

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

TIMOTHY POPPENS AND BRYAN PALONIS)	
)	
Plaintiff,)	
v.)	CASE NO. 1:23-CV-258-HAB
)	
WELLS FARGO BANK NA)	
)	
Defendant.)	

OPINION AND ORDER

On August 30, 2023, the Plaintiff filed a Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) seeking dismissal of Plaintiff Bryan Palonis (ECF No. 25). Along with the Notice, Plaintiff filed a Notice to Correct Caption seeking to remove Palonis from the caption and to correctly reflect the name of the Defendant. There are problems with both notices.

Federal Rule of Civil Procedure 41(a) provides the terms upon which a plaintiff can voluntarily dismiss an action. The Seventh Circuit has indicated that Rule 41(a) should be used for the limited purpose of dismissing an *entire action* rather than for dismissal of individual parties or piecemeal claims. *Taylor v. Brown*, 787 F.3d 851, 857 (7th Cir. 2015) (“Although some courts have held otherwise, we’ve said that Rule 41(a) does not speak of dismissing one claim in a suit; it speaks of dismissing an action—which is to say, the whole case.”) (first quoting *Berthold Types Ltd. v. Adobe Sys. Inc.*, 242 F.3d 772, 777 (7th Cir. 2001); then citing *Nelson v. Napolitano*, 657 F.3d 586, 588 (7th Cir. 2011)). According to the Seventh Circuit then, Rule 41(a) is not the proper vehicle for dropping individual parties or claims. *See Taylor*, 787 F.3d at 858 n.9. (“The parties indicated that it’s common practice in some district courts in this circuit to allow the voluntary dismissal of individual claims under Rule 41(a). If that is true, we remind judges to use Rule 15(a)

instead.”). As for the attempt to “correct the caption” by notice to the Court rather than by a pleading that names the proper Defendant, this too, must be addressed by an amended complaint. *See Padgett v. Norfolk S. Corp.*, Case No. 21-2488, 2022 WL 2073830 (7th Cir. June 9, 2022) (a mis-named defendant is a functional non-party).

For these reasons then, Plaintiff is granted leave to amend the complaint under Federal Rule of Civil Procedure 15(a) to remove Bryan Palonis and to sue the proper defendant. Plaintiff has until September 15, 2023, to file an Amended Complaint.

CONCLUSION

For the reasons above, the Notice of Voluntary Dismissal (ECF No. 25) and the Notice to Correct Caption (ECF No. 26) have no effect and will be termed as pending motions on the Court’s docket. Plaintiff is GRANTED leave to file an Amended Complaint by September 15, 2023.

SO ORDERED on August 30, 2023.

s/ Holly A. Brady

JUDGE HOLLY A. BRADY
UNITED STATES DISTRICT COURT