

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

| | | |
|--------------------------|---|---------------------|
| CLARENCE AITKEN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 07-2119 CM |
| |) | |
| J.E. DUNN CONSTRUCTION |) | |
| COMPANY, |) | |
| |) | |
| and |) | |
| |) | |
| CHOCTAW ERECTORS, |) | |
| |) | |
| and |) | |
| |) | |
| CIVES CORPORATION, d/b/a |) | |
| CIVES STEEL CORP., |) | |
| |) | |
| Defendants. |) | |

ORDER

This matter comes before the court upon defendant J.E. Dunn's Motion for Leave to File Amended Answer to Plaintiff's Petition for Damages. (Doc. 4). No response was filed by plaintiff. A timely response should have been filed by plaintiff no later than May 25, 2007 because D. Kan. Rule 6.1(d)(1) states that responses to non-dispositive motions shall be filed and served within 14 days. Moreover, D. Kan. Rule 7.4 states "if 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." Therefore, this motion is deemed uncontested.

Defendant J.E. Dunn timely filed the present motion on May 11, 2007. Defendant's answer was filed on April 17, 2007. Here, defendant seeks to add an affirmative defense of the applicable statute of limitations for the defamation claim asserted by Plaintiff.

Fed. R. Civ. P. 15 controls the procedure for amending the pleadings. Rule 15(a) states, in pertinent part, that after a responsive pleading: "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."¹ In considering whether to grant leave to amend, the court evaluates several factors including whether the amendment will cause undue delay or prejudice to the non-moving party.² As plaintiff has not opposed the present motion, the amendment should not cause him prejudice. Accordingly, and in the interest of justice,

IT IS THEREFORE ORDERED that defendant's Motion for Leave to File Amended Answer to Plaintiff's Petition for Damages (Doc. 4) is granted. The court directs the Clerk to file Exhibit 1 to Doc. 4 as defendant J.E. Dunn's First Amended Answer.

IT IS SO ORDERED.

Dated this 29th day of May, 2007, at Topeka, Kansas.

s/ K. Gary Sebelius
K. Gary Sebelius
U.S. Magistrate Judge

¹Fed. R. Civ. P. 15(a).

² *Little v. Reed-Prentice Div. Of Package Mach. Co.*, 131 F.R.D. 591, 593 (D. Kan. 1990) (citations omitted).