

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-094721

04/03/2019

HONORABLE DAVID J. PALMER

CLERK OF THE COURT
K. Tiero
Deputy

WOODMAR I V ASSOCIATION INC

CLINT G GOODMAN

v.

PAUL S RUBIN INC

JAMES A ROBLES JR.

JUDGE PALMER

**UNDER ADVISEMENT RULING
MINUTE ENTRY**

The court held oral argument on February 7, 2019 on Defendant Paul S. Rubin Inc., d.b.a. PRM Association Management's ("PRM") December 14, 2018 Motion for Judgment on the Pleadings. Plaintiff Woodmar IV Association, Inc. ("Woodmar") filed a Response in opposition to that Motion on January 4, 2019, and Defendant filed a Reply on January 17, 2019.

Motion for Judgment on the Pleadings

In its Motion, PRM seeks an order dismissing the Complaint based upon Plaintiff's alleged failure to comply with the mandated conditions precedent before filing this lawsuit. Primarily those conditions are for (1) the party alleging breach of the contract to provide notice of the alleged breach; (2) that party providing the alleged breaching party a 30-day opportunity to cure; (3) and offering to mediate.

Woodmar argues that such a provision is not necessary as the relevant statutes case law provide the Plaintiffs with authority to engage in litigation resolve issues between the parties.

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Moreover, Woodmar also argues that the parties have in essence complied with the requirements. They specifically allege that the provisions allowing the cure period was aimed at the parties effectively working together in an ongoing business relationship to resolve any differences. As there is currently no business relationship, they argue the rationale behind the provision in their agreement is largely moot.

Additionally, Woodmar argued that at one time the parties actually engaged in mediation, albeit unsuccessfully. It also stated that they offered to dismiss litigation to engage in mediation, an offer which PRM refused.

Based upon the foregoing,

IT IS ORDERED denying PRM's Motion for Judgment on the Pleadings.

Motion to Amend Complaint

The court also heard oral argument on Woodmar's December 5, 2018 Motion for Leave to File Second Amended Complaint, to which PRM filed a Response in opposition on December 12, 2018, with Woodmar filing its Reply on December 20, 2018. Woodmar sought leave to amend the complaint to add a punitive damages claim, based on information it claims has turned up during discovery during the litigation of this case.

PRM opposes the Motion based on, *inter alia*, the delay it will allegedly cause, and due to its belief that the motion is not being filed in good faith.

Civil Rule 15(a)(2) states that "a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely given when justice requires."

"Mere delay" – the mere fact that the attempt to amend comes late – is not justification for denial of leave to amend. "Notice and substantial prejudice to the opposing party are critical factors in determining whether an amendment should be granted." To justify denial of the motion, there must be "undue" delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments or undue prejudice to the opposing party. "Prejudice is 'the inconvenience and delay suffered when the amendment raises new issues or inserts new parties into the litigation.'"

Owen v. Superior Court, 133 Ariz. 75, 79, 649 P.2d 278, 282 (1982) (citations omitted).

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In this case, no trial date has been set yet. The delay in the case was the result of waiting for the parties' family court litigation to conclude. There are also no new issues; rather, the purported new claims are allegedly connected with the same conduct the Plaintiff alleges were perpetrated by Defendants. Therefore the court finds there is no unfair prejudice to PRM by granting this Motion.

IT IS ORDERED granting Plaintiff's Motion for Leave to File Second Amended Complaint, filed on January 18, 2018.

IT IS FURTHER ORDERED that Plaintiff shall file and serve the Amended Complaint within ten (10) days of the filing date of this minute entry pursuant to Civil Rule 15(a)(5).