

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Dixon F. Jenkins, <u>et al.</u> ,)	
)	
Plaintiffs,)	Case No. 1:13-CV-771
)	
vs.)	
)	
Wells Fargo Bank, N.A., <u>et al.</u> ,)	
)	
Defendants.)	

ORDER

Pending before the Court is a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure filed by Defendants Lerner, Sampson & Rothfuss and Jennifer Templeton. Doc. No. 30.

These Defendants, however, did not file an answer to the complaint, nor did they file a motion for summary judgment. Plaintiffs later filed a notice dismissing their claims against these Defendants without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. Doc. No. 61. Under Rule 41(a)(1), a plaintiff may voluntarily dismiss the complaint without a court order until the defendant files an answer or motion for summary judgment. A motion to dismiss under Rule 12(b)(6), however, does not terminate the plaintiff’s right to voluntarily dismiss the complaint without an order of the court. Aamot v. Kassel, 1 F.3d 441, 444-45 (6th Cir. 1993). In this case, therefore, once Plaintiffs filed their Rule 41(a)(1) notice of voluntary dismissal, the case was effectively terminated against these Defendants. See id. at 445 (stating that “a Rule 41(a)(1) notice of dismissal is self-effectuating”).

Accordingly, Defendants' motion to dismiss pursuant to Rule 12(b)(6) is **MOOT**.

IT IS SO ORDERED

Date February 17, 2015

s/Sandra S. Beckwith
Sandra S. Beckwith
Senior United States District Judge