No. 22-429

IN THE
Supreme Court of the United States

ACHESON HOTELS, LLC,
Petitioner,

v.

DEBORAH LAUFER,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

SUGGESTION OF MOOTNESS

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INTRODUCTION

Pursuant to Supreme Court Rule 21.2(b), respondent Deborah Laufer notifies the Court of the abandonment of her claim against petitioner Acheson Hotels, LLC, in the district court. *See* Notice of Voluntary Dismissal (Dismissal Notice), *Laufer v. Acheson Hotels, LLC*, No. 20-CV-00344 (D. Me. July 20, 2023), ECF No. 45. By operation of Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, the notice of voluntary dismissal filed by Ms. Laufer terminates the proceedings in the district court. Ms. Laufer specified in the notice that her dismissal was with prejudice, *see* Fed. R. Civ. P. 41(a)(1)(B), so there is no possibility that the controversy might re-emerge. Ms. Laufer also intends to dismiss with prejudice her complaints in her other pending cases under the Americans with Disabilities Act, and it is undersigned counsel's understanding that Ms. Laufer's attorneys in those cases are in the process of effectuating those dismissals.

Because Ms. Laufer has no live claim against Acheson, she respectfully suggests that the Court find this case moot on that ground. Ms. Laufer recognizes that, because it was her voluntary decision to dismiss her claim that mooted the case, the favorable opinion she obtained in the court of appeals should be vacated. Accordingly, Ms. Laufer respectfully requests that the Court vacate the underlying decision on grounds of mootness and remand with instructions to dismiss the appeal. Acheson's counsel has conveyed that Acheson objects to this request and will be filing a response.

STATEMENT

Ms. Laufer brought suit against Acheson under Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12188(a)(1), alleging that Acheson engaged in unlawful disability discrimination when it failed to provide accessibility information on its online reservation website or in its listings with third-party reservation services. J.A. 1a-14a. Ms. Laufer sought injunctive relief requiring Acheson to bring its reservation system into compliance with the Justice Department's regulations interpreting Title III as requiring a hotel to "[i]dentify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs." 28 C.F.R. § 36.302(e)(1)(ii).

Acheson moved to dismiss the complaint on the ground that Ms. Laufer lacks Article III standing to seek injunctive relief because she has no intent to stay at Acheson's hotel in the future, but rather brought suit in her capacity as a disabled "tester" who has visited Acheson's reservation website and third-party websites for the purpose of determining whether Acheson complied with Title III and the Justice Department's implementing regulations. Although the district court agreed with Acheson and dismissed the complaint, Pet. App. 36a-51a, the First Circuit reversed, Pet. App. 1a-35a. On March 27, 2023, this Court granted Acheson's petition for a writ of certiorari to decide whether "a self-appointed Americans with Disabilities Act 'tester' ha[s] Article III standing to challenge a place of public accommodation's failure

to provide disability accessibility information on its website, even if she lacks any intention of visiting that place of public accommodation." Pet. i.

On June 5, 2023, Acheson filed its merits brief arguing both that Ms. Laufer lacks standing and that her claim is moot both because Acheson has updated its reservation website to provide accessibility information and because Ms. Laufer now has that information. Petr's Br. 51-53. On June 12, 2023, the United States filed a brief in support of neither party in which it agreed with Acheson that Ms. Laufer's claim may be mooted by the changes Acheson made to its reservation website after Ms. Laufer filed suit. U.S. Br. 29-32. Ms. Laufer's merits brief is due on August 2, 2023, and Ms. Laufer intends to file on that date unless instructed otherwise by this Court.

On July 13, 2023, undersigned counsel became aware that an attorney named Tristan Gillespie was disciplined by the United States District Court for the District of Maryland for conduct taken in ADA cases he filed on behalf of Ms. Laufer and another plaintiff. *See* Order, *In re Tristan W. Gillespie*, No. 21-MC-00014 (D. Md. July 5, 2023), ECF No. 14. The disciplinary order concludes that Mr. Gillespie violated his ethical duty to keep his clients informed, his duty of candor to the court, and his duty of candor and fairness to opposing counsel. Report and Recommendation (R&R), *In re Gillespie*, ECF No. 13 (Jun. 30, 2023). Mr. Gillespie had no involvement in the present case before this Court, and undersigned counsel have not had any involvement in any case filed on behalf of Ms. Laufer beyond representing Ms. Laufer before this Court at the merits stage.

As explained more fully below, although Ms. Laufer has not engaged in any improper conduct and continues to believe that her claims against Acheson and other hotels are meritorious, she recognizes that the allegations of misconduct against Mr. Gillespie could distract from the merits of her ADA claims and everything she has sought to achieve for persons with disabilities like herself. She accordingly has decided to dismiss all of her pending cases with prejudice. On July 17, 2023, undersigned counsel informed Acheson's counsel about the disciplinary order against Mr. Gillespie and Ms. Laufer's intent to dismiss her claims against Acheson with prejudice and file a suggestion of mootness with this Court. On July 18, 2023, Acheson's counsel informed undersigned counsel that Acheson would oppose the filing. That same day, undersigned counsel notified the Supreme Court Clerk's office of the disciplinary order against Mr. Gillespie and Ms. Laufer's intent to dismiss her claim against Acheson with prejudice and file a suggestion of mootness with this Court.

On July 20, 2023, Ms. Laufer filed a "Notice of Voluntary Dismissal" in the district court pursuant to Federal Rule of Civil Procedure 41,[1] dismissing her

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[1] As stated in the notice, the attorney who filed the complaint on behalf of Ms. Laufer in this case, Daniel Ruggiero, was recently suspended from the practice of law, which undersigned counsel learned on July 20, 2023. This suspension arose from conduct relating to mortgage assistance relief work and does not concern Ms. Laufer or the ADA. *See* Memorandum of Law and Term of Suspension, *In re: Daniel G. Ruggiero*, Docket No. BD-2023-006 *(cont'd)*

complaint with prejudice. *See* Dismissal Notice. Rule 41(a)(1)(A)(i) allows a plaintiff to dismiss an action "without a court order" if she files "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." All litigation in this case has proceeded on Acheson's motion to dismiss, and Acheson neither answered nor filed a summary judgment motion in the district court. Ms. Laufer also intends to dismiss with prejudice her complaints in her other pending ADA cases, and it is undersigned counsel's understanding that Ms. Laufer's attorneys in those cases are in the process of effectuating those dismissals.

ARGUMENT

I. Ms. Laufer's dismissal of her claim against Acheson moots this case.

A plaintiff in litigation has an "absolute right" to voluntarily dismiss her case under Rule 41(a)(1)(A)(i) so long as she does so before service of an answer or summary judgment motion. *Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003) (Rule 41(a) notice dismissal is "a matter of right running to the plaintiff

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(Mass. Mar. 15, 2023), available at https://bbopublic.massbbo.org/web/f/BD-2023-006.pdf (last visited July 23, 2023). Ms. Laufer's counsel on appeal to the First Circuit and at the certiorari stage before this Court, Thomas Bacon, withdrew his appearance before the Court in this case on July 23, 2023, and undersigned counsel replaced him as Counsel of Record. Mr. Bacon has conveyed to undersigned counsel that all of his bar memberships are in good standing.

and may not be extinguished or circumscribed by adversary or court" (quoting *Duke Energy Trading & Mktg., L.L.C. v. Davis*, 267 F.3d 1042, 1049 (9th Cir. 2001))). Such a notice operates to terminate the proceedings in the district court immediately upon filing. *See Griggs v. S.G.E. Mgmt., L.L.C.*, 905 F.3d 835, 840 (5th Cir. 2018) ("[A] notice of dismissal is self-effectuating and terminates the case in and of itself; no order or other action of the district court is required." (alteration in original) (quoting *Bechuck v. Home Depot U.S.A., Inc.*, 814 F.3d 287, 291 (5th Cir. 2016))); *see Janssen*, 321 F.3d at 1000-01 (collecting cases supporting the proposition that the filing of the notice "itself closes the file" (quoting *Duke*, 267 F.3d at 1049).[2] The underlying district court case giving rise to the appellate decision under review thus terminated on July 20, 2023.

As noted above and in the attached declaration, Ms. Laufer is terminating her ADA cases in light of the disciplinary action against Tristan Gillespie, an attorney who represented her in cases filed in Maryland. *See* App. A ¶¶ 10, 17. Ms. Laufer has "always wanted [her] cases to focus solely on enforcing the ADA so that [she] and people like [her] can enjoy the

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[2] Procedurally, here, the Court of Appeals' mandate issued on October 27, 2022, but the district court stayed further proceedings pending this Court's decision. The district court's stay order does not impact the effectiveness of the dismissal. *Cf. Merit Ins. Co. v. Leatherby Ins. Co.*, 581 F.2d 137, 142-43 (7th Cir. 1978) (district court stay of proceedings pending arbitration did not preclude Rule 41(a) dismissal); *Hamilton v. Shearson-Lehman Am. Express, Inc.*, 813 F.2d 1532, 1534-35 (9th Cir. 1987) (same).

rights the ADA provides [them]." *Id.* ¶ 17. She decided to "dismiss this and [her] other lawsuits because [she] do[es] not want any allegations of misconduct committed by [her] attorney in Maryland to distract from these important issues." *Id.*[3]

Ms. Laufer's notice of voluntary dismissal in the district court does not of its own force terminate proceedings in this Court. *Cf. Automobile Workers v. Scofield*, 382 U.S. 205, 217 n.10 (1965) ("The Federal Rules of Civil Procedure … apply only in the federal district courts."). Nonetheless, Ms. Laufer's abandonment of her claim against Acheson renders this case moot. *See Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 446 (2009) (a suit becomes moot when it is "clear that the plaintiffs have unequivocally abandoned" their claims); *see also Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) ("A case becomes moot—and therefore no longer a "Case" or "Controversy" for purposes of Article III—when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." (internal quotation marks omitted) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982))).

Ms. Laufer has abandoned her claims and no longer seeks judicial intervention of any kind; thus

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[3] The disciplinary order against Mr. Gillespie suggests an "improper alliance" between Ms. Laufer and her attorney's investigator, Daniel Pezza. R&R 28. Although the disciplinary panel did not "draw any firm conclusions" on this issue, *id.*, Ms. Laufer explains in the attached declaration why the suggestion of impropriety is based on inaccurate information and wholly unwarranted. App. A ¶¶ 10-16.

"there no longer is a live controversy between the parties over whether a federal court can hear respondent['s] equitable claims." *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988). Moreover, while dismissal under Rule 41(a) is ordinarily without prejudice, Ms. Laufer specified in her notice that her dismissal is with prejudice. *See* Fed. R. Civ. P. 41(a)(1)(B). Thus, there is no possibility of "the regeneration of the controversy by a reassertion of a right to litigate." *Deakins*, 484 U.S. at 200.

In previous cases where plaintiffs have notified the Court that they have abandoned their claims, the Court has vacated the underlying judgment and remanded with instructions to dismiss the case. *See, e.g.*, *Carnahan v. Maloney*, No. 22-425, ___ S. Ct. ___, 2023 WL 4163163 (June 26, 2023); *Arave v. Hoffman,* 552 U.S. 117, 118 (2008) (per curiam); *City of Cuyahoga Falls v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 199-200 (2003); *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 512-13 (1989); *Frank v. Minn. Newspaper Ass'n*, 490 U.S. 225, 227 (1989) (per curiam); *Deakins*, 484 U.S. at 200-01. The Court should do the same here.

As noted earlier, because it is Ms. Laufer's own action that mooted the case, Ms. Laufer recognizes that the underlying decision in her favor should be vacated. *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 23 (1994) ("[V]acatur must be granted where mootness results from the unilateral action of the party who prevailed in the lower court.").

II. The Court should not reach the Article III standing question presented in Acheson's petition for a writ of certiorari.

Because the standing issue presented by Acheson's petition for a writ of certiorari and the mootness issue raised in this filing are both governed by the jurisdictional limitations of Article III of the Constitution, this Court has discretion to resolve either issue first. *See Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) ("[A] federal court has leeway to choose among threshold grounds for denying audience to a case on the merits." (internal quotation marks omitted) (quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999))).

But, as it has done in prior cases, the Court should not exercise its discretion to address the standing issue. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 66-67 (1997) (declining to resolve the question of plaintiffs' standing, even with "grave doubts," and addressing, "as a primary matter, whether originating plaintiff … still has a case to pursue"; finding the case moot); *see also U.S. Forest Serv. v. Pac. Rivers Council*, 570 U.S. 901 (2013) (vacating judgment and dismissing as moot where respondent took action to moot the case); *Burke v. Burns*, 479 U.S. 361, 362-63 (1987) (holding case moot and declining to address whether respondents had standing).

In light of Ms. Laufer's abandonment of her claim against Acheson, there is no reason for this Court to expend further time or judicial resources on the standing question presented in the petition. Resolving the case based on mootness would involve a routine application of the Court's mootness precedents,

would affect only the parties to the case, and could be done with a limited expenditure of further resources. By contrast, resolving the standing question would require the Court to decide an issue that has divided the circuits, would affect disabled persons other than respondent, and would require the expenditure of substantial further resources. *Cf. Pearson v. Callahan*, 555 U.S. 223, 236-37 (2009) (courts have discretion to choose the order of deciding the two prongs of the qualified immunity test in order to avoid both the "substantial expenditure of scarce judicial resources on difficult questions that would have no effect on the outcome of the case" and "[u]nnecessary litigation of constitutional issues [that] also wastes the parties' resources"); *see also Frank*, 490 U.S. at 227 ("There is no justification for our retaining jurisdiction of a civil case where no real controversy is before us.").

This is especially true given that Acheson and the United States have also urged the Court to hold that the case is moot. *See* Petr's Br. 51-53 (arguing that Ms. Laufer's claim is moot because Acheson has updated its reservation website to provide accessibility information); U.S. Br. 29-32 (agreeing with Acheson on that point). Although Ms. Laufer disagrees with that particular mootness argument, the fact that Acheson, Ms. Laufer, and the United States are now in agreement that this case is moot makes further consideration of the standing issue unwarranted.

CONCLUSION

This Court should vacate the court of appeals' judgment on mootness grounds and remand with instructions to dismiss the appeal.

Respectfully submitted,

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