

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

ERIKA JO LARSON, and JEROD )  
LARSON, )

Plaintiffs, )

v. )

Case No. 05-1005-WEB

CHASE MANHATTAN )  
MORTGAGE CORP., )  
Defendants. )

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**MEMORANDUM AND ORDER**

Before the Court is Plaintiffs' Motion for Leave to File Amended Pleading (Doc. 24), which seeks to add claims for breach of contract and fraud and negligent misrepresentation. Plaintiffs properly provide a copy of the proposed Amended Complaint. Defendant, Chase Manhattan Mortgage Corp. did not file a response.

Plaintiff's originally sued Defendant for fraudulent concealment of a defect in connection with the sale of real estate. Plaintiffs claim that, after reviewing the entire sales contract, they now believe that Defendant breached that contract and fraudulently or negligently misrepresented material facts surrounding the transaction. Plaintiff's proposed Amended Complaint seeks to add these claims.

Fed. R. Civ. P. 15(a) provides that leave to amend shall be freely given when justice so requires. In the absence of any apparent or declared reason, such as

undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment, leave to amend should, as the rules require, be freely given. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962); *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993).

Furthermore, D. Kan. Rule 7.4 provides that “[i]f a respondent fails to file a response within the time required by Rule 6.1(d), the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.”

**IT IS THEREFORE ORDERED** that Plaintiffs’ Motion for Leave to Amend is GRANTED.

**IT IS FURTHER ORDERED** that within ten (10) days from the date of this Order, Plaintiffs shall file their Amended Complaint in the form attached to their present motion.

**IT IS SO ORDERED.**

Dated at Wichita, Kansas on this 12<sup>th</sup> day of August, 2005.

s/ Donald W. Bostwick  
DONALD W. BOSTWICK  
United States Magistrate Judge