

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JUAN DAVID VARGAS,

Plaintiff,

Civil Action No. 20-CV-13223

vs.

HON. BERNARD A. FRIEDMAN

UNIMARK TRANSPORTATION SERVICES,  
INC. and CURTIS DWAYNE NEWMAN,

Defendants.

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**OPINION AND ORDER DENYING PLAINTIFF'S MOTION TO SUBSTITUTE  
PARTY AND DISMISSING THE COMPLAINT WITHOUT PREJUDICE**

This matter is presently before the Court on plaintiff's motion to substitute party [docket entry 4]. Plaintiff filed the instant motion following the Court's March 31, 2021, show cause order requiring that "plaintiff show cause within seven days of the date of this order why the Court should not dismiss the complaint pursuant to Fed. R. Civ. P. 41(b) for lack of prosecution." Docket entry 3. The Court noted that although defendants removed the case on December 8, 2020, they have not responded to the complaint and plaintiff has done nothing to move the case along. *Id.* In addition to the instant motion, plaintiff filed a response to the Court's order [docket entry 5].

Plaintiff alleges that in September 2019 he was insured when the car he was driving collided with a semi-trailer driven by defendant Newman. The suit was originally filed in Wayne County Circuit Court against defendants Newman and Unimark Transportation Services, Inc. ("Unimark"). Defendants subsequently removed the matter to this Court.

In the instant motion, plaintiff states:

Defense counsel notified Plaintiff that Unimark . . . is not the correct Defendant corporation and American Truck Transport USA LLC [{"ATT USA"}], a Wisconsin corporation is the proper party Defendant.

Plaintiff obtained concurrences from Defense counsel for this substitution request.

Plaintiff seeks an order from this Honorable Court substituting Defendant [ATT USA] in place of Defendant Unimark . . . pursuant to FRCP 25.

Pl.'s Mot. at 2.

Federal Rule of Civil Procedure 25 does provide for substitution of a party, but not under the circumstances presented. Rule 25 outlines four circumstances warranting substitution of a party: (1) “[i]f a party dies and the claim is not extinguished”; (2) “[i]f a party becomes incompetent”; (3) “[i]f an interest is transferred”; and (4) if “a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending.” Plaintiff does not suggest that any of these four circumstances applies to this case.

In plaintiff’s response to the Court’s show cause order, he restates the fact that

[d]efense counsel notified Plaintiff that Defendant Unimark . . . is not the proper corporate party and [proposed] Defendant [ATT USA], a Wisconsin corporation, is the proper party. Plaintiff obtained concurrences from Defendant on a motion to substitute parties and that motion was filed on April 5, 2021.

\* \* \*

Plaintiff requests this Honorable Court allow the parties to continue in the current action and not dismiss the current case.

Pl.’s Resp. to Show Cause Order at 2. Plaintiff provides no explanation for having failed to prosecute the case as to defendant Newman, nor does plaintiff explain why he mistakenly sued defendant Unimark or when this error was brought to his attention.

Plaintiff has failed to prosecute the case since it was removed four months ago, and he has failed to adequately respond to the Court’s show cause order requiring him to explain his inaction to date. Further, the parties agree that defendant Unimark is not a proper party in this suit, and substitution is not permitted under Rule 25. Accordingly,

IT IS ORDERED that plaintiff's motion to substitute proposed defendant ATT USA for defendant Unimark is denied [docket entry 4].

IT IS FURTHER ORDERED that the complaint is dismissed without prejudice as to both defendants Newman and Unimark. If plaintiff wishes to proceed against proposed defendant ATT USA (and/or defendant Newman), he is free to file a new lawsuit.

Dated: April 7, 2021  
Detroit, Michigan

s/Bernard A. Friedman  
BERNARD A. FRIEDMAN  
SENIOR UNITED STATES DISTRICT JUDGE