

A woman from State A purchased a luxury motorhome online and wired the dealership a deposit for \$80,000. The dealership is incorporated and headquartered in State B. When the dealership shipped the motorhome to the woman, she discovered that it failed to meet the contract specifications and refused to accept delivery. The woman then permanently moved to State C.

The woman sued the dealership in a federal court in State C for breach of contract to recover her deposit. The dealership moved to dismiss for lack of personal jurisdiction and improper venue. The court granted the motion on both grounds and dismissed the action.

The woman immediately filed the same breach-of-contract claim in a federal court in State B. The dealership filed a motion to dismiss, arguing that the dismissal of the first action precludes the second action.

Is the court likely to grant the motion?

- A. No, because a dismissal does not operate as an adjudication on the merits.
- B. No, because the first action was dismissed without prejudice.
- C. Yes, because the dealership obtained a court order to dismiss the first action.
- D. Yes, because the first action was involuntarily dismissed.

Explanation:

Voluntary v. Involuntary dismissal

(FRCP 41)

	Process	Effect
Voluntary dismissal	<p>π may dismiss suit without court order when:</p> <ul style="list-style-type: none">• notice of dismissal filed before Δ serves answer or summary judgment motion <i>or</i>• all parties sign stipulation of dismissal <p>π may request court order to dismiss suit unless:</p> <ul style="list-style-type: none">• Δ's counterclaim cannot be independently adjudicated	<p>Dismissal <i>without</i> prejudice unless:</p> <ul style="list-style-type: none">• π previously dismissed federal or state action based on same claim <i>or</i>• notice or stipulation states otherwise
Involuntary dismissal	<p>Δ may move to dismiss suit if π failed to:</p> <ul style="list-style-type: none">• prosecute own action <i>or</i>• comply with rules or court order <p>Δ may move to dismiss suit via:</p> <ul style="list-style-type: none">• pre-answer motion• judgment on the pleadings <i>or</i>• summary judgment	<p>Dismissal <i>with</i> prejudice unless:</p> <ul style="list-style-type: none">• court order states otherwise <i>or</i>• based on lack of jurisdiction, improper venue, or failure to join required party

FRCP = Federal Rule of Civil Procedure; π = plaintiff; Δ = defendant.

A suit can be dismissed in two ways:

- **Voluntary** dismissal – when the ***plaintiff moves*** to dismiss the suit
- **Involuntary** dismissal – when the ***defendant moves*** to dismiss the suit (as seen here)

An **involuntary dismissal** generally results in an adjudication on the merits (**Choice A**). This means that the plaintiff's action is dismissed ***with prejudice***, which precludes the plaintiff from suing the same defendant on the same claim in the future (ie, claim preclusion).

However, an involuntary dismissal based on **lack of jurisdiction, improper venue, or failure to join an indispensable party** is **without prejudice** (as seen here). This means that the dismissal is not an adjudication on the merits and does not trigger claim preclusion, so the woman can assert the same claim against the dealership in the State B federal court **(Choice D)**. Therefore, the court will likely deny the dealership's motion to dismiss the second action.

(Choice C) Whether the court entered an order dismissing the action would be relevant in a **voluntary dismissal analysis** to determine whether the dismissal was with or without prejudice. However, it is irrelevant in an involuntary dismissal analysis because such dismissals always require a court order.

Educational objective:

An involuntary dismissal is generally with prejudice, which precludes the plaintiff from suing the same defendant on the same claim in the future. However, an involuntary dismissal based on lack of jurisdiction, improper venue, or failure to join a required party is without prejudice.

References

- Fed. R. Civ. P. 41(b) (involuntary dismissal).
- 9 Charles Alan Wright et al., Federal Practice and Procedure § 2373 (4th ed. 2020) (explaining the effect of an involuntary dismissal for lack of jurisdiction, improper venue, or failure to join a required party).