

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

ANB BANK,

Plaintiff,

v.

JMK PROPERTIES, L.L.C., et al.,

Defendants.

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Case No. 17-2234-JAR

**ORDER**

This matter comes before the court upon plaintiff's Motion to Amend Answer to Counterclaim (ECF No. 31). For the following reasons, this motion is granted.

In this action, plaintiff seeks to enforce certain loan agreements and security interests, including a deed of trust in real property and to obtain declaratory judgment regarding its rights to foreclose on its secured interest, as well as other rights under the loan agreements and security interests. Defendant JMK Properties, LLC ("JMK"), has filed a counterclaim seeking to declare that the subject loan is no longer secured by the real estate, that there is no right to foreclose judicially or by power of sale any interest in the real estate, and that the default rate of interest sought by plaintiff is illegal.

In its motion, plaintiff asks to amend its answer to the counterclaim. Plaintiff seeks to add additional defenses to its original answer. Plaintiff contacted JMK concerning the proposed amendment but JMK was unwilling to consent to its filing. Nevertheless, JMK failed to timely respond to the motion to amend.

Under the court's local rules, , a party "who fails to file a responsive brief or memorandum within the time specific in D. Kan. Rule 6.1(d) waives the right to later file such

brief or memorandum” unless there is a showing of excusable neglect.<sup>1</sup> This rule also provides, “[i]f a responsive brief or memorandum is not filed within the D. Kan. Rule 6.1(d) time requirements, the court will consider and decide the motion as an uncontested motion. Ordinarily, the court will grant the motion without further notice.”<sup>2</sup>

Since JMK has not timely responded to plaintiff’s motion, the court considers plaintiff’s motion to amend as an uncontested motion. Accordingly, the court will grant the motion without further notice.

**IT IS THEREFORE ORDERED** that plaintiff’s Motion to Amend Answer to Counterclaim (ECF No. 31) is granted. Plaintiff shall file its amended answer within ten (10) days of the date of this order.

**IT IS SO ORDERED.**

Dated this 3rd day of November , 2017, at Topeka, Kansas.

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

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<sup>1</sup> D. Kan. Rule 7.4(b).

<sup>2</sup> *Id.*