

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RAD DIVERSIFIED REIT, INC.,

Plaintiff,

v.

**U.S. BANK TRUST NATIONAL
ASSOCIATION, NOT IN ITS
INDIVIDUAL CAPACITY BUT
SOLELY AS TRUSTEE OF HOF
GRANTOR TRUST 3; AND ELITE
COMMERCIAL SERVICING, LLC,**

Defendants.

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CIVIL ACTION NO. 4:24-cv-04319

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

To: The Court and All Defendants:

Plaintiff, by the undersigned counsel, pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, voluntarily dismiss the above action *without prejudice*. The dismissal is *without prejudice* because Plaintiff has filed this notice of dismissal with the Clerk of the above-entitled Court before service by any defendant of either an answer or a motion for summary judgment. *See Carter v. U.S.*, 547 F.2d 258 (5th Cir. 1977) (Under the plain terms of Rule 41(a)(1)(A)(i), a plaintiff has an absolute right to dismiss a lawsuit before the defendant has filed an answer or summary judgment motion.).¹

¹ See also *Pilot Freight Carriers, Inc. v. International Brotherhood of Teamsters*, 506 F.2d 914 (5th Cir. 1975), (upheld notice of dismissal after plaintiff argued, and lost, a motion for preliminary injunctive relief); *Plain Growers, Inc. v. Ickers-Braun Glass, Inc.*, 474 F.2d 250, 252-54 (5th Cir. 1973) (motion to dismiss

This notice was filed on the date set forth below. The dismissal is effective upon filing. Plaintiff requests the court sign an order dismissing the case without prejudice under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure.

Dated: December 26, 2024.

Respectfully submitted,

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By: /s/ Jeffrey C. Jackson
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served, via the Court's CM/ECF System, USPS Certified Mail, Fax Transmission, and/or Email to all counsel of record on this 26th day of December, 2024.

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for lack of personal jurisdiction, motion to challenge service of process, and filing of written interrogatories not the equivalent of an answer for the purposes of Rule 41(a)(1)); *Nix v. Machinists Lodge No. 2*, 452 F.2d 794, 797-98 (5th Cir. 1971) (motions to dismiss based on insufficiency of service of process, lack of subject matter jurisdiction, failure to state a claim, and res judicata not the equivalent of a motion for summary judgment for the purposes of Rule 41(a)(1)).

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*Attorney for Defendant U.S. Bank Trust National Association, not in its
Individual Capacity but Solely as Trustee of HOF Grantor Trust 3*

/s/ Jeffrey C. Jackson
JEFFREY C. JACKSON