

**IN THE SUPERIOR COURT
OF
Gila County, State of Arizona**

FILED in Court Record

08/13/2020

HON. TIMOTHY M. WRIGHT
Div: 2

V GUADIANA
Judicial Assistant

**BEAVER VALLEY IMPROVEMENT
ASSOCIATION, a domestic nonprofit
Corporation,**

Plaintiff,

vs.

**BEAVER LAND, LLC, a domestic limited
liability company; its member MICHAEL
ARMSTEAD; BEAVER VALLEY WATER
COMPANY, INC., a domestic for-profit
corporation; its sole director and president
MICHAEL ARMSTEAD,**

Defendants.

CV201900254

ORDER

This matter comes before the Court on Plaintiff's Motion to Amend Complaint filed on June 26, 2020. As set forth below, the Court grants the Motion.

Background.

On August 29, 2019, the original Complaint was filed in this matter. The Complaint was served in September. On September 10, 2019, counsel appeared for Defendants. Later in September new counsel substituted in for Defendants. During October 2019 through early 2020, the Parties attempted to resolve the matter without the Court's assistance and an open extension of time to file a responsive pleading was agreed to by the Parties. On June 26, 2020, the Motion to Amend was filed. On July 8, 2020 counsel for Defendants moved to withdraw and on July 24, 2020 the Court granted the Motion to Withdraw. On that same date a Notice of Appearance was filed by Defendants' current counsel. On July 23, 2020, Defendants filed an Objection to the Motion to Amend. On July 30, 2020, Plaintiff Filed a Reply.

Law and Analysis.

Defendants Objection is untimely. A Response to a Motion (including an objection such as this case) must be filed within 10 days with 5 days added if the Motion is mailed. See Rules 6(c) and 7.1(a)(3), Arizona Rules of Civil Procedure. In this case, the Objection was not filed until 27 days after the Motion was filed. No reason for this delay has been presented to the Court.

Leave to amend a complaint is liberally granted.¹ As Plaintiff states, the Motion is subject to Rule 15(a)(2), Arizona Rules of Civil Procedure, which requires “leave of court.” Such “[l]eave to amend must be freely given when justice requires.” *Id.* As Arizona Courts have consistently held, “[l]eave to amend [a complaint] is discretionary, but amendments will be liberally allowed; trial on the merits of the claim is favored, and amendment will be permitted unless there has been undue delay, dilatory action or undue prejudice.” *Owen v. Superior Court*, 133 Ariz. 75, 79 (1982). When an amended complaint “merely advances a new legal theory,” denying a motion to amend “is generally an abuse of discretion.” *Uylemanv. D.S. Rentco*, 195 Ariz. 300, 3030 (App. 1999) (citing *Walls v. Arizona Dep’t of Public Safety*, 170 Ariz. 591, 597 (App. 1999)), *see also MacCollum v. Perkinson*, 185 Ariz. 179 (App. 1996). In this case, no responsive pleading has yet been filed by Defendants. The Court is unaware of any discovery that has taken place. The Parties have merely attempted to resolve the matter through private mediation. The Court does not find any ‘undue delay, dilatory action, or undue prejudice.’

Based upon the forgoing,

IT IS ORDERED granting Plaintiff’s Motion to Amend Complaint filed on June 26, 2020.

cc:

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¹ Although the Court finds that Defendant’s Objection is untimely, the Court still address the merits of the Motion to Amend.