

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 05-15368  
Non-Argument Calendar

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FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
JUNE 23, 2006  
THOMAS K. KAHN  
CLERK

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D. C. Docket No. 04-00185-CV-OC-10-GRJ

ROBERTS ENTERPRISES, INC.,  
a Florida corporation,

Plaintiff-Appellee,

versus

OLYMPIA SALES, INC.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Florida

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**(June 23, 2006)**

Before DUBINA, HULL and COX, Circuit Judges.

PER CURIAM:

Defendant Olympia Sales, Inc. (“Olympia”) appeals the district court’s judgment of voluntarily dismissal of Plaintiff Roberts Enterprises, Inc.’s (“Roberts”) lawsuit against Olympia without prejudice, pursuant to Fed. R. Civ. P. 41(a)(2). Olympia contends that the district court abused its discretion in dismissing the complaint without prejudice because Roberts delayed in moving for dismissal, Olympia had incurred significant legal expenses in defending the case, Olympia had filed a motion for summary judgment that was pending at the time of the dismissal, and Olympia was deprived by the dismissal without prejudice of a potential malicious prosecution claim against Roberts.

After review of the briefs and the record on appeal, we affirm. The district court did not abuse its discretion in granting Roberts’s motion for a voluntary dismissal on the condition that Roberts could not reassert the claims made in this lawsuit in another case without first paying Olympia \$139,121.98 (the costs and attorneys’ fees Olympia incurred in defense of this lawsuit). *See Pontenberg v. Boston Scientific Corp.*, 252 F.3d 1253 (11th Cir. 2001).

AFFIRMED.