

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

JOHNATHAN HOLMAN and
MARCELLA WARNER HOLMAN,

Plaintiffs,

v.

FUTURE GROWTH, LLC et al.,

Defendants/Third-Party Plaintiffs,

v.

BLACK DIAMOND ANGUS RANCH
PARTNERSHIP et al.,

Third-Party Defendants.

Case No. 24-1012-EFM

MEMORANDUM AND ORDER

Before the Court is Black Diamond Angus Ranch Partnership's, Black Diamond Angus Ranch LLC's, Warner Angus Morgans's, and Warner Angus Ranch's (the "Movants") uncontested Motion to Dismiss for failure to obtain leave of court and insufficient service of process (Doc. 6).

On December 6, 2023, Plaintiffs Johnathan and Marcella Holman filed their First Amended Petition in state court against Defendants Future Growth LLC, High Plain Title LLC, and STUGA LLC. On January 16, 2024, Defendants filed an Answer to Plaintiffs' First Amended Petition. Included within the Answer was a section entitled "Counterclaim and Third-Party Petition." There, Defendants purported to add the Movants as third-party defendants to this lawsuit. The next day,

Defendants filed a notice of removal. On February 6, 2024, the Movants filed a motion to dismiss arguing that Defendants failed to: (1) obtain leave of the state court to file a third-party complaint as required by K.S.A. 60-214(a); (2) obtain leave or file a third-party complaint under Federal Rule of Civil Procedure 14(a); and (3) serve process on the Movants. Consequently, the Movants argue that they are not proper parties to this litigation and should be dismissed accordingly. Defendants never responded to the Movants' motion.

This Court's local rules provide that a party opposing a motion must file a response "within 21 days after the motion is served."¹ If the court has not otherwise granted the party an extension and the party fails to meet the 21-day deadline, "the court will consider and decide the motion as an uncontested motion. Ordinarily, the court will grant the motion without further notice."²

The Movants filed their Motion to Dismiss on February 6, 2024. Local Rules 6.1(d)(2) and 7.1(c) required a response to be filed within 21 days—by February 27, 2024. Defendants did not request an extension to respond, the deadline for them to respond has passed, and they have not filed a response to the Movants' motion. Thus, consistent with D. Kan. R. 7.1(c), the Court considers and decides the Movants' motion as uncontested. As such, the Court grants the Movants' Motion to Dismiss.


IT IS THEREFORE ORDERED that Black Diamond Angus Ranch Partnership's, Black Diamond Angus Ranch LLC's, Warner Angus Morgans's, and Warner Angus Ranch's Motion to Dismiss (Doc. 6) is **GRANTED**.

¹ D. Kan. R. 6.1(d)(2).

² D. Kan. R. 7.1(c).

IT IS SO ORDERED.

Dated this 16th day of April, 2024.

A handwritten signature in black ink, reading "Eric F. Melgren". The signature is written in a cursive, flowing style with a large, stylized "E" and "M".

ERIC F. MELGREN
CHIEF UNITED STATES DISTRICT JUDGE