UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE,

Plaintiff,

v.

FREDERICK DIMOND, ROBERT DIMOND, and MOST HOLY FAMILY MONASTERY,

Defendants.

ORDER TO SHOW CAUSE

08-CV-00347(JTC)(JJM)

This action has been referred to me by Hon. John T. Curtin for supervision of further proceedings [128].[1] Familiarity with the procedural history of this case is presumed, and will be discussed only to the extent relevant to this Order to Show Cause.

Before me is defendants' motion [125] seeking dismissal of their remaining counterclaims, without prejudice, pursuant to Fed. R. Civ. P. ("Rule") 41(c). "The only claims remaining in this action to be disposed of at trial are Defendants' remaining counterclaims. Defendants have proposed that they withdraw their counterclaims without prejudice based on the belief that, despite an anticipated judgment, it will be difficult, if not impossible, to actually collect against Plaintiff. Plaintiff has refused to stipulate to dismissal without prejudice." Ritter Affidavit [125-1], ¶¶10-11.

Responding to the motion, plaintiff states that the defendants "are aware that it is Plaintiff's intention to file an appeal of the dismissal of his claims and the denial of his motion to file a Second Amended Complaint. Defendants are moving to dismiss their counterclaims to allow Plaintiff to file an appeal. Moreover, Defendants are requesting a dismissal without prejudice to be able to have their counterclaims available to them if Plaintiff is successful on his

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[1] Bracketed references are to the CM/ECF docket entries.

appeal. Therefore, the reason that the Defendants are moving to dismiss their claims without prejudice is to circumvent the final judgment rule". Bowman Affidavit [127], ¶13.

"A pragmatic approach to the question of finality has been considered essential to the achievement of the 'just, speedy, and inexpensive determination of every action': the touchstones of federal procedure." Brown Shoe Co. v. United States, 370 U.S. 294, 306 (1962) (*quoting* Rule 1). Since defendants have stated that they are willing to dismiss their remaining counterclaims with prejudice if plaintiff's appeal is unsuccessful, I see no reason to force the parties to incur the expense and delay entailed in litigating those counterclaims, simply to enable plaintiff to take that appeal. "It is well established that district courts possess the inherent power *and responsibility* to manage their dockets so as to achieve the orderly and expeditious disposition of cases." In re World Trade Center Disaster Site Litigation, 722 F.3d 483, 487 (2d Cir. 2013) (emphasis added); *see also* Cecere v. City of New York, 1991 WL 136026, *5 (S.D.N.Y. 1991) ("the Court is obligated to see that litigants pursue their actions expeditiously and do not waste limited judicial resources").

Rule 54(b) authorizes the court to enter final judgment as to fewer than all claims "if the court expressly determines that there is no just reason for delay". "The mere presence of [counterclaims] . . . does not render a Rule 54(b) certification inappropriate. If it did, Rule 54(b) would lose much of its utility." Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 9 (1980). Cerification is particularly appropriate where, as here, "an appellate resolution of the certified claims would facilitate a settlement of the remainder of the claims". Id. at 8, n. 1.

Although neither plaintiff nor defendants have moved for certification under Rule 54(b), "[i]n an appropriate case, the district court may consider the question of whether to direct entry under Rule 54(b) *sua sponte*". Lankler Siffert & Wohl, LLP v. Rossi, 2004 WL 541842, *3

(S.D.N.Y. 2004), aff'd, 125 Fed. Appx. 371 (2005) (Summary Order). *See also* Coleman Co., Inc. v. Hlebanja, 1997 WL 13189, *9 (S.D.N.Y. 1997); 10 Wright & Miller, *et al*., Federal Practice & Procedure (Civil), §2660 at n. 8; 10 Moore's Federal Practice, §54.23[1][a] (Matthew Bender 3d ed.).

Accordingly, on or before February 10, 2014 the parties shall show cause why this Court should not invoke Rule 54(b) to enter final judgment as to all claims (both plaintiff's and defendants') which have previously been dismissed by Judge Curtin.

Dated: February 3, 2014

/s/ Jeremiah J. McCarthy
JEREMIAH J. MCCARTHY
United States Magistrate Judge