

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 617

ANGELA PRESTON, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

HOMETRUST BANCSHARES, INC.,

Defendant.

**ORDER ON NOTICE OF VOLUNTARY
DISMISSAL WITHOUT PREJUDICE**

1. **THIS MATTER** is before the Court following Plaintiff's 9 May 2023 filing of the Notice of Voluntary Dismissal Without Prejudice (the "Dismissal") pursuant to Rule 41(a)(1) of the North Carolina Rules of Civil Procedure. (ECF No. 6.)

2. Plaintiff initiated this action on the filing of the Complaint on 13 February 2023. (ECF No. 3.) Following designation of the action as a complex business case pursuant to N.C.G.S. § 7A-45.4, and assignment to the undersigned, (ECF Nos. 1–2), Plaintiff filed the Dismissal on 9 May 2023, (ECF No. 6).

3. Rule 41(a)(1) of the North Carolina Rules of Civil Procedure (the "Rules") provides that, "[s]ubject to the provisions of Rule 23(c) and of any statute of this State, an action or any claim therein may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before the plaintiff rests his case, or; (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action." N.C.G.S. § 1A-1, Rule 41(a)(1).

4. "Where, as here, dismissal is sought before a class is certified, the North Carolina Court of Appeals has held that, while Rule 23(c) does not require a party 'to

obtain judicial approval . . . before obtaining a voluntary dismissal of a class-action complaint,' the Rule nonetheless requires the trial court to conduct a limited inquiry into the circumstances of a proposed pre-certification dismissal to determine: '(a) whether the parties have abused the class-action mechanism for personal gain, and (b) whether dismissal will prejudice absent putative class members.'"¹ *McNew v. Fletcher Hosp., Inc.*, 2023 NCBC LEXIS 59, at *4 (N.C. Super. Ct. Apr. 6, 2023) (quoting *Moody v. Sears Roebuck & Co.*, 191 N.C. App. 256, 267, 269 (2008)) (cleaned up). "Abusive practices in class action litigation include defendants avoiding class action certification by buying off named plaintiffs or plaintiffs coercing unusually generous individual settlements from defendants." *Moody v. Sears, Roebuck & Co.*, 2008 NCBC LEXIS 14, at *3 (N.C. Super. Ct. Aug. 6, 2008).

5. In applying this inquiry to pre-certification class actions, the Court has required counsel to submit the following:

(1) a statement of the reason for dismissal, (2) a statement of the personal gain received by the plaintiffs in any settlement, (3) a statement of any other material terms of the settlement, specifically including any terms which have the potential to impact [other potential] class members, (4) a statement of any counsel fees paid to plaintiff's counsel by defendants, and (5) a statement of any agreement by plaintiff(s) restricting their ability to file other litigation against any defendant.

Rickenbaugh v. Power Home Solar, LLC, 2022 NCBC LEXIS 57, at *6 (N.C. Super. Ct. June 10, 2022) (cleaned up).

¹ "The purpose of Rule 23(c) is to ensure that the named plaintiff does not terminate the class action without providing proper notice to other members of the class." *Kitchin v. Halifax Cty.*, 192 N.C. App. 559, 566 (2008).

6. In at least one case, this Court has also directed that counsel file “a statement either detailing any potential prejudice to putative class members or representing to the Court that no prejudice exists.” *Moody*, 2008 NCBC LEXIS 14, at *3. “The Court has required this information where, as here, the factual record has not been developed beyond the . . . Complaint’s allegations because the Court’s review of these submissions is necessary to provide the supervision and transparency encouraged by the Court of Appeals with respect to class action litigation.” *McNew*, 2023 NCBC LEXIS 59, at *5 (citations and internal marks omitted).

7. It is unclear to the Court from the abbreviated filing by Plaintiff, whether the decision to dismiss the action was a unilateral decision by Plaintiff to discontinue the action or was in some way a result of discussion or negotiation with Defendant’s agents or others.

8. **THEREFORE**, for the reasons set forth herein, the Court concludes that it is necessary for Plaintiff to file a statement with the Court in conformity with this order and the elements set forth in *Power Home Solar, LLC*. The Court hereby **ORDERS** that Plaintiff, through counsel, shall file that statement within twenty days of the entry of this Order.

SO ORDERED, this the 10th day of May, 2023.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases