

District Court, Adams County, Colorado 1100 Judicial Center Drive Brighton, Colorado 80601	DATE FILED: November 29, 2023 9:30 AM CASE NUMBER: 2022CV31644
Plaintiff: REUNION METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, v. Defendants: NORTH RANGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado; the BOARD OF DIRECTORS OF NORTH RANGE METROPOLITAN DISTRICT NO. 1; NORTH RANGE METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado; and the BOARD OF DIRECTORS OF NORTH RANGE METROPOLITAN DISTRICT NO. 2	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 22CV31644 Division: W
Order Granting Plaintiff’s Motion to Amend Complaint	

I. Background

This lawsuit was filed just over 11 months ago. The Parties have yet to conduct discovery, there has been no Case Management Conference set, and trial has yet to be set. Approximately seven months into the filing of the lawsuit, on July 7, 2023, Plaintiff Reunion Metropolitan District (RMD) filed a Motion to Amend its Complaint requesting the Court grant RMD leave to file a Second Amended Complaint for the purposes of adding North Range Metropolitan District No. 3 and the Board of Directors of North Range Metropolitan District No. 3 (NR3) to this litigation. On July 31, 2023, Defendants filed their Response. Plaintiff filed a Reply on August 7, 2023. On November 28, 2023, the Court held a hearing where the pending motion was addressed.

II. Parties' Positions

A. Plaintiff's Position.

Plaintiff claims that “[l]ike the Defendants, NR3 is also a party to the [Mill Levy Equalization and Pledge Agreement] MLEPA and the Operating Agreement[, and] NR3 is in an identical legal position with respect to those agreements and with respect to RMD as the current Defendants.” According to Plaintiff, “[u]p until April of 2023, NR3 was complying with its obligations under the MLEPA and the Operating Agreement.” However, Plaintiff contends that “[o]n May 2, 2023, three new directors were elected to the Board of Directors of NR3. . . .[and] NR3 failed to remit to RMD the tax revenues it was obligated to pay under the MLEPA and Operating Agreement by May 20, 2023 [which] placed NR3 in immediate default under the MLEPA.” Plaintiff concludes that because of this, that it should be allowed to amend its claims to add NR3 as defendants, subject to the same claims as those asserted against the current Defendants.

B. Defendants' Position.

Defendants contend that “both the Court and Defendants are prejudiced by an unnecessary or inappropriate amendment to the Complaint.” Specifically, Defendants argue that they “will have to incur unnecessary and excessive expense of answering the Second Amended Complaint, if granted.” Defendants continue that “there are motions to dismiss pending before the Court[, and that t]he Second Amended Complaint may require supplemental pleadings regarding those motions as well.” The remainder of Defendants' Response concerns factual disputes as to Plaintiff's claims that Plaintiff relies on in the Motion to Amend. By way of example, Defendants argue that they “dispute that NRMD3

is in an ‘identical legal position’ as Defendants,” and that “contrary to the assertion of Plaintiff, NRMD3 was not in full compliance with the MLEPA and the Operating Agreement up until April 2023.” Defendants ask the Court to deny Plaintiff’s Motion to Amend.

III. Law

A “party may amend [its] pleading once as a matter of course at any time before a responsive pleading is filed or. . .[o]therwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” C.R.C.P. 15(a).

“The decision whether to permit an amendment pursuant to C.R.C.P. 15(a) is committed to the district court’s discretion, and [an appellate court] will not reverse the district court’s ruling absent a clear abuse of that discretion.” *Akin v. Four Corners Encampment*, 179 P.3d 139, 146 (Colo. App. 2007) (citations omitted). “A court abuses its discretion if its decision is manifestly arbitrary, unreasonable, or unfair.” *Id.* (citations omitted).

The Colorado Supreme Court has endorsed a “liberal policy of amendment [which] is intended to effectuate the just and speedy determination of claims.” *Civil Service Commission v. Carney*, 97 P.3d 961, 964 (Colo. 2004). This “liberal policy of amendment [] encourages the courts to look favorably on requests to amend.” *Eagle River Mobile Home Park, Ltd. v. Dist. Court*, 647 P.2d 660, 662 (Colo.1982).

“This lenient policy, however, is not without limits.” *Akin*, 179 P.3d at 146. “Leave to amend may be denied where, for example, [1] the moving party has unduly delayed in seeking the amendment, [2] the opposing party would be prejudiced if the amendment were permitted, or [3] the amendment would be futile.” *Id.* (citations omitted). “[T]he movant carries the burden of demonstrating lack of knowledge, mistake, inadvertence, or other reason for having [failed to file the motion] earlier.” *Polk v. Denver Dist. Court*, 849 P.2d 23, 27 (Colo. 1993). “When considering a motion to amend made long after the original pleading and only shortly before trial, the court should weigh the prejudice to the opponent in granting the motion against the prejudice to the movant in denying the motion.” *Gaubatz v. Marquette Minerals, Inc.*, 688 P.2d 1128, 1130 (Colo. App. 1984).

IV. Analysis

As the Court conducts its analysis under Rule 15 and the caselaw interpreting it, the Court asks the following questions:

A. Has Plaintiff unduly delayed in seeking the amendment?

Put another way, has Plaintiff carried the burden of demonstrating lack of knowledge, mistake, inadvertence, or other reason for not having filed the motion earlier? Here, Plaintiff claims that on May 17, 2023 NR3 dismissed its previous district manager, accountant, and legal counsel; then a few days later, failed to make the required payment. It appears some time occurred while counsel for the relevant Parties tried to resolve the issue. When it was not resolved, Plaintiff filed this motion on July 7, 2023. Here, the Court

finds that Plaintiff has not unduly delayed in seeking the amendment and has carried the burden of demonstrating lack of knowledge for not having filed the motion earlier.

B. Would Defendants be prejudiced if the amendment were permitted?

The Court accepts that there will always be some prejudice to the non-moving party when an amendment is authorized by the Court. This is because when a new claim or defense is added that was not there before, it carries the potential to change strategic or tactical decisions, it may change settlement positions, and it may prolong the case. This is especially true when a new party is added. Here, the prejudice identified by Defendants include incurring additional expense of answering the Second Amended Complaint and perhaps having to file supplemental pleadings regarding motions to dismiss. The Court does not see this as an issue of prejudice, but instead as the normal course of litigation. Additionally, as the Court pointed out at the beginning of this Order, the Parties have yet to conduct discovery, there is no Case Management Conference, and trial has yet to be set.

C. Would the amendment would be futile?

Without discovery and briefing on the substantive issue, the Court cannot determine the viability of the claim against NR3. Defendants make arguments concerning the veracity of the factual allegations, but those are arguments for whether the claim would be dismissed at a later time. As such, the Court finds that the amendment would not be futile.

V. Conclusion

The Court finds that justice requires allowing Plaintiff to amend its Complaint. Plaintiff is to do so within 21 days of the date of this Order.

Ordered on November 29, 2023

By the Court:

A handwritten signature in black ink, appearing to read "Robt. Ramirez". The signature is written in a cursive, somewhat stylized font.

Roberto Ramirez
District Court Judge