

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-013607

05/12/2022

HON. PAMELA GATES

CLERK OF THE COURT
S. Ortega
Deputy

MARICOPOLY L L C

KYLE A KINNEY

v.

TIERRA SANTA COMMUNITY
ASSOCIATION INC, et al.

EMBER ANN VAN VRANKEN

CHAD M GALLACHER
SEAN P HEALY
AARON C SCHEPLER
JUDGE GATES

MINUTE ENTRY

The court considered Plaintiff's Motion for Leave to File Second Amended Complaint for Tort Damages, Defendant Maxwell & Morgan's Response, Defendant Tierra Santa Community Association, Inc.'s Notice of No Objection, and Plaintiff's Reply.

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." *See* Ariz. R. Civ. P. 15(a)(2). Absent undue delay, dilatory action, or undue prejudice to the adverse party, the policy underlying Rule 15 supports permitting a plaintiff's request to amend its complaint. *See Owen v. Superior Court*, 133 Ariz. 75, 77-80 (1982)(reversing denial of leave to amend where request to amend was delayed twenty-seven months, but occurred six weeks prior to trial and did not require any additional discovery); *Torstenson v. Valley Nat'l Bank*, 125 Ariz. 373, 376 (App. 1980)(citing *Foman v. Davis*, 371 U.S. 178, 182 (1972)). The court should not permit amendment if the proposed amendment would be futile. An amendment is futile if the proposed amended pleading would be subject to dismissal

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under Rule 12(b)(6) for failure to state a claim. *Swenson v. County of Pinal*, 243 Ariz. 122, 128, ¶ 21 (App. 2017).

Plaintiff seeks to amend its complaint to add a claim under A.R.S. § 33-420(A) against Maxwell & Morgan, P.C. and Tierra Santa Community Association, Inc. Section 33-420(A) states:

A person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

The statute creates a cause of action against a defendant who causes a document to be recorded against real property that is “forged,” “groundless,” “contains a material misstatement, false claim or is otherwise invalid.” Under the plain language of the statute, only “[a] person purporting to claim an interest in, or a lien or encumbrance against, real property” can be held liable. Plaintiff does not allege that Maxwell & Morgan claimed an interest in the property at issue in this lawsuit nor does Plaintiff allege facts similar to *LeBaron Properties v Kaufman*, 223 Ariz. 227 (App. 2009). Rather, Plaintiff alleges that Maxwell & Morgan is a law firm that represented a client who claimed an interest in the property.

The statute does not provide a cause of action against Maxwell & Morgan. *See Wyatt v. Wehmueller*, 167 Ariz. 281, 284 (1991); *TWE Ret. Fund Tr. v. Ream*, 198 Ariz. 268, 273, ¶ 19 n.3 (Ct. App. 2000); *Evergreen W., Inc. v. Boyd*, 167 Ariz. 614, 619, 810 P.2d 612, 617 (Ct. App. 1991). Although Plaintiff claims that Maxwell & Morgan had a “financial interest in prosecuting the foreclosure,” this factual basis is insufficient. *See PSAC* ¶34.

IT IS ORDERED granting Plaintiff’s Motion for Leave to File Second Amended Complaint for Tort Damages in part. The court denies Plaintiff’s request to add a claim under A.R.S. §33-420 against Maxwell & Morgan.