissed as to defendant NCO Financial Systems, Inc., with prejudice and without fees and costs imposed.

II. RECOMMENDATION

For the foregoing reasons, plaintiff's motion to dismiss defendant NCO Financial Systems, Inc. (#19), should be granted, with prejudice, and without fees and costs.

By order (#23), the court dismissed defendant Bank of America, NA, with prejudice, and without fees and costs. Accordingly, the court recommends that judgment by entered dismissing this case, with prejudice, and without fees and costs imposed on any party

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order.

The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 5 day of April, 2005.

/s/
UNITED STATES MAGISTRATE JUDGE