

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**BANK OF NEW YORK MELLON,
AS TRUSTEE**

Plaintiff

v.

DONOVAN C. HACKETT *et al.*,

Defendants

* * * * *

CIVIL NO. JKB-11-626

MEMORANDUM AND ORDER

Plaintiff has filed a “Notice of Voluntary Dismissal as to Village of Constant Branch Townhouses Assoc., Inc.,” pursuant to Federal Rule of Civil Procedure 41(a)(1). (ECF No. 22.) The Village has not filed an answer or a motion for summary judgment in the case. In the notice, Plaintiff clarifies it is not dismissing its claims against the remaining Defendants, Donovan Hackett and Katriena Taylor.

Rule 41(a)(1) provides:

- (A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, 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; or
 - (ii) a stipulation of dismissal signed by all parties who have appeared.

“Action” would seem to refer to the entire case, but various courts have construed Rule 41(a)(1) as permitting dismissal of all claims against one defendant in a case with more than one defendant. *See, e.g., Redding v. Ameriprise Auto & Home Insurance*, Civ. No. DKC-11-3141, 2012 WL 1268327 (D. Md. Apr. 13, 2012) (citing cases). This is discussed in a treatise:

Both branches of Rule 41(a) refer to the voluntary dismissal of “an action.” This led the Court of Appeals for the Second Circuit to hold that “the word ‘action’ as used in the Rules denotes the entire controversy, whereas ‘claim’ refers to what has traditionally been termed ‘cause of action.’” Therefore, a plaintiff may not dismiss with regard to one of several defendants under Rule 41(a) but must proceed under Rule 21. Although some other courts have followed the Second Circuit, the sounder view and the weight of judicial authority are to the contrary.

9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2362, at 409-10.

The treatise distinguishes the “sounder view” of this use of Rule 41(a)(1) from attempts to use it to dismiss less than all of the claims against a defendant, recommending in that instance that partial claim dismissal be accomplished under Rule 15, pertaining to amendment of pleadings. *Id.* at 413-14.

Although dismissal of less than all defendants could also be accomplished pursuant to Rule 15 or 21, this Court accepts the “sounder view” as a reasonable and pragmatic interpretation of Rule 41(a)(1). Since dismissal under Rule 41(a)(1) is accomplished without a court order, the Court hereby DIRECTS the Clerk to terminate The Village of Constant Branch Townhouses Association, Inc., as a party in this case.

DATED this 25th day of May, 2012.

BY THE COURT:

/s/
James K. Bredar
United States District Judge