

03/26/24 To JAVICA D. Dineen
USCA2 USCA# WC
23-86-163 Break petition
01/7/24 Prayer in Dineen
So I can try to get for more time.

So I can try to put it together
correctly. 2 months also Passover is
coming which takes time + effort

Respectfully,
Sally Dineen
SALCY DINEEN
1141 E 13
PKAZ30 NY

Sally Dineen

0219

2

RECEIVED
MAR 29 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Also
also
myss
15560015
A137
+ 2011/15/15

USSE# TV, D 2016
23-86-163 USCA2 VS DCE DM

April 2, 2024

This is my 3rd request for more
time. 1st No Response 2 (032924)

+ This is my third 0402 T 24,
Please grant me the time to
make my case. (60 Day)

my kitchen fixtures

Respectfully)

03/14/14 @ 8 PM
for 5 minutes
my P once
@ 1139 E 13 St 11230

Sally Duceanu

114 E 13 St

PK NY 11230

718 338 0933

lets away.
Thank you.

No one helped me, US
instead I got a
colossal lawsuit.
I don't understand.

718 338 0933
Sally Duceanu
Def Leppell out Poole

to deserve this. no
in fact, I saved the day
I should get a IT paradise.

I did nothing to
Court date in 10 years

MRS
Sally Duceanu

my insurance co should
have helped with temporary housing etc
as Travis did for the victims
Respectfully Sally Duceanu

ORIGINAL

MANDATE

23-86-cv (L)
Travco Ins. Co. v. Dinerman

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of December, two thousand twenty-three.

PRESENT: DENNIS JACOBS,
RAYMOND J. LOHIER, JR.,
WILLIAM J. NARDINI,
Circuit Judges.

TRAVCO INSURANCE COMPANY, AS
SUBROGEE OF ERIC VICTOR,

Plaintiff-Counter-Defendant-Appellee,

v.

SALLY DINERMAN, IRA DINERMAN,

*Defendants-Counter-Claimants-Appellants.**

Nos. 23-86-cv(L),
23-163-cv(CON)

dc

* The Clerk of Court is directed to amend the caption as set forth above.

MANDATE ISSUED ON 01/24/2024

FOR PLAINTIFF-COUNTER-
DEFENDANT-APPELLEE:

Daniel J. Krisch, Halloran &
Sage LLP, Hartford, CT

FOR DEFENDANTS-COUNTER-
CLAIMANTS-APPELLANTS

Sally Dinerman, *pro se*,
Brooklyn NY; Ira Dinerman,
pro se, Brooklyn, NY

Appeal from a judgment of the United States District Court for the Eastern
District of New York (Hector Gonzalez, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
AND DECREED that the judgment of the District Court is AFFIRMED.

Appellants Sally and Ira Dinerman, proceeding *pro se*, appeal the judgment
and various orders of the United States District Court for the Eastern District of
New York (Gonzalez, *J.*) granting the appellee's motion for voluntary dismissal
with prejudice under Federal Rule of Civil Procedure 41(a)(2), denying their
motion for attorneys' fees, and denying their motion for reconsideration. We
assume the parties' familiarity with the underlying facts, the procedural history,
and issues on appeal, to which we refer only as necessary to explain our decision
to affirm.

This appeal stems from an action brought by Travco Insurance Company
("Travco") against the Dinermans as a result of fire and water damage to an

house

apartment insured by Travco. Travco blamed the Dinermans, who lived in an adjoining apartment, for the damage and sought to recover over \$161,000. Years into the litigation, the Dinermans mailed Travco a check for \$20,000—an amount corresponding exactly to a settlement offer that they had previously made to Travco. Travco cashed the check and informed the Dinermans that it fully settled Travco's claims against them. After the Dinermans refused to sign a stipulation of dismissal, Travco moved under Rule 41(a)(2) to voluntarily dismiss its case against the Dinermans with prejudice. The Dinermans filed a response that the District Court construed as opposing Travco's motion and also moving for attorneys' fees. The District Court granted Travco's motion to voluntarily dismiss the case with prejudice and denied the Dinermans' motion for attorneys' fees and their subsequent motion for reconsideration.¹

01/17/24

I. Voluntary Dismissal Under Rule 41(a)(2)

We review a voluntary dismissal under Rule 41(a)(2) for abuse of

¹ Travco raises a challenge to this Court's appellate jurisdiction. A party ordinarily lacks standing to appeal an order unless aggrieved by it, and by extension cannot appeal a judgment or decree entered in his or her favor. See *Spencer v. Casavilla*, 44 F.3d 74, 78 (2d Cir. 1994). Because the District Court's judgment could be viewed as ratifying the existence of a settlement agreement that the Dinermans dispute, the Dinermans are sufficiently aggrieved by the District Court's judgment to have standing to appeal.

discretion. *Correspondent Servs. Corp. v. First Equities Corp.*, 338 F.3d 119, 124 (2d Cir. 2003). We “liberally construe pleadings and briefs submitted by pro se litigants, reading such submissions to raise the strongest arguments they suggest.” *Publicola v. Lomenzo*, 54 F.4th 108, 111 (2d Cir. 2022).

Here, the dismissal *with prejudice* of the claims against the Dinermans has “the effect of a final adjudication on the merits *favorable*” to them. *Nemaizer v. Baker*, 793 F.2d 58, 60 (2d Cir. 1986) (emphasis added). In other words, the Dinermans won the case below and cannot be sued again by Travco for claims arising from the apartment fire. *See id.* at 60–61. On appeal, they nevertheless claim that they never agreed to settle with Travco and want Travco to return the \$20,000 payment. In effect, the Dinermans challenge the Rule 41(a)(2) dismissal on the ground that it prevents them from recovering that payment.

We are not persuaded. While we review Rule 41(a)(2) dismissals for possible harm to the defendant when the plaintiff’s claims are dismissed *without prejudice*, we do not do the same for claims that are dismissed *with prejudice*. Cf. *Camilli v. Grimes*, 436 F.3d 120, 123 (2d Cir. 2006) (finding, in the context of evaluating a Rule 41(a)(2) dismissal without prejudice, that factors such as “vexatiousness on the plaintiff’s part” and “the extent to which the suit has

7

progressed" have "little relevance" when "no possibility of relitigation at the instance solely of the plaintiff exists"). And while the District Court here assumed without deciding in its dismissal order that the parties had reached a settlement, the dismissal was premised on the plaintiff's desire to discontinue the case, not the existence of a settlement. See Fed. R. Civ. P. 41(a)(2) (providing that a dismissal pursuant to a court order may be conditioned on terms that the court considers proper).

Because the District Court did not finally decide whether there was a settlement, that issue remains unresolved. The dismissal itself does not prevent the Dinermans from challenging the existence of the settlement and attempting to recoup the \$20,000 payment in a separate action. See *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 94 (2d Cir. 2005) (noting that issue preclusion applies under New York law only if "the issue in question was actually and necessarily decided in a prior proceeding" (quotation marks omitted)); see *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 199 (2d Cir. 2000) (finding a lack of prejudice in denial of motion to intervene when a party "remain[ed] free to file a separate action"); *D'Alto v. Dahon California, Inc.*, 100 F.3d 281, 283 (2d Cir. 1996) ("[S]tarting a litigation all over again does not constitute legal prejudice.").

In summary, the Dinermans have not shown that the District Court abused its discretion in granting the motion for voluntary dismissal or denying the motion for reconsideration. *See Warren v. Pataki*, 823 F.3d 125, 137 (2d Cir. 2016).

II. Motion for Attorneys' Fees

We review the denial of attorneys' fees for abuse of discretion. *Scarangella v. Grp. Health, Inc.*, 731 F.3d 146, 151 (2d Cir. 2013). "Under the prevailing American rule, in a federal action, attorneys' fees cannot be recovered by the successful party in the absence of statutory authority for the award." *Odeon Capital Grp. LLC v. Ackerman*, 864 F.3d 191, 198 (2d Cir. 2017) (quotation marks omitted). However, "[p]ursuant to its inherent equitable powers . . . a court may award attorneys' fees when the opposing counsel acts in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* (quotation marks omitted). Here, the Dinermans failed to show that Travco's subrogation claim was meritless or brought for improper purposes. *See Kerin v. U.S. Postal Serv.*, 218 F.3d 185, 190 (2d Cir. 2000). We accordingly affirm the District Court's order denying the motion for attorneys' fees.

CONCLUSION

We have considered the Dinermans' remaining arguments and conclude

that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:
Cathrine O'Hagan Wolfe, Clerk of Court


Cathrine O'Hagan Wolfe

A True Copy

Cathrine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


Cathrine O'Hagan Wolfe

7/7

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of January, two thousand twenty-four,

Before: Dennis Jacobs,
Raymond J. Lohier, Jr.,
William J. Nardini,
Circuit Judges.

TravCo Insurance Company, as subrogee of Eric Victor,
Plaintiff-Counter-Defendant-Appellee,

ORDER
Docket No. 23-86(L), 23-163(Con)

v.

Sally Dinerman, Ira Dinerman,
Defendants-Counter-Claimants-Appellants.

Sally Dinerman and Ira Dinerman having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court




46

USSC #
1-1st NE
W, DC 20543-0001
202-479-3023
-3011

No. # _____
_____ /

IN THE
SUPREME COURT OF THE UNITED STATES #

2016 cv 1064 USDC EDNY
23-86-163 USCA2

IRIA DIVERMAN
SALLY DIVERMAN - PETITIONER
(Your Name)

TRAVCO INS Co VS. PRIORITY MAIL
RESPONDENT(S)

PROOF OF SERVICE

Source
of
time
&
orders

I, Sally Diverman, do swear or declare that on this date, 04, 2024, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

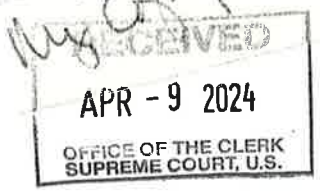
The names and addresses of those served are as follows:

DJ KRISCH A/C 225 Aeylum St. Hgt 06103
02974630 SAGE
2024

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2024

AJS



Sally Diverman
SALLY (Signature) DIVERMAN
1141 E 13th St
@6-11230
718 338-0933
IRA.D @6

USSC #
1-1st NE
WDC 20543-0001
202-479-3023
-3011

No. # _____
_____ / _____

IN THE

SUPREME COURT OF THE UNITED STATES #

2016 W 1064 USDC ED NY
23-86-163 USAZ

SALLY DIVERMAN
(Your Name) PETITIONER

TRAVCO INS Co VS. PRIORITY MAIL
RESPONDENT(S)

Need 2 more mo
of time
& orders

PROOF OF SERVICE

I, Sally Diverman, do swear or declare that on this date, 04/02/2024, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:
DJ KRISCH A/C 225 Aeylum St. HGT 08116

12/18/24
12/18/23

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 04/02, 2024

12/18/24
05/11/18
07/14/17
04/20/17

AAS
my am

Sally Diverman
SALLY (Signature) DIVERMAN
1141 E 13th St
@0-11230
718 338-0933
-04.7 @G

Orig. Sally Diverman E: TRAD

**Additional material
from this filing is
available in the
Clerk's Office.**