

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>June 26, 2017</u>

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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ANNE BRYANT,	:	
	:	15 Civ. 8427 (PAC) (HBP)
<i>Plaintiff,</i>	:	
	:	<u>OPINION AND ORDER</u>
- against -	:	
	:	
PATRICK J MONAGHAN, JR., ESQ., <i>et al.</i> ,	:	
	:	
<i>Defendants.</i>	:	
-----X	:	

HONORABLE PAUL A. CROTTY, United States District Judge:

On June 20, 2017, *pro se* plaintiff Anne Bryant (“Plaintiff”) sent an e-mail to defendant Patrick J. Monaghan (“Monaghan”) and the Court attaching a “Notice of Voluntary Dismissal of Defendant Patrick J Monaghan Jr Pursuant to Rule 41(a)(1)(B)” (the “Notice”) she had filed that day, *see* Dkt. 99; the Notice was electronically docketed by the Court’s *pro se* office on June 26, 2017. Dkt. 101. The Notice specifies that the dismissal is without prejudice. *See id.*

Federal Rule of Civil Procedure 41(a)(1)(A) provides, in relevant part, that “the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . .” Fed. R. Civ. P. 41(a)(1)(A)(i).

On March 22, 2016, Monaghan filed a “Motion to Dismiss Amended Complaint (Fed. R. Civ. P. 8, 9(b) and 12(b)(6) and for Summary Judgment Under Rule 56.” Dkt. 25. One month later, Plaintiff filed a “Notice of Voluntary Dismissal of Defendant Patrick J Monaghan Jr Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i)” (the “First Notice of Voluntary Dismissal”). Dkt. 46. Magistrate Judge Pitman held this First Notice of Voluntary Dismissal ineffective, as it violated the time limit set forth in Fed. R. Civ. P. 41(a)(1)(A), concluding Plaintiff could “no longer


dismiss this matter without prejudice unilaterally and that she must either consent to the dismissal of this matter with prejudice or oppose the pending dispositive motion.” Dkt. 51 at 1. Plaintiff chose to oppose Monaghan’s motion. *See* Dkt. 53.

On June 21, 2017, Monaghan filed a letter requesting the Court to dismiss the action with prejudice and on the merits, urging the Court to rely on Plaintiff’s First Notice of Voluntary Dismissal and citing the part of Rule 41 that provides: “if the plaintiff previously dismissed any federal- or state- court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” Dkt. 99 at 1 (citing Fed. R. Civ. P. 41(a)(1)(B)).

Plaintiff’s First Notice of Voluntary Dismissal was deemed ineffective and invalid; the Court thus cannot do as Monaghan requests. *See* Dkt. 51. But for exactly the same reasons that Magistrate Judge Pitman found Plaintiff’s First Notice of Voluntary Dismissal invalid, the Court similarly finds Plaintiff’s most recent Notice untimely and ineffective. She has lost her right to voluntarily dismiss the action unilaterally, without prejudice; the time period for doing so has long passed. *See* Fed. R. Civ. P. 41(a)(1)(A)(i). She must either consent to dismissal with prejudice by entering a stipulation pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), or reply, if she wishes, to Monaghan’s June 21, 2017 Opposition to her May 24, 2017 Motion for Leave to File Supplemental Pleadings. Dkts. 93, 97.

Plaintiff’s Rule 41 Notice seeking to voluntarily dismiss the action without prejudice is ineffective. The reference to Magistrate Judge Pitman is continued.

Dated: New York, New York
June 26, 2017

SO ORDERED

PAUL A. CROTTY
United States District Judge

Copies Mailed to:

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