
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

**RUPP TRUCKING & ENTERPRISES,
INC., et al.,**

Plaintiffs,

vs.

**SOLARE LAND HOLDINGS, LLC, et
al.,**

Defendants.

**MEMORANDUM DECISION
AND ORDER**

Case No. 1:09CV163DAK

On June 6, 2010, Plaintiffs filed a Third Amended Complaint. In response, Defendant Federal Deposit Insurance Corporation, as Receiver for Irwin Union Bank and Trust Company (“FDIC”), filed a Motion to Strike Third Amended Complaint. The motion to strike is fully briefed. The court does not believe that oral argument on the motion would significantly aid in its determination of the motion. Accordingly, the court enters the following Memorandum Decision and Order based on the written memoranda submitted by the parties and the facts and law relevant to the motion.

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend its complaint within 21 days of the filing of a 12(b) motion to dismiss, by written consent of the opposing party, or by leave of court. Fed. R. Civ. P. 15(a). In this case, the FDIC filed a motion to dismiss on March 2, 2010, well beyond the 21 days provided for in the rule. In addition, the

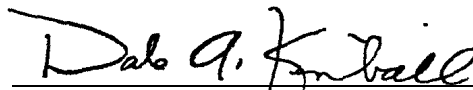
FDIC did not give consent to Plaintiffs' filing of an amended complaint. Finally, the court did not grant leave for the filing of the amended complaint.

Nevertheless, Plaintiffs assert that the court implicitly granted Plaintiffs leave to amend their pleading when several homeowner defendants were dismissed from the action. The court's order allowing the dismissal of the homeowner defendants, however, does not provide a basis for filing an amended complaint. The order dismissing the homeowner defendants stands on its own, and it was unnecessary to amend the pleadings to reflect that order. Moreover, Rule 15 contemplates an explicit leave of court, not an implicit one. Plaintiffs should have sought leave of court to file their Third Amended Complaint. As such, Plaintiffs filing of a Third Amended Complaint does not meet Rule 15 standards, and the court concludes that such complaint should be stricken.

For the reasons stated above, Defendant FDIC's Motion to Strike Third Amended Complaint is GRANTED, and Plaintiffs' Third Amended Complaint is stricken from the court's docket.

DATED this 9th day of July, 2010.

BY THE COURT:



DALE A. KIMBALL
United States District Judge