IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

KATHLEEN PARKS,	)	
Plaintiff,	)	
vs.	)	2:03cv2326 D/P
FINANCIAL FEDERAL SAVINGS BANK,	)	
Defendant.	)	

ORDER GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT

Presently before the Court is the plaintiff, Kathleen Parks', Motion to Amend Complaint, filed on June 6, 2003. The defendant filed a response to the plaintiff's motion on June 20, 2003. For the following reasons Ms. Parks' Motion to Amend is GRANTED.

I. Background

On April 14, 2003, Ms. Parks filed a Complaint in the Chancery Court for Shelby County, Tennessee. Her Complaint contained counts alleging negligent misrepresentation, intentional misrepresentation, and breach of contract. On May 7, 2003, the defendant filed a Notice of Removal with the United States District Court for the Western District of Tennessee pursuant to 28 U.S.C. § 1441(b). On May 15, 2003, the defendant filed a Motion to Dismiss. The defendant has not answered Ms. Parks' Complaint.

In her motion, the plaintiff asks the Court for leave to amend. She says she intends to omit her breach of contract claim and to clarify her grounds for relief. In response, the defendant argues that the Court should not address this motion until after it rules on the defendant's Motion to Dismiss.

II. Analysis

Federal Rule of Civil Procedure 15(a) states that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . ." The decision to grant a party leave to amend a pleading is within the discretion of the District Court. Moore v. City of Paducah, 790 F.2d 557, 559 (6th Cir. 1986). A motion to dismiss is not a responsive pleading for the purposes of Rule 15(a). Youn v. Track, Inc., 324 F.3d 409, 416 n.6 (6th Cir. 2003).

Had the defendant filed an answer in this case, the plaintiff would be required to seek leave of Court to amend her Complaint. FED. R. CIV. P. 15. Since the defendant has not, the plaintiff is free to amend her Complaint without leave of Court. Cerasoli v. Xomed, Inc., 952 F.Supp. 152, 161 (W.D.N.Y. 1997).

III. Conclusion

For the foregoing reasons the plaintiff's Motion to Amend Complaint is GRANTED.

IT IS SO ORDERED. Entered this ____ day of June, 2003.

_____
TU M. PHAM
U.S. MAGISTRATE JUDGE