

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 21 – WITHDRAWAL AND DISCONTINUANCE

Remarks

1. Withdrawal of acknowledgment of service (O. 21, r. 1)

A party who has acknowledged service in an action may withdraw the acknowledgment at any time with the leave of the Court.

2. Discontinuance of action, etc., without leave (O. 21, r. 2)

(1) Subject to paragraph (2A) the plaintiff in an action begun by writ may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

(2) Subject to paragraph (2A) a defendant to an action begun by writ may, without the leave of the Court –

- (a) withdraw his defence or any part of it at any time;
- (b) discontinue a counterclaim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defence to counterclaim or, if the counterclaim is made against two or more parties, of the defence to counterclaim last served,

by serving a notice to that effect on the plaintiff or other party concerned.

(2A) A party in whose favour an interim payment has been ordered, in accordance with Order 29, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties.

(3) Where there are two or more defendants to an action begun by writ not all of whom serve a defence on the plaintiff, and the period fixed by or under these rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to an action begun by writ with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counterclaim, to

the defendant and to paragraph (2) respectively.

(3A) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence filed pursuant to Order 28, rule 1A(2) or, if there are two or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(3B) When there are two or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these rules for service by any of those defendants of his affidavit evidence expires after the latest date on which any other defendant serves his affidavit evidence, paragraph (3A) shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period.

(4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the Registrar a written consent to the action being withdrawn signed by all the parties.

3. Discontinuance of action, etc., with leave (O. 21, r. 3)

(1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counter-claim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons ~~or motion~~ or by notice under Order 25, rule 7.

Rule 31
Rec 14

4. Effect of discontinuance (O. 21, r. 4)

Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.

5. Stay of subsequent action until costs paid (O. 21, r. 5)

(1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs

Remarks

of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then, if, before payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

(2) An application for an order under this rule may be made by summons ~~or motion~~ or by notice under Order 25, rule 7.

Rule 32
Rec 14

6. Withdrawal of summons (O. 21, r. 6)

A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.

(Enacted 1988)