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## Decluttering the Docket: The Court's Authority to Dismiss Cases Sua Sponte Under FRCP Rule 41(b)

Working from home over the past year has motivated many of us to declutter our homes, purging outdated or unused items that “no longer serve us.” Litigators may be surprised to learn that federal courts with a similar impetus possess the power to *sua sponte* purge their dockets of “unused” lawsuits that plaintiffs have failed to prosecute. A recent case from the Southern District of New York analyzes the court’s inherent authority under Fed. R. Civ. P. 41(b) to dismiss a case on its own motion, when the plaintiff is unresponsive to the court’s directives.

### **The Case: *Blum, et al., v. Discover Bank***

In *Blum, et al. v. Discover Bank*, 2021 WL 1964295 (S.D.N.Y. May 17, 2021), the plaintiffs sued the defendant in the Southern District of New York for alleged violations of the Telephone Consumers Protection Act (TCPA). The court held an initial conference on September 8, 2020, at which the parties indicated settlement talks were ongoing. On September 22, 2020, the plaintiffs informed the court that settlement talks had not progressed, and that the defendant was seeking new counsel. After the court granted the defendant’s motion to substitute attorneys on November 24, 2020, the parties took no further action on the case and did not communicate with the court for four months. Accordingly, on April 12, 2021, the court *sua sponte* entered an Order to Show Cause, requiring the plaintiffs to respond within 30 days and to show why the litigation should not be dismissed for failure to prosecute. When the plaintiffs failed to respond, the court exercised its inherent authority and dismissed the case for failure to prosecute under Rule 41(b).

In analyzing whether to dismiss the case, the court considered: 1) the duration of the plaintiffs’ failures, 2) whether the plaintiffs had received notice that further delays would result in dismissal, 3) whether the defendant would be prejudiced by further delay, 4) whether a balancing test was conducted between court congestion and protecting the party’s right to due process, and 5) whether lesser sanctions were applicable. While acknowledging that a Rule 41(b) dismissal is restricted only to “extreme situations,” Judge Kenneth Karas ultimately determined the plaintiffs’ complete inaction for a period of eight months, coupled with the failure to respond within 30 days to the April 12, 2021, order, were sufficient to invoke such a harsh remedy.

### **Takeaway**

While *sua sponte* dismissal by the district court is a harsh and unusual remedy for a plaintiff’s failure to prosecute a case, the *Blum* case serves as an important reminder to plaintiff’s counsel that the court retains the ultimate authority to control its own docket and ignoring the court (and the case) can have dire consequences for a plaintiff’s claims.