

United States Court of Appeals For the First Circuit

No. 24-1863

AIR-CON, INC.,
Plaintiff-Appellant,

v.

DAIKIN APPLIED LATIN AMERICA, LLC,
Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Raúl M. Arias-Marxuach, U.S. District Judge]

Before

Aframe, Hamilton,* and Thompson,
Circuit Judges.

Rafael M. Santiago-Rosa, with whom José R. Negrón-Fernández,
Miguel A. Rangel-Rosas, and Marichal Hernández LLC were on brief,
for appellant.

Mauricio O. Muñoz-Luciano, with whom Claudia S. Delbrey-Ortiz
and Marini Pietrantoni Muñoz LLC were on brief, for appellee.

August 21, 2026

* Of the United States Court of Appeals for the Seventh
Circuit, sitting by designation.

HAMILTON, Circuit Judge. We dismiss this appeal for lack of appellate jurisdiction. The defendant's counterclaim for damages was dismissed voluntarily and without prejudice, which means the counterclaim could be revived in the district court after this appeal. Accordingly, there is no genuinely final judgment from which to appeal, nor is any other route for interlocutory appeal available here.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from a commercial relationship between defendant Daikin Applied Latin America, LLC, a Miami-based subsidiary of Daikin Industries, and plaintiff Air-Con, Inc., a Puerto Rican company that distributed Daikin products in Puerto Rico and across the Caribbean. See Air-Con, Inc. v. Daikin Applied Latin America, LLC, 21 F.4th 168, 171-72 (1st Cir. 2021).

The relationship soured. Air-Con then sued Daikin and others in Commonwealth court under the Puerto Rico Dealer's Act, commonly known as Law 75. P.R. Laws Ann. tit. 10, §§ 278-278e. Air-Con alleged that Daikin had taken various steps to impair Air-Con's distribution rights. After Air-Con voluntarily dismissed its claims against non-diverse defendants, Daikin removed the case to the federal district court in Puerto Rico. Daikin then answered and alleged a counterclaim for more than \$235,000 that Air-Con allegedly owed on transactions during the breakdown of their commercial relationship. Daikin also sought a

declaratory judgment to the effect that it had just cause under Law 75 to terminate its commercial relationship with Air-Con.

The district court granted Daikin's motion for summary judgment on Air-Con's Law 75 claim and dismissed the declaratory judgment counterclaim without prejudice as not yet ripe. Setting the stage for the issue of appellate jurisdiction in this appeal, the district court denied summary judgment on Daikin's counterclaim for damages. The court found genuine issues of material fact as to whether Air-Con was past due on payments and if so in what amount. The court set the case for trial on that counterclaim.

Air-Con then sought entry of final judgment on its Law 75 claim under Federal Rule of Civil Procedure 58. Air-Con seems to have feared, quite incorrectly, that it would be precluded from ever appealing the summary judgment order if it did not act promptly to seek an interlocutory appeal. (It is well established under the "merger doctrine" that an appeal of a final judgment brings before the court of appeals all interlocutory decisions that preceded it. See, e.g., Commonwealth School, Inc. v. Commonwealth Academy Holdings LLC, 994 F.3d 77, 82–83 (1st Cir. 2021).) The district court correctly analyzed this request as a motion for partial final judgment under Rule 54(b) and rejected it, noting the "significant factual and legal overlap" between

Air-Con's Law 75 claim and Daikin's counterclaim, which remained set for trial.

Air-Con then tried to invoke Federal Rule of Appellate Procedure 5 and filed a petition for leave to appeal the denial of entry of partial final judgment and the underlying summary judgment order. This court denied that petition, noting that the "summary judgment ruling was not a final, immediately appealable order because a counterclaim remained pending" and that denial of a Rule 54(b) motion for entry of a separate final judgment is not subject to immediate interlocutory review. Air-Con, Inc. v. Daikin Applied Latin America, LLC, No. 24-8013 (1st Cir. July 8, 2024) (non-precedential). Air-Con's invocation of Rule 5 was unusual. Rule 5 is not an independent source of appellate jurisdiction. It provides only the mechanism by which a court of appeals may grant discretionary appellate review authorized by some other rule or law. Id.; see Fed. R. App. P. 5(a)(1)-(2).

One month later, and just before the deadline for submitting proposed pretrial orders for trial on the counterclaim, defendant Daikin moved under Federal Rule of Civil Procedure 41(a) and (c) to dismiss its remaining counterclaim voluntarily, but to do so without prejudice. "That way," it wrote, "the Court can enter judgment and this case can conclude." The district court directed the parties to report whether Air-Con stipulated to the dismissal. Air-Con opposed dismissal on the terms proposed by

Daikin. It asked the court either to make the dismissal with prejudice or to award attorney fees and costs Air-Con had incurred on the counterclaim.

The district court granted voluntary dismissal on Daikin's terms, that is, without prejudice and without attorney fees or costs. The court wrote that the pending counterclaim was "the only bar to entry of final judgment and appellate review of" the summary judgment order and that "[t]his assessment is confirmed by the Court of Appeal's July 8, 2024, Judgment dismissing Air-Con's improper attempt at an interlocutory appeal." The district court entered what it called a final judgment dismissing with prejudice Air-Con's Law 75 claim and dismissing without prejudice Daikin's counterclaims. Air-Con has appealed.

Given the district court's assertion that its judgment was final, it is easy to understand why Air-Con appealed. Unfortunately, however, the district court was not correct about the judgment being final. We invited the parties to address appellate jurisdiction at oral argument. We conclude that appellate jurisdiction is lacking because the judgment appealed from is not final within the meaning of 28 U.S.C. § 1291.

II. APPELLATE JURISDICTION

This case presents a recurring problem of appellate jurisdiction. See 15A Wright & Miller, Federal Practice & Procedure § 3914.8.1 (3d ed. Apr. 2026 update). When the district

court decides some but not all claims before trial, one or both sides may not wish to proceed with the remaining claims, particularly if they appear expensive to try and/or less important than the issues already decided. The temptation to appeal immediately on the most valuable claims or most important issues can be strong.

One path to such an immediate appeal is to dismiss the remaining claims voluntarily, seemingly leaving nothing more pending in the district court. If the remaining claims are dismissed with prejudice so that they will not resurface after the immediate appeal, that path can work. It does not work, however, if parties try to hedge their bets by dismissing without prejudice in an effort to preserve an ability to revive the dismissed claims after an appeal.

That tactic was tried here, but it did not produce a genuinely final appealable judgment. In dismissing this appeal, we follow the principles the Supreme Court uses in deciding finality, as well as the decisive weight of authority among the circuits. The general rule we apply is that a claim voluntarily dismissed without prejudice precludes finality under § 1291 if it could be revived in the same district court, and that rule applies regardless of whether the claim belongs to an appellant or an appellee.

To explain our reasoning, we first sketch voluntary dismissals under Rule 41. We then turn to general principles of finality and the guidance of the Supreme Court in Microsoft Corp. v. Baker, 582 U.S. 23 (2017), and explain why they point toward dismissal here. We then review relevant First Circuit precedents and principles, which leave open the question in this appeal. We then review the cases from other circuits, most of which would also point toward dismissal. We then explain why finality should not depend on which side's claim has been voluntarily dismissed without prejudice. Finally, we address some nuances and objections to this rule.

A. Voluntary Dismissals Under Rule 41

We understand why Air-Con has sought immediate appellate review of an interlocutory decision resolving a particularly important claim or issue. Such a party may ask the district court to enter a separate final judgment under Federal Rule of Civil Procedure 54(b) or seek leave to appeal from the district court and a circuit court under 28 U.S.C. § 1292(b). Those routes have stringent requirements, however, and both require approval by the district court and court of appeals. Those routes have not been available to Air-Con on its Law 75 claim here.

Daikin seems to have offered Air-Con another path to appeal the Law 75 issues without trying its counterclaim by using another tactic: voluntary dismissal. Federal Rule of Civil

Procedure 41(a) provides that a plaintiff may "dismiss an action without a court order" as of right if the defendant has not served a responsive pleading or motion for summary judgment, or else by stipulation of all parties who have appeared. To dismiss unilaterally as of right a counterclaim, crossclaim, or third-party claim, the claimant must do so before service of a responsive pleading or, "if there is no responsive pleading, before evidence is introduced at a hearing or trial." Fed. R. Civ. P. 41(c). Except in those circumstances, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

Whether by right, stipulation, or leave of the court, a voluntary dismissal under Rule 41(a) is "without prejudice" unless otherwise indicated, although a second voluntary dismissal as of right or by stipulation "operates as an adjudication on the merits." Fed. R. Civ. P. 41(a)(1)(B) & (2). "The primary meaning of 'dismissal without prejudice,'" in the Supreme Court's view, "is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim." Semtek International Inc. v. Lockheed Martin Corp., 531 U.S. 497, 505 (2001). In this case, there is no doubt that the dismissal of

Daikin's counterclaim was without prejudice, both legally and practically.¹

B. Finality for Appeal

1. General Principles

With this understanding of voluntary dismissals under Rule 41, we turn to general principles of finality and consider how a voluntary dismissal without prejudice fits with them, or not. Federal courts of appeals have appellate jurisdiction over "final decisions" of federal district courts. 28 U.S.C. § 1291. The canonical definition of the term "final decision" in § 1291 comes from Catlin v. United States: "A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." 324 U.S. 229, 233

¹ Several circuits have read the text of Rule 41(a) to contemplate dismissal of "'an action' -- which is to say, the whole case," and not "a particular claim." Perry v. Schumacher Group of Louisiana, 891 F.3d 954, 958 (11th Cir. 2018), quoting Berthold Types Ltd. v. Adobe Systems Inc., 242 F.3d 772, 777 (7th Cir. 2001); see also 9 Wright & Miller, Federal Practice & Procedure § 2362, n.15 (4th ed. Apr. 2026 update) (collecting cases). District courts in this circuit have concluded likewise, noting the appropriate path is amendment under Rule 15(a) instead of dismissal under Rule 41(a). E.g., Shwachman v. Town of Hopedale, 540 F. Supp. 3d 134, 139-40 (D. Mass. 2021). Courts sometimes allow a plaintiff to dismiss all claims against a particular defendant while leaving other defendants in the case. Williams v. Taylor Seidenbach, Inc., 958 F.3d 341, 344-45 (5th Cir. 2020) (en banc); accord, Donahue v. Federal National Mortgage Ass'n, 971 F.3d 1, 3 (1st Cir. 2020), superseded on reh'g, 980 F.3d 204. We need not and do not address such situations here. While the effect of a voluntary dismissal without prejudice goes to jurisdiction, its propriety does not, and the parties have not raised an issue about its propriety here.

(1945); see 15A Wright & Miller, supra, § 3909 (identifying Catlin as leading case).

"'Finality as a condition of review is an historic characteristic of federal appellate procedure.' . . . [The] final-judgment rule, by preventing piecemeal appeals, 'promotes the efficient administration of justice' and 'preserves the proper balance between trial and appellate courts.'" GEO Group, Inc. v. Menocal, 607 U.S. 438, 443-44 (2026), quoting first Cobbledick v. United States, 309 U.S. 323, 324 (1940), and then Microsoft Corp. v. Baker, 582 U.S. 23, 36-37 (2017). The Supreme Court has "recognized that 'finality is to be given a practical rather than a technical construction.'" Baker, 582 U.S. at 37, quoting Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 171 (1974), quoting in turn Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949). The Baker Court continued: "Finality, we have long cautioned, 'is not a technical concept of temporal or physical termination.' It is one 'means [geared to] achieving a healthy legal system,' and its contours are determined accordingly." Id. at 41 (citations omitted and alteration in original), quoting Cobbledick, 309 U.S. at 326.

The final-judgment rule promotes a "healthy legal system" by advancing several important purposes. The Supreme Court has explained that these include: (1) "emphasiz[ing] the deference that appellate courts owe to the trial judge as the individual

initially called upon to decide the many questions of law and fact that occur in the course of a trial"; (2) preventing "piecemeal appeals [that] would undermine the independence of the district judge, as well as the special role that individual plays in our judicial system"; and (3) "the sensible policy of 'avoid[ing] the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise, from its initiation to entry of judgment.'" Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981) (third alteration in original), quoting Cobbledick, 309 U.S. at 325.

Efforts by parties to skirt the final-judgment rule to rush appellate review often prove counterproductive, as here. They waste judicial resources and the parties' time and expense. They can even lead to the irrecoverable loss of a valuable claim or defense. Those prospects do not let this court disregard its obligations both to assure itself of appellate jurisdiction and to guard the health of the legal system. See Commonwealth School, 994 F.3d at 82 (courts of appeals must confirm existence of appellate jurisdiction in every case).

2. Guidance from Microsoft Corp. v. Baker

The Supreme Court has rejected the use of "inventive litigation ploys," including voluntary dismissal under Rule 41(a), to get around the rules limiting interlocutory appeals. Microsoft

Corp. v. Baker, 582 U.S. 23, 39 (2017). In Baker, the Supreme Court held that a voluntary dismissal with prejudice of named plaintiffs' individual claims could not be used to produce a final judgment allowing immediate appeal of the denial of class certification. In Baker, a putative class of disgruntled gamers alleged their game discs were destroyed by a design defect in the Xbox device. The district court denied class certification because individual causation and damages issues predominated.

The Ninth Circuit denied permission for a discretionary interlocutory appeal of the denial of class certification under Federal Rule of Civil Procedure 23(f), which allows the court of appeals to "permit an appeal from an order granting or denying class-action certification." Id. at 31, 34, 40. The plaintiffs presumably decided that the value of their own game discs was not worth litigating to final judgment. They stipulated with Microsoft to dismiss voluntarily their individual claims, hoping to secure immediate appellate review of the denial of class certification. Id. at 35. According to the plaintiffs, the dismissal was "with prejudice" but was also conditional, meaning the individual claims could be revived, but only if the court of appeals reversed the denial of class certification. Id. at 41. In other words, the conditional dismissal amounted to a version of dismissal without prejudice.

The case reached the Supreme Court to decide finality under § 1291. In the first section of its discussion, the Court noted, in line with its reasoning in past finality cases like Firestone, that allowing the appeal would "invite[] protracted litigation and piecemeal appeals" and would thereby undermine the judicial efficiency that the final-judgment rule promotes. 582 U.S. at 37-38. The Court added to that familiar analysis its concern that voluntary dismissal would allow the parties to get around Rule 23(f): "Because respondents' dismissal device subverts the final-judgment rule and the process Congress has established for refining that rule and for determining when nonfinal orders may be immediately appealed, see [28 U.S.C.] §§ 2072(c) and 1292(e), the tactic does not give rise to a 'final decisio[n]' under § 1291." Id. at 37 (second alteration in original).

A bit of the backstory helps clarify the weight Baker deserves here. The Judicial Conference proposed Rule 23(f) two decades after the Supreme Court decided Coopers & Lybrand v. Livesay, which rejected the so-called "death knell" theory of interlocutory appeals from class certification decisions. 437 U.S. 463 (1978). Under that rejected theory, a class certification denial could be a final decision immediately appealable as of right. The theory was that "the individual plaintiff may find it economically imprudent to pursue his lawsuit to a final judgment

and then seek appellate review of an adverse class determination." Id. at 469-70. The "principal vice" of the death-knell theory was that it made the interlocutory appeal a matter of right rather than the appellate court's discretion. Id. at 474-75.

Rule 23(f) instead "commits the decision whether to permit interlocutory appeal from an adverse certification decision to 'the sole discretion of the court of appeals.'" Baker, 582 U.S. at 32, quoting Committee Note on Fed. R. Civ. P. 23(f) (1998). Rule 23(f)'s drafters wanted to "provide 'significantly greater protection against improvident certification decisions than § 1292(b)' alone offered," including a path to review for denials that economically doomed a case. Id. at 31-32, quoting Judicial Conference of the United States, Advisory Committee on Civil Rules, Minutes of November 9-10, 1995. Accepting the Baker plaintiffs' voluntary dismissal strategy would have disrupted that "careful calibration" of authority by instead putting the parties in the driver's seat. See id. at 40-41. Similarly here, allowing evasion of finality requirements by voluntary dismissals without prejudice would disrupt the balance struck by statutes and rules in allowing only narrow categories of interlocutory appeals. See Mohawk Industries, Inc. v. Carpenter, 558 U.S. 100, 113-14 (2009) (foreclosing judicial expansion of collateral order doctrine).

3. Case Law on Finality and Voluntary Dismissals Without Prejudice

First Circuit case law provides no clear guidance on the specific question we face here, the effect on finality of a voluntary dismissal without prejudice. In two recent cases, we recognized the issue but did not need to or declined to decide it. In Donahue v. Federal National Mortgage Ass'n, we did not need to decide whether a voluntary dismissal without prejudice under Rule 41(a)(1) of a plaintiff's remaining claims could ripen a premature appeal. 980 F.3d 204, 206-07 (1st Cir. 2020). The dismissed claims had already been dismissed voluntarily once before, so the plaintiff contended that the new dismissal operated "as an adjudication on the merits" that barred any later revival of the claims. Id. at 207 & n.3, quoting Fed. R. Civ. P. 41(a)(1)(B). This court chose to "assume appellate jurisdiction and proceed to the merits, given how clear they are." Id. at 207.

A similar question of finality arose again in Shea v. Millett, where the defendants voluntarily dismissed their counterclaims without prejudice, just as in this case. 36 F.4th 1, 5 & n.5 (1st Cir. 2022). Notwithstanding the entry of partial final judgment by the district court, in Shea the appellate motions judge ordered the parties to show cause why appellate jurisdiction existed, citing Donahue as well as cases clearly showing that the judge questioned the propriety of the partial final judgment. But

the motions judge deferred the issue to the merits panel, which chose to assume it had jurisdiction and to decide the merits, just as in Donahue. Id. at 5 n.5.²

We decline to follow that path here. We need to confront the problem for our appellate jurisdiction, and there is no suggestion here that Daikin's dismissal of its counterclaim without prejudice would somehow have the same effect as a dismissal with prejudice. Also, apart from the Supreme Court's rejection of hypothetical jurisdiction in Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 101-02 (1998), and unlike Donahue and Shea, the merits here are not necessarily obvious. This case presents substantial questions of Puerto Rico law, including whether Law 75 requires advance notice before a distributor terminates only a product line rather than the entire relationship. That issue may be important for the attractiveness of the Puerto Rico market and the rights of local dealers for mainland and foreign manufacturers and distributors. See V. Suarez & Co. v. Dow Brands, Inc., 337 F.3d 1, 4, 7-9 (1st Cir. 2003); Borg Warner International Corp. v. Quasar Co., 138 D.P.R. 60, 38 P.R. Offic.

² This court has also recently decided at least one case with the same scenario we face here -- a defendant voluntarily dismissing counterclaims without prejudice after winning summary judgment on the plaintiff's claims -- without noting any finality problem. Dusel v. Factory Mutual Insurance Co., 52 F.4th 495, 502 (1st Cir. 2022). Cf. Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 91 (1998) (such "drive-by" jurisdictional rulings have no precedential effect).

Trans. 10 (P.R. 1995); Medina & Medina v. Country Pride Foods, Ltd., 122 D.P.R. 172, 22 P.R. Offic. Trans. 163 (P.R. 1988) (answering certified question). Further, just as district courts must police their subject-matter jurisdiction, this court has a duty to police our appellate jurisdiction. Commonwealth School, 994 F.3d at 82.

On finality generally, this court has said repeatedly that "[f]inal decisions -- which we also often refer to as final judgments -- are those that 'dispose[] of all claims against all parties.'" Triangle Cayman Asset Co. v. LG & AC, Corp., 52 F.4th 24, 30 (1st Cir. 2022) (second alteration in original), quoting Galvin v. U.S. Bank, N.A., 852 F.3d 146, 154 (1st Cir. 2017), quoting in turn Maine Medical Center v. Burwell, 841 F.3d 10, 15 (1st Cir. 2016), quoting in turn Boston Property Exchange Transfer Co. v. Iantosca, 720 F.3d 1, 6 (1st Cir. 2013) (Souter, J.). That definition does not answer the question what it means to "dispose" of a claim, which is the problem we face here.

One general standard we have applied, though it is subject to exceptions, is that finality depends on whether any proceedings remain pending before the district court. See North Carolina National Bank v. Montilla, 600 F.2d 333, 334 (1st Cir. 1979) (Rule 12(b)(6) dismissal without prejudice of defendant's counterclaim not appealable notwithstanding entry of partial final judgment under Rule 54(b); order explicitly allowed defendant to

raise counterclaim again "during the course of the pending proceedings" on plaintiff's claims depending on what evidence might later be introduced); Pratt v. United States, 129 F.3d 54, 57 (1st Cir. 1997) (dismissal without prejudice of habeas petition lacking clearance required by AEDPA was "final in the relevant sense" because the prisoner could "regain access to the district court . . . only by an appeal and a subsequent holding" in his favor); Mirpuri v. ACT Manufacturing, Inc., 212 F.3d 624, 629 (1st Cir. 2000) (Rule 12(b)(6) dismissal without prejudice was final for purpose of starting clock on deadline to appeal because, unlike in Montilla, dismissal "left no aspect of the litigation pending and was therefore immediately appealable"); United States ex rel. Willette v. Univ. of Massachusetts, Worcester, 812 F.3d 35, 44-45 (1st Cir. 2016) (reading partial final judgment certification strictly and noting that, as to other issues, "the case was still pending in the district court" and "the litigation still continues" in that court); see also AVX Corp. v. Cabot Corp., 424 F.3d 28, 32 (1st Cir. 2005) (no final judgment for claim-preclusion purposes, which court equated with finality under § 1291, where parties stipulated to voluntary dismissal without prejudice of entire case).

Tying finality to whether any claims are still pending before the district court will usually produce the correct result, but that standard and the cases applying it do not engage with the

problem here and parties' ability to manufacture the appearance of finality. If a claim that had been pending in the district court was voluntarily dismissed without prejudice, so that it could be revived in the same district court after what looks like an appeal from a "final" judgment, then that judgment was not actually final. Finality was instead an illusion created by the artifice of dismissal without prejudice.

Basing our jurisdiction on such an illusion, without paying attention to whether dismissal was with or without prejudice, is not consistent with Baker. After all, in Baker itself, nothing remained before the district court after the plaintiffs stipulated to "conditional" dismissal with prejudice of their individual claims. That's why the concurring opinion concluded that the order was in fact a final decision. See 582 U.S. at 43 (Thomas, J., concurring in the judgment) (noting that order "left nothing for the District Court to do but execute the judgment," which is exactly what it did).

The majority in Baker took a different approach, characterizing the final-judgment rule as "not a technical concept of temporal or physical termination" but a "means [geared to] achieving a healthy legal system." Id. at 41 (alteration in original), quoting Cobbledick, 309 U.S. at 326. Baker also explained that Rule 23(f) restored the economic and efficiency benefits of some immediate appeals of class certification

decisions while avoiding what Coopers & Lybrand had called the "principal vice" of the death-knell theory, 437 U.S. at 474, namely that it put the parties and not the appellate court in control. See 582 U.S. at 30-33 (noting Rules Committee's guidance that certification may be proper "in a death-knell or reverse death-knell situation").

Similarly, as the Supreme Court explained in Sears, Roebuck & Co. v. Mackey, Rule 54(b) was a response to the prevailing judicial unit theory under which the court had to decide all claims asserted in the action before any party could appeal. 351 U.S. 427, 431-32 (1956). Like Rule 23(f), Rule 54(b) balances the benefits of relief from the "injustice" of unduly delaying appeal in certain circumstances, 10 Wright & Miller, Federal Practice & Procedure, § 2653 (4th ed. Apr. 2026 update), while empowering the courts, not the parties, to act as the "dispatcher," Mackey, 351 U.S. at 435.

Enforcement of the final-judgment rule and the judicial unit theory protects the domain of federal rules authorizing interlocutory appeals in particular circumstances, such as Rules 23(f) and 54(b), where the Supreme Court and Congress have decided those principles ought to give way. Applying these rules does not require parsing different formulations of finality in Supreme Court or circuit case law as if they were statutory texts, including questions about what it means to "end[] the litigation

on the merits and leave[] nothing for the court to do but execute the judgment," Catlin, 324 U.S. at 233, what it means to "resolve[] the entire case," GEO Group, 607 U.S. at 443-44, quoting Ritzen Group, Inc. v. Jackson Masonry, LLC, 589 U.S. 35, 38 (2020), or what it means to "dispose[] of all claims against all parties," Triangle Cayman, 52 F.4th at 30 (alteration in original). Such an effort would be in vain. "No verbal formula yet devised can explain prior finality decisions with unerring accuracy or provide an utterly reliable guide for the future." Eisen, 417 U.S. at 170.

We can say, however, that voluntary dismissal without prejudice is not a route to finality when the dismissed claims may be revived in the same district court. That criterion best guards against piecemeal appeals and preserves the balance of authority struck by Rule 54(b).³

Finding finality where a party could return to the same court with the same claim would mean "litigants, not district judges, would control the timing of appeal" by dismissing and reinstating claims at their pleasure. Blue v. District of Columbia

³ We do not address here the finality rules governing involuntary dismissals, see Acevedo-Villalobos v. Hernandez, 22 F.3d 384, 386-89 (1st Cir. 1994), nor dismissals for reasons such as improper venue, lack of personal jurisdiction, or failure to exhaust administrative remedies that leave open the possibility of refiling in another district or refiling a newly ripened claim in the same district.

Public Schools, 764 F.3d 11, 18 (D.C. Cir. 2014); accord, e.g., Marshall v. Kansas City Southern Railway Co., 378 F.3d 495, 500 (5th Cir. 2004) (noting circuit precedent "disallows the manipulative plaintiff from having his cake (the ability to refile the claims voluntarily dismissed) and eating it too (getting an early appellate bite at reversing the claims dismissed involuntarily)"); Union Oil Co. of California v. John Brown E & C, 121 F.3d 305, 310 (7th Cir. 1997) ("In short, litigants and courts cannot avoid the finality requirement of § 1291 by agreement. To hold otherwise would allow litigants to circumvent the rules that Congress has instructed as to the timing of appellate proceedings.") (citations omitted). "The resulting fragmentary appeals would burden courts and litigants, foster uncertainty, and undermine the salutary aims that Rule 54(b) and the final judgment rule promote." Blue, 764 F.3d at 18.

Our dismissal in this case is thus consistent with general principles of finality and guidance from the Supreme Court. It is also in accord with the substantial weight of authority in other circuits. The clear majority rule is that, in general, a claim voluntarily dismissed without prejudice defeats finality. See Scottsdale Insurance Co. v. McGrath, 88 F.4th 369, 379 (2d Cir. 2023); S.B. v. KinderCare Learning Centers, LLC, 815 F.3d 150, 152 (3d Cir. 2016); Metz v. McCarthy, 167 F.4th 722, 725-26 (4th Cir. 2026); Williams v. Taylor Seidenbach, Inc., 958 F.3d

341, 343 (5th Cir. 2020) (en banc); Rowland v. Southern Health Partners, Inc., 4 F.4th 422, 425 (6th Cir. 2021); West v. Louisville Gas & Electric Co., 920 F.3d 499, 503-05 (7th Cir. 2019); In re Municipal Stormwater Pond Coordinated Litig., 73 F.4th 975, 979-80 (8th Cir. 2023); Eastom v. City of Tulsa, 783 F.3d 1181, 1183-84 (10th Cir. 2015); Blue, 764 F.3d at 16-17 (D.C. Cir.). In the Ninth Circuit, however, the picture is not as clear. Some panels have looked for evidence of intentional jurisdictional manipulation by the parties rather than focused on the nature of the dismissal. See Galaza v. Wolf, 954 F.3d 1267, 1270-72 (9th Cir. 2020). In the Eleventh Circuit, a voluntary dismissal creates finality regardless of prejudice. Corley v. Long-Lewis, Inc., 965 F.3d 1222, 1231 (11th Cir. 2020).⁴

Some courts recognize an exception to this general rule and treat a voluntary-dismissal-without-prejudice judgment as final when some other bar, such as a statute of limitations, an

⁴ This area of civil procedure can be so frustrating and complicated that it has been compared to a Jackson Pollock painting. Corley, 965 F.3d at 1228. Inter- and intra-circuit splits are common, and these issues sometimes go unremarked upon. See, e.g., Williams v. Taylor Seidenbach, Inc., 935 F.3d 358, 361 (5th Cir. 2019) (Haynes, J., concurring) ("[O]ur precedent at best is muddled, and at worst is simply wrong and illogical."), rev'd en banc, 958 F.3d 341 (5th Cir. 2020); Rowland, 4 F.4th at 435 (Moore, J., dissenting) (noting "disagreement and confusion sown by the circuits"). The Federal Circuit allows a voluntary dismissal without prejudice to create a "final decision" under its distinct jurisdictional statute, 28 U.S.C. § 1295(a). Atlas IP, LLC v. Medtronic, Inc., 809 F.3d 599, 604-05 (Fed. Cir. 2015).

immunity doctrine, or a jurisdictional defect, precludes reviving the same claim in the same court. The scope of this practical exception is not entirely clear, but if the bar is truly definitive, that exception seems consistent with the Supreme Court's pragmatic approach to finality. Its most straightforward application occurs when the claimant consents to converting the voluntary dismissal without prejudice to a voluntary dismissal with prejudice, which precludes the claim from being raised at any future point in the same court. E.g., Alix v. McKinsey & Co., 23 F.4th 196, 202-03 (2d Cir. 2022); Chessie Logistics Co. v. Krinos Holdings, Inc., 867 F.3d 852, 856 (7th Cir. 2017); Rossley v. Drake Univ., 979 F.3d 1184, 1186 (8th Cir. 2020).

Conversion to dismissal with prejudice responds to the concerns about piecemeal appeals because a claim that a party cannot reassert in the future cannot become the basis for a successive appeal. The party is in effectively the same position as if it had settled the claim before litigating the others, circumstances that ordinarily would not present a finality problem and would not implicate the judicial unit theory.⁵ Here, however,

⁵ This observation justifies continuing to treat dismissal with prejudice of a party's remaining claims as sufficient to produce finality outside the class-action context. The Supreme Court in Baker acknowledged the conditional nature of the dismissal with prejudice, meaning the individual claims were lost if the Ninth Circuit affirmed denial of certification, but they would somehow spring back to life if it reversed. Yet, the Supreme Court

Daikin declined at oral argument to consent to dismissal with prejudice.

Aside from conversion to dismissal with prejudice, courts have discussed a variety of other reasons that may prevent a party from pursuing the same claim in the same court so that the judgment can be deemed final. See, e.g., Morton International, Inc. v. A.E. Staley Manufacturing Co., 460 F.3d 470, 477 (3d Cir. 2006) (expiration of fixed deadline to reinstate claim); Affinity Living Group, LLC v. StarStone Specialty Insurance Co., 959 F.3d 634, 638-39 (4th Cir. 2020) (claim inherently doomed as a matter of law by failure of other claim on the merits); Abdullah v. Paxton, 65 F.4th 204, 208 n.3 (5th Cir. 2023) (plaintiff's concession of sovereign immunity created jurisdictional defect); Wesco Insurance Co. v. Roderick Linton Belfance, LLP, 39 F.4th

did not seem to hinge its analysis on that feature of the dismissal, which suggests the case would have come out the same way even if the claims had been dismissed with prejudice, full stop. See 582 U.S. at 41. Perhaps that's because, in the class-action context, giving up a few individuals' claims does not prevent future litigation and future appeals. When a district court denies certification, counsel for the putative class often can find a new plaintiff not bound by a dismissal (or settlement) as to the first plaintiff. In fact, in Baker itself, the attorneys had previously brought an essentially identical design defect claim against Microsoft, failed at the class-certification stage, and settled the individual claims before trying again with new plaintiffs in the same district court two years later. Id. at 33. Multiple bites at the apple, even within the applicable statute of limitations, are not available in the ordinary civil case. Cf. China Agritech, Inc. v. Resh, 584 U.S. 732, 735-36 (2018) (limiting tolling of statutes of limitations in repetitive attempts to certify class).

326, 335 (6th Cir. 2022) (non-diversity of parties to cross-claim). We express no view on these decisions. Neither party to this case has identified any legal grounds that would prevent Daikin from reviving its counterclaims in the District of Puerto Rico.

4. Dismissal Without Prejudice by Appellee

This case presents one other wrinkle addressed by some other circuits. The counterclaim that was voluntarily dismissed without prejudice belongs to the would-be appellee, Daikin, not the would-be appellant, Air-Con. When the claim voluntarily dismissed without prejudice belongs to the appellee, some courts have expressed concern that rejecting finality might mean that "parties could deliberately manipulate the proceedings . . . to cut off their adversary's right to appeal." CSX Transportation, Inc. v. City of Garden City, 235 F.3d 1325, 1329 (11th Cir. 2000). For example, a defendant confident of winning summary judgment on a plaintiff's claims could serve and dismiss unilaterally a counterclaim before the plaintiff responds, or a plaintiff confident of winning summary judgment on some claims could similarly raise and dismiss a meritless claim. See id. at 1329 & n.4, citing State Treasurer v. Barry, 168 F.3d 8, 21 (11th Cir. 1999) (Cox, J., specially concurring). By rule, those tactics would produce a dismissal without prejudice, Fed. R. Civ. P. 41(a), (c), seemingly foreclosing an appeal without further action on the dismissed claims. Until recently there existed no obvious path to

requiring the would-be appellee either to dismiss the claim with prejudice or to reinstate it and litigate to final judgment. See Barry, 168 F.3d at 19 & n.9 (Cox, J., specially concurring).

Some courts have therefore allowed appeals as if from final judgments where the claims voluntarily dismissed without prejudice belonged to the appellee. See We CBD, LLC v. Planet Nine Private Air, LLC, 109 F.4th 295, 301 (4th Cir. 2024); DeCastro v. Hot Springs Neurology Clinic, P.A., 107 F.4th 813, 815 n.3 (8th Cir. 2024); Local Motion, Inc. v. Niescher, 105 F.3d 1278, 1279 (9th Cir. 1997) (per curiam). Other courts have taken the path we follow here, rejecting any distinction between appellants and appellees. Heimann v. Snead, 133 F.3d 767, 769 (10th Cir. 1998) (per curiam) (nature of claimant "makes little difference when one considers the very purpose of [Rule 54(b)]"); see also Chessie Logistics, 867 F.3d at 856 (implicit holding).

We think the better path is to preserve the general rule that voluntary dismissals without prejudice do not establish finality, regardless of whether the claims dismissed without prejudice belong to the would-be appellant or appellee. After all, Rule 54(b) "treats counterclaims, whether compulsory or permissive, like other multiple claims." Cold Metal Process Co. v. United Engineering & Foundry Co., 351 U.S. 445, 452 (1956). The two scenarios pose the same risk of piecemeal appeals. They equally undermine the gatekeeping roles of the district court and

court of appeals. We have located no instance of a party successfully deploying a dismissal tactic to frustrate appellate review, behavior that would probably amount to a sanctionable fraud on the court.

If such a tactic were tried, moreover, the courts have tools to protect all parties' rights to appeal. The simplest route forward would be for the district court to require the claimant to choose between dismissal with prejudice or litigating the claim to final judgment. A dismissal with prejudice for failure to prosecute under Rule 41(b) might be available if the party holding the claim declined to act on it.

For other cases, Rule 60(b) provides the path forward. That rule provides a mechanism for a "party" to seek "relie[f]" from a "final judgment, order, or proceeding." Fed. R. Civ. P. 60(b). And last year, the Supreme Court held that a voluntary dismissal without prejudice under Rule 41(a) is a final "proceeding" that can be reopened through a party's Rule 60(b) motion. See Waetzig v. Halliburton Energy Services, Inc., 604 U.S. 305, 313, 319 (2025). The Waetzig Court explained:

After a case is finally terminated, however, a court no longer presides, and a party can no longer seek a "rehearing" on an interlocutory judgment. It is at that point that a court's power under Rule 60(b) kicks in, permitting the court to look back at the "final" act in a case and provide relief from that act when appropriate. A voluntary dismissal without prejudice is one such "final" act. It

terminates the case and strips a court of its equitable power to revise its earlier rulings. At that point, Rule 60(b) is the appropriate avenue for relief.

Id. at 319 (citation omitted). The Court also specifically rejected the view that "final" under Rule 60(b) means the same thing as "final" under § 1291 (i.e., for our appellate jurisdiction purposes) -- finality under Rule 60(b) is undoubtedly broader. Id. at 314.

It is true that Waetzig, procedurally, is a bit different than today's case. Waetzig wanted to reopen his own case, while Air-Con would be trying to invoke Rule 60(b) to reopen a claim brought against it. See 604 U.S. at 308-09. But that is no matter: Rule 60(b) does not limit its availability to a party that has received an entirely adverse (or even partially adverse) judgment. Nothing in the rule's text, which references only "a party," would forbid Air-Con from invoking the rule.

We also see no reason to doubt the applicability of Rule 60(b) to circumstances like these -- where, without judicial intervention, Daikin could in theory remain indefinitely the master of Air-Con's appellate rights. The rule is designed to strike a balance "between the conflicting principles that litigation must be brought to an end and that justice should be done." Waetzig, 604 U.S. at 309 (cleaned up). And although there's sometimes tension between "finality" and "justice," we

have no doubt it would be unjust for a party to block its opponent from appeal by voluntarily dismissing without prejudice a counterclaim. Further, finality concerns are minimal here, where a counterclaim dismissed without prejudice may be brought again, so that the parties' respective rights remain unsettled.

To make the path clearer, we also note that Rule 60(b)(6) likely offers Air-Con a path toward appeal, though it may require adjudication to judgment of Daikin's counterclaim. That catch-all provision, which allows a case to be reopened for "any other reason that justifies relief," is a "grand reservoir of equitable power to do justice in a particular case." Johnson v. Spencer, 950 F.3d 680, 700-01 (10th Cir. 2020) (cleaned up); see also Henson v. Fidelity National Financial, Inc., 943 F.3d 434, 440-41 (9th Cir. 2019) (same). In the rare case where one party could hold another's appellate rights hostage into perpetuity, the latter would be forced "into a procedural no man's land," a result the Court in Waetzig specifically sought to avoid. See 604 U.S. at 313. So, in such a case, the "grand reservoir of equitable power" contained in Rule 60(b)(6) may well need to be opened. Johnson, 950 F.3d at 700.

5. A "Finality Trap"?

The possibility of Rule 60(b) relief from a voluntary dismissal without prejudice also responds to concerns about the so-called "finality trap." See Bryan Lammon, Disarming the

Finality Trap, 97 N.Y.U. Law Review Online 173, 189 (2022). Judges and commentators have said that the majority rule that a dismissal without prejudice defeats finality could mean a party could permanently lose its right to appeal if the court of appeals dismissed an appeal as non-final and the district court then refused to do anything to finish the case. E.g., Williams v. Taylor Seidenbach, Inc., 935 F.3d 358, 361 (5th Cir. 2019) (Haynes, J., concurring) (criticizing such "ghostly magic"), rev'd en banc, 958 F.3d 341 (5th Cir. 2020); Waltman v. Georgia-Pacific, LLC, 590 F. App'x 799 (10th Cir. 2014) (non-precedential) (finality trap in action), cited by Lammon, supra, at 174-75; see generally Terry W. Schackmann & Barry L. Pickens, The Finality Trap: Accidentally Losing Your Right to Appeal (Parts I and II), 58 Journal of the Missouri Bar 78 & 138 (2002).

We expect that such a trap could be neutralized rather easily. The trap scenario seems to assume a district judge would not finish the case after a party has identified the odd circumstances detailed here -- a counterclaimant holding captive a plaintiff's appellate rights based on a counterclaim voluntarily dismissed without prejudice. Such judicial inaction would surprise us, no doubt. But via Rule 60(b) (as well as, possibly, other mechanisms we have not identified), a party has a way to prod the district court to finish the case for purposes of § 1291.

The appeal is DISMISSED. Each party shall bear its own costs. See Fed. R. App. P. 39(a).