

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

UNITED RENTALS (NORTH	:
AMERICA), INC. & UNITED	:
RENTALS, INC.	:
Plaintiffs,	:
	:
-vs-	: Civ. No. 3:02cv995 (PCD)
	:
VINCENT NARDI <i>et al.</i> ,	:
Defendants.	:

**RULING ON DEFENDANTS' BILL OF COSTS**

Defendants seek reimbursement of costs associated with the proceedings on plaintiffs' motion for a preliminary injunction pursuant to FED. R. CIV. P. 41(d). Plaintiffs objects to the bill of costs on the ground that this Court is without jurisdiction to award costs. For the reasons set forth herein, defendants' bill of costs is denied.

**I. BACKGROUND**

On June 7, 2002, plaintiff filed their complaint alleging breach of contract, tortious interference with contract, breach of a fiduciary duty and fraud. On July 1, 2002, this Court heard and granted plaintiffs' motion for a temporary restraining order. On August 9, 2002, in an attempt to address personal jurisdiction concerns as to certain defendants, plaintiffs voluntarily dismissed this action pursuant to FED. R. CIV. P. 41(a)(1)(I). On August 12, 2002, plaintiffs filed a substantively identical complaint in the United States District Court for the Middle District of Florida ("Florida action") against the same defendants while adding four more defendants.

**II. DISCUSSION**

Defendants seek costs associated its defense on the complaint before this Court. Plaintiffs argue that this Court is without jurisdiction to award costs following the voluntary dismissal and refiling of the complaint in Florida.

FED. R. CIV. P. 41(d) provides that

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Contrary to plaintiffs' objection, Rule 41(d) cannot be read as conferring exclusive jurisdiction over an award of costs in the first action to the court with jurisdiction over the second action. Also contrary to plaintiffs' argument, a court is not completely without jurisdiction following a voluntary dismissal.

Although a voluntary dismissal deprives a court of jurisdiction to decide the merits of the action, jurisdiction is retained for rulings on collateral matters such as costs and attorneys' fees. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395-98, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990); *Sequa Corp. v. Cooper*, 245 F.3d 1036 (8th Cir. 2001)(acknowledging inherent authority of court to award costs after voluntary dismissal); *Esposito v. Piatrowski*, 223 F.3d 497, 501 (7th Cir. 2000)(declining to award costs after voluntary dismissal but concluding that Rule 41(d) confers authority to do so after filing of second complaint).<sup>1</sup>

Unlike FED. R. CIV. P. 54(d) which provides for an award of costs "as of course to the

---

<sup>1</sup> Plaintiffs argue that "in almost 100 reported cases, not one involves a court which presided over the dismissed action but not the recommenced action deciding a motion for costs under Rule 41(d)." Such may very well be true. The infrequency of occurrence does not however deprive this Court of jurisdiction over the issue of costs.

prevailing party unless the court otherwise directs,” FED. R. CIV. P. 41(d) provides for the “payment of costs of the action previously dismissed as [the court] may deem proper.” According to defendants, “[t]he New Action includes the same claims against the same defendants.” There is thus no indication that the expenditure of costs by defendants before this Court will not defray litigation expenditures in the Florida action as would weigh in favor of such an award. *See Rogers v. Wal-Mart Stores, Inc.*, 230 F.3d 868, 871 (6th Cir. 2000). There is further no indication that the complaint before this Court contained groundless claims, *see Esposito*, 223 F.3d at 501, or that the Florida action is evidence of a vexatious intent or forum shopping, *see Rogers*, 230 F.3d at 874. By all appearances, the voluntary dismissal reflects plaintiffs’ attempt to address personal jurisdiction defects as to certain Florida defendants raised in the hearing before this Court. The complaint was dismissed within two months, thus defendants did not delay unduly. Defendants’ request for costs, including attorneys’ fees, for defending the complaint before this Court is best left to the Florida court which can interrelate costs due in this case to costs in that court and therefore is denied.

### III. CONCLUSION

Plaintiffs’ bill of costs (Doc. No. 49) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, September \_\_\_\_, 2002.

---

Peter C. Dorsey  
United States District Judge