

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

THOMAS F. RUSSELL and
DONNA A. RUSSELL,

Plaintiff,

v.

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.,

Defendant.

ORDER

11-cv-358-bbc

This is a civil action in which plaintiffs Thomas Russell and Donna Russell are proceeding pro se against defendant Mortgage Electronic Registration Systems, Inc. On December 2, 2011, defendant Mortgage Electronic Registration Systems, Inc. filed a motion to dismiss. See dk. 17. Plaintiffs' brief in opposition to defendant's motion to dismiss is due on January 3, 2012. Plaintiffs have not filed a brief in opposition to that motion, but have instead filed a motion to dismiss this case without prejudice so that they may have the option of refiling this case in state court. See dk. 22.

When a motion for dismissal is filed after a defendant has filed an answer, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the

court and upon such terms and conditions as the court deems proper." Because defendant Mortgage Electronic Registration Systems, Inc. has been required to defend this action, I will grant plaintiffs' motion for voluntary dismissal of this defendant only on one of two conditions: first, that the dismissal is with prejudice, which means that plaintiffs will be barred from bringing the claim against defendant Mortgage Electronic Registration Systems, Inc. in this current case in any future action or if defendant agrees to a dismissal without prejudice. If defendant Mortgage Electronic Registration Systems, Inc. does not agree to a dismissal without prejudice, then plaintiffs will have to decide whether to accept dismissal with prejudice or withdraw their motion for dismissal.

ORDER

IT IS ORDERED that

1. Defendant Mortgage Electronic Registration Systems, Inc. may have until January 13, 2012, in which to advise plaintiffs and the court whether it agrees to dismissal of this action without prejudice. If defendant does not agree to such a dismissal, plaintiffs may have until January 20, 2012 to either (1) withdraw their motion to dismiss, *dk.* 22, or (2) advise the court that they have no objection to a dismissal of this case with prejudice. If, by January 20, 2012, plaintiffs fail to request withdrawal of their motion to dismiss, this case will be dismissed with prejudice.

2. Briefing on defendant's motion to dismiss, dkt. 17 is STAYED pending resolution of plaintiffs' motion to dismiss without prejudice.

Entered this 3d day of January, 2012.

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