

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DARYL STRENKE,

Plaintiff,

v.

ROBERT ALAN GLICKMAN,

Defendant.

ORDER

09-cv-473-bbc

In a March 23, 2012 order, I granted defendant Robert Glickman's motion for summary judgment regarding plaintiff Daryl Strenke's breach of contract and fraud claims, but construed plaintiff's complaint as including a state law malpractice claim and set an April 23, 2012 deadline for dispositive motions on this claim. This deadline was extended later at plaintiff's request. Now plaintiff has filed a motion to voluntarily dismiss his malpractice claim, stating that he is unable to prove his "actual innocence" as is required for criminal defendants to sustain a legal malpractice claim under Wisconsin law. Accordingly, I will dismiss the case. Under Fed. R. Civ. P. 41(a)(2), such dismissal must be "on terms that the court considers proper." Because the parties have spent years litigating the action and I have already granted summary judgment to defendant on plaintiff's breach of contract and fraud claims, I conclude that it is appropriate to dismiss the case with prejudice.

Defendant has filed a motion for summary judgment, which will be denied as moot.

Also, he has filed a document titled "Final Motion for Summary Judgment," in which he seeks judgment following plaintiff's request for voluntary dismissal. I will deny this motion as unnecessary.

ORDER

IT IS ORDERED that

1. Plaintiff Daryl Strenke's motion for voluntary dismissal of this case, dkt. #145, is GRANTED; the case is DISMISSED with prejudice.

2. Defendant Robert Glickman's motion for summary judgment, dkt. #136, is DENIED as moot.

3. Defendant's "Final Motion for Summary Judgment," dkt. #146, is DENIED as unnecessary.

4. The clerk of court is directed to enter judgment in favor of defendant and close the case.

Entered this 19th day of June, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge