

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KAREN LARSON,

Plaintiff,

v.

Case No: 2:23-cv-1085-JES-KCD

SELECTIVE INSURANCE COMPANY
OF THE SOUTHEAST,

Defendant.

ORDER

This matter comes before the Court on plaintiff's Stipulation of Dismissal of Only Count II in the Complaint (Doc. #23) filed on June 4, 2024.

Federal Rule of Civil Procedure 41(a)(1) does not permit dismissal of some, but not all, counts of a complaint. A plaintiff may dismiss "an action" pursuant to Rule 41(a)(1) without a court order "before the opposing party serves either an answer or a motion for summary judgment" or by "a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A)(i), (ii). While the stipulation satisfies the "all parties who have appeared" requirement of Rule 41(a)(1)(A)(ii)¹, it is ineffective because it does not agree to dismiss the entire "action." "A plain reading reveals that the Rule does not

¹ See City of Jacksonville v. Jacksonville Hosp. Holdings, L.P., 82 F.4th 1031, 1039 (11th Cir. 2023).

authorize the voluntary dismissal of individual claims; rather, the Rule requires that a plaintiff dismiss the entire action." In re Esteve, 60 F.4th 664, 675 (11th Cir. 2023). The same is true of Rule 41(a)(2), which allows dismissal of an "action" at plaintiff's request by court order. Rosell v. VMSB, LLC, 67 F.4th 1141, 1144 (11th Cir. 2023) (In the Eleventh Circuit, "a Rule 41(a)(2) dismissal can only be for an entire action, and not an individual claim.") See also City of Jacksonville v. Jacksonville Hosp. Holdings, L.P., 82 F.4th 1031, 1039 (11th Cir. 2023).

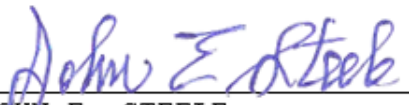
As the parties are only seeking to dismiss Count II, the voluntary dismissal will be denied. Plaintiff may seek leave to amend the Complaint pursuant to Fed. R. Civ. P. 15(a).

Accordingly, it is now

ORDERED:

Plaintiff's Stipulation of Dismissal of Only Count II in the Complaint (Doc. #23) is **DENIED without prejudice** to filing a motion for leave to amend the complaint.

DONE and ORDERED at Fort Myers, Florida, this 5th day of June 2024.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record