

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHIRLEY L. FARSTVEDT, et al.,

Defendants.

Case No. 18-4016-DDC-GEB

MEMORANDUM AND ORDER

Plaintiff the United States of America asks the court to dismiss defendant Robert W. Helms from this foreclosure action because he no longer has an interest in the property subject to foreclosure. Doc. 5. While plaintiff does not cite a specific rule authorizing the court to take this action, it appears plaintiff implicitly invokes Fed. R. Civ. P. 41(a), which governs voluntary dismissals.

The Tenth Circuit, in *Gobbo Farms & Orchards v. Poole Chemical Co.*, 81 F.3d 122 (10th Cir. 1996), held that Rule 41(a) “speaks to dismissal of an action, [and] not just a claim within an action.” District courts have interpreted *Gobbo Farms* differently, but the Tenth Circuit has not clarified yet whether a plaintiff can employ Rule 41 to dismiss fewer than all defendants. Hoping to bring a pragmatic and efficient solution to bear, the court, in its discretion, elects to construe Doc. 5 as a Rule 15 motion to amend plaintiff’s Complaint to omit the claim against Mr. Helms. Rule 15(a)(2) provides, “A party may amend its pleading only with the opposing party’s written consent or the court’s leave.” With the court’s leave, plaintiff

may eliminate those claims against Mr. Helms no longer at issue in the case by filing an amended complaint within 14 days of the date of this Order.

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff's Motion to Dismiss Party Robert W. Helms (Doc. 5) is granted in part and denied in part. The court grants plaintiff leave to file an amended complaint omitting Mr. Helms as a defendant. But the court denies plaintiff's request to dismiss Mr. Helms because Rule 41 does not allow the court to take such action.

IT IS SO ORDERED.

Dated this 1st day of May, 2018, at Topeka, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge