

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-018876

02/13/2024

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

PAT MAH

JONATHAN A DESSAULES

v.

CANTERRA AT SQUAW PEAK
CONDOMINIUM ASSOCIATION INC

HENRY NICKOLAS EICHER

JACOB A KUBERT
JONATHAN D EBERTSHAUSER
JUDGE BLANEY

RULING

The Court has reviewed and considered Plaintiff's *Amended Motion for Leave to File First Amended Complaint*, Defendant's *Objection to Plaintiff's Motion for Leave to Amend Complaint*, Plaintiff's *Reply in Support of Motion for Leave to File First Amended Complaint*, and the record in this case.

"Leave to amend must be freely given when justice requires." Rule 15(a)(2); *Cagle v. Carr*, 101 Ariz. 225, 227, 418 P.2d 381, 383 (1966). But the Court may deny the requested amendment based upon, *inter alia*, "undue delay, dilatory action, or undue prejudice to the opposing party." *Owen v. Superior Court*, 133 Ariz. 75, 79 (1982). "Prejudice is the inconvenience and delay suffered when the amendment raises new issues or inserts new parties into the litigation." *Id.* (internal quotations omitted).

This case involves a dispute over assessments issued by the condominium association for a condominium community. Plaintiff Homeowner brought this action against the Association, seeking, *inter alia*, declaratory relief stating that cost of repair to balconies in the complex cannot

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be assessed against her because a 1996 Amendment to the CC&Rs limits the allocation of such expenses to only those homeowners who benefit from the exclusive use of the balconies (the “1996 Amendment Claim”). Defendant filed a *Motion to Dismiss* as to this and Plaintiff’s other claims, which was fully briefed. The Court ultimately resolved this particular issue in its September 26, 2022 Ruling (filed 09/28/2022) and dismissed the 1996 Amendment Claim.

Approximately two weeks later, Plaintiff filed a *Motion for Clarification*, which was actually a mislabeled motion for reconsideration, simply reasserting some of the same arguments Plaintiff had already asserted during the briefing on Defendant’s *Motion to Dismiss*. The Court nevertheless ordered the parties to fully brief Plaintiff’s *Motion for Clarification*. After reviewing and considering the briefing, the Court found that Plaintiff failed to establish good cause to support the relief she was seeking.

Plaintiff now seeks to amend her *Verified Complaint*: (1) more than two years after she initiated this action; (2) after the parties already prepared for and participated in a settlement conference; and (3) with only one month left before the close of discovery. More specifically, Plaintiff seeks to buttress her already-dismissed 1996 Amendment Claim with new factual allegations that were known to her at the time she filed her *Verified Complaint*, or that she would have known with the exercise of reasonable diligence. Moreover, although Plaintiff responded in opposition to Defendant’s *Motion to Dismiss*, she did not seek leave to amend her *Verified Complaint* at the time. Plaintiff has already made two attempts to save that portion of her claim that was based on the 1996 Amendment. She now seeks a third bite at the apple. *See Amended Motion for Leave to File First Amended Complaint* at pg. 6:12-16.

THE COURT FINDS those portions of the proposed *First Amended Complaint* supporting Plaintiff’s 1996 Amendment Claim are futile, as they purport to buttress a claim that the Court has already rejected twice in this litigation.

THE COURT FURTHER FINDS Plaintiff has unduly delayed in seeking to amend her *Verified Complaint*. Plaintiff did not seek leave to amend the 1996 Amendment claim two years ago when she responded in opposition to Defendant’s *Motion to Dismiss*. Instead, she waited more than one year after the Court dismissed the claim, after the parties prepared for and participated in a settlement conference, and after the parties completed all but the last few weeks of discovery.

THE COURT FURTHER FINDS that permitting Plaintiff to amend her *Verified Complaint* to add supporting allegations to her 1996 Amendment claim – obviously with an eye toward attempting to reassert the claim later in the litigation – would unduly prejudice Defendant. Defendant has been forced to expend time and resources successfully arguing against the 1996 Amendment Claim twice already – three times if the Court considers the current briefing. Plaintiff’s continued assertion of the dismissed claim has caused Defendant, and the Court, to

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unnecessarily expend time and resources and has improperly expanded this litigation. *See* Rule 1, Ariz.R.Civ.P. (courts are to employ and administer the Rules of Civil Procedure to ensure the just, speedy, and inexpensive determination of every action).

IT IS THEREFORE ORDERED, in the Court’s discretion, rejecting Plaintiff’s request to add allegations to a first amended complaint that are intended to support the dismissed 1996 Amendment Claim.

THE COURT FURTHER FINDS good cause to permit the filing of a first amended complaint to include the claims/allegations addressed in the *Amended Motion to File First Amended Complaint*, pp. 5:25 – 6:11.

THE COURT FURTHER FINDS that Plaintiff has so comingled the allegations in the proposed *First Amended Complaint* supporting the dismissed 1996 Amendment Claim and the other allegations/claims that she seeks to add that the Court is unable to determine which paragraphs apply to which claims.

IT IS THEREFORE ORDERED, in the Court’s discretion, granting Plaintiff’s *Amended Motion* in part and permitting Plaintiff to file a first amended complaint that asserts those claims/allegations found on pp. 5:25 – 6:11 of the *Amended Motion*. The first amended complaint shall not contain the 1996 Amendment Claim or any allegations in support thereof, as the claim has been dismissed from this case. Plaintiff shall file and serve the first amended complaint by **February 26, 2024**. Defendant shall file and serve its answer within **ten days** thereafter.

PLEASE NOTE: This Division requires that all motions, responses, replies and other Court filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. **No filing will be accepted if filed in combination with another. Additionally, all filings shall be fully self-contained and shall not “incorporate by reference” other separate filings for review and consideration as part of the pending filing.**