

[CAPTION]

MOTION TO DISMISS under K.S.A. 60-212(b)

The (plaintiff) (defendant) (third-party plaintiff) (third-party defendant) moves the Court to dismiss the (petition) (counterclaim), (cross-claim) (third-party petition) under K.S.A. 60-212(b), as follows:

The Court lacks jurisdiction over (the subject matter) (the person) because *[state reasons why the Court lacks jurisdiction]*.

The venue is improper because {state reasons why the venue is improper}.
(The process is insufficient) (The service of process is insufficient) because *[state reasons why the process and/or service of process is insufficient]*.

The petition fails to state a claim upon which relief can be granted because *[state reasons why the claim is insufficient]*.

Parties needed for just adjudication have not been joined as required under K.S.A. 60-219.

WHEREFORE, (plaintiff) (defendant) (third-party plaintiff) (third-party defendant) moves the Court to dismiss the (petition) (counterclaim), (cross-claim) (third-party petition) for the reasons stated.

(Signature of attorney)
(Name), Attorney for (party)
Bar Registration Number
Address
Telephone
[Facsimile number]
[Email address]

Authority

K.S.A. 60-212.

Notes on Use

This form is intended to illustrate the presentation of defenses and objections under K.S.A. 60-212, when the pleader elects to present defenses allowed under K.S.A. 60-212(b) by motion before a responsive pleading is made. The following defenses may be made by motion: lack of jurisdiction over the subject matter, K.S.A. 60-212(b)(1); lack of jurisdiction over the person, K.S.A. 60-212(b)(2); improper venue, K.S.A. 60-212(b)(3); insufficiency of process, K.S.A. 60-212(b)(4); insufficiency of service of process, K.S.A. 60-212(b)(5); failure to state a claim upon which relief can be granted, K.S.A. 60-212(b)(6); and, failure to join a party under K.S.A. 60-219 and amendments thereto, K.S.A. 60-212(b)(7).

A defense of lack of jurisdiction over the person, improper venue, insufficiency of process or insufficiency of service of process is waived if not asserted in a motion or in a responsive pleading. A defense of failure to state a claim upon which relief can be granted or a defense of failure to join a party under K.S.A. 60-219 may be made in any pleading permitted or ordered under K.S.A. 60-207(a), or by motion for judgment on the pleadings, or at the trial of the merits. A defense of lack of jurisdiction over the subject matter may be suggested by a party at any time. The motion must be signed as required by K.S.A. 60-211 and served as required by K.S.A. 60-205. The form for motions is covered by K.S.A. 60-207(b) and K.S.A. 60-210.

The motions contemplated under K.S.A. 60-212(b) raise defenses or objections which could result in dismissal of the action. The motion should be accompanied by a short memorandum setting forth any reasons for the motion not fully stated in the motion itself and citation, without extended elaboration, of any authorities necessary for consideration in ruling upon the motion. S. Ct. Rule 133, 2003 Kan. Ct.R. Annot., 185-186.

Comment

Facts outside the pleadings may be presented by affidavit. The motion would then be converted to a summary judgment motion under K.S.A. 60-256. *McCormick v Board of Shawnee County Commissioners*, 272 Kan. 627, 647, 35 P.3d 815 (2001).