

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GLORIA HERNANDEZ,

Plaintiff,

vs.

F & F PROPERTIES, LLC, and XHEVDET
GASHI,

Defendants.

8:16CV523

ORDER

Plaintiff filed this suit on December 1, 2016, naming F&F Properties, LLC d/b/a Roma Italian Restaurant (“F&F”) and “Does 1-5” as defendants. ([Filing No. 1.](#)) In response to the Complaint, Defendant F&F filed a Motion to Dismiss. ([Filing No. 8.](#)) Plaintiff filed an Amended Complaint on January 6, 2017, naming Xhevdet Gashi as a defendant. ([Filing No. 14.](#)) F&F’s Motion to Dismiss was denied on January 9, 2017. ([Filing No. 15.](#)) Xhevdet Gashi filed its Answer to the Amended Complaint on February 6, 2017. ([Filing No. 21.](#))

The Court entered a scheduling order on February 7, 2017, which directed the parties to file a Rule 26(f) Report by March 9, 2017. ([Filing No. 22.](#)) The parties were subsequently granted an extension until April 11, 2017 to file the Report. ([Filing No. 25.](#)) However, the Rule 26(f) Report was not filed until April 13, 2017. ([Filing No. 26.](#))

On April 14, 2017, F&F filed a “Third-Party Complaint” against Defendant Xhevdet Gashi. ([Filing No. 27.](#)) There are several problems with this filing. First, Federal Rule of Civil Procedure 14, which governs third-party practice, states that a “defending party may, as third-party plaintiff, serve a summons and complaint on a *nonparty* who is or may be liable to it for all or part of the claim against it.” [Fed. R. Civ. P. 14](#) (emphasis added). At the time the Third-Party Complaint was filed, Xhevdet Gashi was already a party to this action. Second, Rule 14 further provides that “the third-party plaintiff must, by motion, obtain the court’s leave if it files the third-party complaint more than 14 days after serving its original answer.” [Fed. R. Civ. P. 14.](#) F&F has not filed an answer in this action, even though its responsive pleading deadline has long

passed. *See* [Fed. R. Civ. P. 12\(a\)\(4\)](#) (stating that a responsive pleading must be served within 14 days after the ruling on a motion to dismiss under Rule 12(b)(6)). Moreover, even assuming an answer had been timely filed, F&F's Third-Party Complaint would still be improper because F&F did not seek leave to file the Third-Party Complaint.

Accordingly,

IT IS ORDERED as follows:

1. The Clerk of Court is directed to strike F&F's Third-Party Complaint ([Filing No. 27](#)) from the record in this action. The Clerk is further directed to strike the issued summons. ([Filing Nos. 28](#) and [29](#).)

Dated this 18th day of April, 2017.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge