

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

CAPITAL SOLUTIONS, LLC,

Plaintiff,

v.

Case No. 08-2027-JWL

**KONICA MINOLTA BUSINESS
SOLUTIONS USA, INC.,**

Defendant.

MEMORANDUM AND ORDER

This matter comes before the court on defendant Konica Minolta Business Solutions USA, Inc.'s Motion to Dismiss Counts V and VI of Plaintiff's Complaint (doc. #8). On April 17, 2008, plaintiff Capital Solutions, LLC, filed an amended complaint. Because Konica Minolta only filed a motion to dismiss but not an answer to the original complaint, Capital Solutions was free to amend the complaint without leave of court. *See* Fed. R. Civ. P. 15(a)(1) ("A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . ."); *Adams v. Campbell County Sch. Dist.*, 483 F.2d 1351, 1353 (10th Cir. 1973) ("A motion to dismiss is not a responsive pleading within the meaning of Rule 15(a)."). Accordingly, Konica Minolta's motion to dismiss, which was directed at Capital Solutions' original complaint, was rendered moot when Capital Solutions filed its amended complaint.

IT IS THEREFORE ORDERED BY THE COURT that Konica Minolta's motion to dismiss (doc. #8) is denied as moot.

IT IS SO ORDERED this 25th day of April, 2008.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge