

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-1238

Douglas B. Gardner; Inara H. Gardner, *

Plaintiffs-Appellants, *

v. *

Steven Heineman, individually and as independent executor of the estate of Ralph Heineman, deceased, *

Defendant-Appellee, *

Steven Heineman, individually and as independent executor of the estate of Ralph Heineman, deceased, *

Third Party Plaintiff, *

v. *

D.N.I. Financial Corporation; DNI Properties, Inc.; Travel Designs, Inc., *

Third Party Defendants. *

No. 00-1239

Appeals from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Douglas B. Gardner; Inara H. Gardner,	*
	*
Plaintiffs-Appellees,	*
	*
v.	*
	*
Steven Heineman, individually and as	*
independent executor of the estate of	*
Ralph Heineman, deceased,	*
	*
Defendant-Appellant,	*
-----	*
Steven Heineman, individually and as	*
independent executor of the estate of	*
Ralph Heineman, deceased,	*
	*
Third Party Plaintiff-	*
Appellant,	*
v.	*
	*
D.N.I. Financial Corporation;	*
	*
Third Party Defendant,	*
	*
DNI Properties, Inc.;	*
	*
Third Party Defendant-	*
Appellee,	*
	*
Travel Designs, Inc.;	*
	*
Third Party Defendant.	*

Submitted: November 17, 2000

Filed: November 22, 2000

Before BYE, HEANEY, and FAGG, Circuit Judges.

PER CURIAM.

Douglas B. and Inara H. Gardner owned real estate know as the Executive House. They signed a \$1 million promissory note secured by a second deed of trust in Ralph Heineman's favor. The parties later modified the loan agreement, limiting interest payments to the property's cash flow. After the Gardners refused further modification, Heineman foreclosed on the property in 1996. The Gardners filed a lawsuit in Missouri state court alleging fraud, breach of contract, promissory estoppel, and breach of an implied covenant of fair dealing. Heineman removed the case to federal court, filed a counterclaim, and moved to dismiss the Gardners' complaint. The district court granted the motion, concluding the complaint failed to state a claim. Forty-two days later, the Gardners filed a motion to amend the dismissed complaint. The district court denied the motion to amend because the Gardners did not show any valid reason for failing to amend the complaint before the dismissal ruling, and because the additional facts pleaded in the proposed amended petition did not cure the initial petition's defects. Heineman filed a motion to amend his counterclaim, and the district court denied that motion because Heineman failed to show a valid reason for not filing the counterclaim before the dismissal. The Gardners filed a counterclaim in response to Heineman's motion, and the district court dismissed the Gardners' counterclaim because the counterclaim was an attempt to revive the claims dismissed in the Gardners' initial complaint. The district court granted a final judgment under Federal Rule of Civil Procedure 54(b).

The Gardners appeal, asserting the district court committed error in dismissing their complaint, in denying them leave to amend the complaint, and in dismissing their counterclaim. Heineman cross-appeals, asserting the district court committed error in

denying him leave to file an amended counterclaim. Having carefully reviewed the parties' briefs, the record, and the applicable law, we conclude the district court ruled correctly. We affirm the district court's rulings in this state-law diversity case without further opinion. See 8th Cir. R. 47B. We also grant Heineman's motion to strike the Gardners' addendum to their reply brief. Thus, only parts of Count I and Count III in Heineman's counterclaim remain for the district court's resolution.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.