IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEBRASKA

IN RE:

AT_

DEC - 1988

Judith M. Napier, Clerk U.S. Bankrupicy Court - Lincoln

Denuty

ROLLAND LEE VICTOR and MARJORIE MARIE VICTOR,

Debtors.

ROLLAND LEE VICTOR and MARJORIE MARIE VICTOR,

Plaintiffs,

v.

FEDERAL LAND BANK, et al.,

Defendants.

CV. 88-0-760 BK. 86-135FILED DISTRICT OF NEBRASKA 1.5 William L. C.Son, Clerk ORDER

This matter is before the Court on appeal from the Bankruptcy Court's order of September 19, 1988, striking an amended complaint and rendering a motion to dismiss moot. The Bankruptcy Court sustained defendants' motion to strike for the reason that plaintiffs failed to obtain permission of the Court prior to filing the amended complaint as required by Fed.R.Civ.P. 15, and B.R. 7015. The issues presented on appeal are whether or not a motion under Fed.R.Civ.P. 12 is a responsive pleading and, if not, whether the Bankruptcy Court erred in striking the amended complaint when no responsive pleading had been filed.

The Federal Rules provide that "a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served " Fed.R.Civ.P. 15(a). A

FimeDion is not a responsive pleading. See Fed.R.Civ.P. 7(a); C. DISTRICT OF NEBRASKA Wright and A. Miller, Federal Practice and Procedure: Civil



§ 1483. The record shows that defendant Farm Credit Bank of Omaha filed a motion to dismiss or in the alternative, motion for more definite statement and motion to strike with respect to the original complaint. Because such pleading does not constitute a responsive pleading to the original complaint, plaintiffs were free to amend without leave of court. Accordingly, the Court finds that the Bankruptcy Court erred in striking the amended complaint.

IT IS ORDERED that this action is remanded to the Bankruptcy Court for proceedings consistent with this opinion. DATED this 30^{24} day of November, 1988.

BY THE COURT:

LALE E. STROM, Chief Judge United States District Court