

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

EDWARD BECKETT,)	
)	
<i>Plaintiff</i>)	
)	
v.)	Docket No. 98-93-P-C
)	
MAINE MEDICAL CENTER,)	
)	
<i>Defendant</i>)	

**RECOMMENDED DECISION ON DEFENDANT’S MOTIONS TO DISMISS
AND FOR SUMMARY JUDGMENT AND PLAINTIFF’S MOTION TO DISMISS**

The remaining defendant in this action¹ seeks dismissal or summary judgment on Count II of the amended complaint and summary judgment on Count III, the only counts asserted against it. After the filing of the motions to dismiss and for summary judgment on Count II and before the filing of the motion for summary judgment on Count III, the plaintiff moved for dismissal of all of his claims with prejudice. The defendant has also filed a motion for sanctions against the plaintiff’s attorney. I recommend that the plaintiff’s motion to dismiss be granted.

I. Procedural and Factual Background

This action, alleging violation of a portion of a Portland, Maine city ordinance prohibiting discrimination on the basis of sexual orientation, Portland Code §§ 13.5-21 through 13.5-33, and of

¹ The plaintiff’s claim against two other defendants, Brian Chipman and Heather Cady, has been dismissed with prejudice by stipulation. Docket No. 19.

the Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C. § 1395dd, was initially filed on April 1, 1998. Docket No. 1. The EMTALA count was added in an amended complaint filed on April 10, 1998. Docket No. 2. The defendant hospital filed a motion to dismiss Count II, the claim asserted under the city ordinance, on April 10, 1998. Docket No. 3. It filed a motion for summary judgment on this count on June 18, 1998. Docket No. 16. The plaintiff filed a motion to dismiss all counts against all parties with prejudice on June 25, 1998. Docket No. 18. The defendant hospital has not filed a response to this motion. On July 1, 1998 a stipulation of dismissal with prejudice as to all defendants other than the defendant hospital was filed. Docket No. 19. The defendant hospital’s motion for summary judgment on Count III was filed on July 24, 1998. Docket No. 23. The plaintiff has conceded that summary judgment should enter on Count III. Docket No. 25. Accordingly, there is no need to recite the undisputed material facts relative to Count III. For the reasons that follow, there is also no need to recite the factual background concerning Count II.

II. Discussion

Fed. R. Civ. P. 41(a)(2) provides:

Except as provided in subsection (1) of this rule [governing dismissal by stipulation], an action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper. . . . Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

When a plaintiff seeks dismissal without prejudice, dismissal should be granted “unless the result would be to legally harm the defendant.” *Holbrook v. Andersen Corp.*, 130 F.R.D. 516, 519 (D. Me. 1990), quoting 5 J. Moore, J. Lucas & J. Wicker, *Federal Practice* ¶ 41.05[1] (2d ed. 1988). When,

as here, a plaintiff seeks dismissal with prejudice, the defendant will not be harmed by the granting of the motion. *Schwarz v. Folloder*, 767 F.2d 125, 129 (5th Cir. 1985). “The defendant receives all that he would have received had the case been completed.” *Id.* At least one federal circuit court has held that dismissal with prejudice must be granted upon a plaintiff’s request. *Smoot v. Fox*, 340 F.2d 301, 303 (6th Cir. 1964) (“[A] trial with an unwilling plaintiff, even if it could be enforced, would be an expensive luxury. . . . Our district judges have no time to conduct useless trials.”).

In this court, a party that fails to file a timely objection to a motion is deemed to have waived objection. Local Rule 7(b).

The plaintiff’s motion should be granted in the circumstances here. *SEC v. American Bd. of Trade, Inc.*, 750 F. Supp. 100, 105 (S.D.N.Y. 1990) (granting dismissal with prejudice requested by plaintiff in absence of argument in opposition by defendant). *See also FDIC v. Becker*, 166 F.R.D. 14, 15-16 (D.Md. 1996) (facts that plaintiff seeks dismissal with prejudice and does so early in litigation process of paramount importance; motion granted); *Bioxy, Inc. v. Birko Corp.*, 935 F. Supp. 737, 740 (E.D.N.C. 1996) (plaintiff’s motion for dismissal with prejudice should be granted absent evidence of collusion, imminent decision on merits, or other extraordinary circumstance); *Shepard v. Egan*, 767 F. Supp. 1158, 1165 (D. Mass. 1990) (finding *Smoot* “highly persuasive”).

Dismissal of the plaintiff’s claims against the defendant hospital with prejudice will render the defendant’s motions to dismiss and for summary judgment on those claims moot.

To the extent that the hospital defendant argues that the Count II claim against it is meritless and that it has a substantial interest in a court finding to that effect, the answer is that “a dismissal with prejudice gives the defendant the full relief to which [it] is legally entitled and is tantamount to a judgment on the merits.” *Schwarz*, 767 F.2d at 130. As the Fifth Circuit has observed:

Although parties may, at times, vindicate their conduct through litigation, the business of courts is to adjudicate legal rights, not to dispense seals of approval. Thus, while a judgment by any other name may not smell as sweet, a defendant is entitled only to the protection of his legal rights, not to a cleansing of the stench emitted by the plaintiff's complaint.

Id. The defendant's motion for sanctions against the plaintiff's counsel provides the only legitimate channel for a sought-after determination that the offending claim was asserted for an improper purpose or that the underlying allegations never had any evidentiary support. A court may impose sanctions under Rule 11 even when the plaintiff has voluntarily dismissed the action with prejudice.

Nippy, Inc. v. Pro Rok, Inc., 932 F. Supp.41, 44 (D. P. R. 1996).

III. Conclusion

For the foregoing reasons, I recommend that the plaintiff's motion to dismiss with prejudice be **GRANTED**. If my recommendation is accepted, the defendant's motions to dismiss and for summary judgment will be rendered moot.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 21st day of August, 1998.

*David M. Cohen
United States Magistrate Judge*

