



OPPM

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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

ANDREA COLLIER, as trustee of the JACT
TRUST

Plaintiff,

vs.

PENNIE MOSSETT-PUHEK, individually;
ANTHEM HIGHLANDS COMMUNITY
ASSOCIATION, a Nevada Non-Profit
Corporation; DOES I through X and ROE
BUSINESS ENTITIES I through X, inclusive.

Defendants.

CASE NO. A-22-852032-C

DEPT. NO. VIII

**DEFENDANT ANTHEM HIGHLANDS
COMMUNITY ASSOCIATION'S
OPPOSITION TO PLAINTIFF
COLLIER'S COUNTERMOTION FOR
LEAVE TO AMEND**

Date of Hearing: August 17, 2023

Time of Hearing: 10:00 a.m.

Defendant, ANTHEM HIGHLANDS COMMUNITY ASSOCIATION, by and through
its attorney of record Edward D. Boyack of the law firm Boyack Orme & Anthony, hereby
submits this Opposition to Plaintiff COLLIER'S Countermotion for Leave to Amend:

OPPOSITION TO COUNTERMOTION

I. FACTUAL AND PROCEDURAL HISTORY

This case is a dispute between a homeowner and the owner's homeowner association and
board president. Like many of these cases, the facts are highly in dispute and ANTHEM

HIGHLANDS COMMUNITY ASSOCIATION does not stipulate to any of the asserted facts set forth in plaintiff COLLIER's Opposition.

Defendant MOSSETT-PUHEK filed a motion for summary judgment/motion to dismiss on May 18, 2023. This case was originally filed on May 3, 2022, and presently the discovery cutoff is set for November 13, 2023. COLLIER'S Opposition to the Motion was filed on August 4, 2023, only around 13 days prior to the hearing set on August 17, 2023 (less than the normally allowed 14 days to oppose a motion/countermotion under EDCR 2.20). In the Opposition filed by COLLIER to the Motion, she made an untimely and inappropriate Counter-motion for leave to amend the Complaint. The Counter-motion seeks leave to amend the Complaint to add two new Defendants, the community manager Carmen Eassa and the community management company TerraWest. For the procedural and substantive reasons set forth below, ANTHEM HIGHLANDS opposes the Counter-motion.

II. LAW AND ARGUMENT

A. The Court should not hear the improperly filed Counter-motion and instead should require it to be procedurally re-filed

EDCR 2.20(f) states that a valid Counter-motion must be "related to the same subject matter" as the original motion to be considered at the same hearing date and time as the original motion. A counter-motion which does not concern the same subject as the original motion should either not be considered or assigned its own hearing date in order to allow complete briefing. Moreover, parties should be given 14 days to oppose any motion after the motion is filed. EDCR 2.20(e).

In this case, MOSSETT-PUHEK filed a Motion for Summary Judgment/Motion to Dismiss. COLLIER then filed an opposition but filed a counter-motion on a completely different subject, i.e. amendment of the Complaint to assert causes of action as to two new proposed Defendants, Eassa and TerraWest. Further, it was filed less than 14 days prior to the hearing date of the original motion on August 17th. This Counter-motion plainly does not relate to the original motion and ANTHEM HIGHLANDS requests that the Counter-motion not be heard on August

1 17th and instead the Court should direct the countermotion to be re-filed as its own motion so a
2 full brief in opposition can be made.

3 *B. The Court should not grant the Motion to Amend as it is dilatory and would require*
4 *new trial and discovery deadlines*

5 Although ANTHEM HIGHLANDS would like additional time to prepare a full brief in
6 opposition to the Countermotion for Leave to Amend, it would state the following as a
7 substantive opposition.

8 As explained by *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139
9 (1973), “Rule 15(a) of the Nevada Rules of Civil Procedure clearly provides that leave to amend
10 shall be freely given when justice so requires. This does not, however, mean that a trial judge
11 may not, in a proper case, deny a motion to amend. If that were the intent, leave of court would
12 not be required. A motion for leave to amend is addressed to the sound discretion of the trial
13 court...” Valid reasons to deny a motion for leave to amend include “undue delay, bad faith or
14 dilatory motive on the part of the movant...” *Id.* at 105-106.

15 The Motion for Leave to Amend to assert new claims and add new Defendants, Carmen
16 Eassa and TerraWest, should be denied for several reasons. There is seemingly no way this case
17 could remain on the existing discovery and trial deadlines if the Motion for Leave was granted,
18 therefore it would cause undue delay to grant the Motion. As noted in the Opposition, numerous
19 depositions have already occurred in this case. These depositions would have to be continued or
20 re-opened to accommodate a new party. Initial experts are supposed to be disclosed by August
21 15, 2023, and the discovery cutoff is November 13, 2023. If the Court granted the
22 Countermotion for leave to amend to add two new parties at this stage, discovery would likely
23 have to be completely re-opened and a whole new discovery scheduling order would have to be
24 entered if the leave were granted. The current trial ready date of April 15, 2024. would also have
25 to be vacated.
26

27 Moreover, COLLIER was not diligent in bringing her motion and dilatory behavior is
28 grounds to deny a motion for leave to amend. As noted in her Opposition and Countermotion,

1 the events leading to this case occurred as early as March 2021. COLLIER has known the
2 operative facts of this dispute *for over two years* and simply seeks to reset discovery after not
3 diligently pursuing a matter against Eassa and TerraWest originally.

4 In summary, although ANTHEM HIGHLANDS would like additional time and briefing
5 regarding this issue, the Countermotion for Leave to Amend should be denied as it is dilatory
6 and would require the trial date and all discovery deadlines in this matter to be continued.
7

8 **III. CONCLUSION**

9 In closing, ANTHEM HIGHLANDS respectfully requests that the Countermotion be
10 continued to allow full briefing. However, if the Court does hear the Countermotion at the
11 upcoming Summary Judgment hearing, leave to amend should be denied.

12 DATED this 10th day of August, 2023.

13 **BOYACK ORME & ANTHONY**

14 By: /s/Edward D. Boyack

15 EDWARD D. BOYACK, ESQ.

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19 *Attorney for Defendant Anthem Highlands*
20 *Community Association*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August, 2023, a true and correct copy of the foregoing **DEFENDANT ANTHEM HIGHLANDS COMMUNITY ASSOCIATION's OPPOSITION TO COUNTERMOTION**, was served via electronic submission through the Clerk of Court's electronic filing/service to all parties registered to receive electronic.

By: /s/ Norma Ramirez
An Employee of Boyack Orme & Anthony