

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

AIR QUALITY ASSESSORS, LLC,

Plaintiff,

v.

Case No: 2:18-cv-300-FtM-38MRM

ASI PREFERRED INSURANCE
CORPORATION,

Defendant.

_____ /

ORDER¹

This matter comes before the Court on Defendant's Notice of Filing Plaintiff's Voluntary Dismissal Without Prejudice ([Doc. 9](#)). Defendant requests dismissal based on Plaintiff's voluntary dismissal in state court. ([Doc. 9](#)). For the following reasons, the Court denies Defendant's request.

[Rule 41\(a\)\(1\)\(A\)\(i\)](#) allows a plaintiff to voluntarily dismiss an action by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." [Fed. R. Civ. P. 41\(a\)\(1\)\(A\)\(i\)](#). Here, Defendant removed this action from state court, filed its Answer, and then filed Plaintiff's notice of dismissal.² ([Docs. 1](#);

¹ Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

² Defendant filed Plaintiff's notice of dismissal because "Plaintiff's counsel does not have the ability to file the dismissal in Federal Court." ([Doc. 9 at ¶ 6](#)).


7; 9). The notice of dismissal is ineffective because it was filed in this Court after Defendant's Answer. See [Fed. R. Civ. P. 41\(a\)\(1\)\(A\)\(i\)](#). Moving forward, if Plaintiff wishes to dismiss this action, a notice of voluntary dismissal under [Federal Rule of Civil Procedure 41\(a\)\(1\)\(A\)\(ii\)](#) signed by all parties who have appeared must be filed.

Accordingly, it is now

ORDERED:

Defendant's Notice of Filing Plaintiff's Voluntary Dismissal Without Prejudice ([Doc. 9](#)) is **DENIED**.

DONE and **ORDERED** in Fort Myers, Florida this 9th day of May 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record