

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

MOUNTAIN AREA REALTY, INC.,

*Plaintiff,*

v.

WINTERGREEN PARTNERS, INC.,  
ROY WHEELER REALTY CO.,  
ROBERT S. ASHTON,  
LLOYD W. WILLIAMS,  
LELAND S. KOLLMORGEN

*Defendants*

CIVIL NO. 3:07cv00016

MEMORANDUM OPINION and ORDER

JUDGE NORMAN K. MOON

This matter is before the Court on Plaintiff’s Motion for Leave to File a Second Amended Complaint, filed on August 15, 2007 (docket entry no. 80).

Rule 15(a) of the Federal Rules of Civil Procedure states that a plaintiff who has once amended his complaint may again amend his complaint so long as either the adverse party consents in writing or the court grants leave to amend. *See* Fed. R. Civ. P. 15(a). Here, Plaintiff has once amended his complaint and seeks to do so again; Defendants have not consented in writing. Therefore, Plaintiff may do so only if I grant it leave; “leave shall be freely given when justice so requires.” *Id.* District court judges in the Fourth Circuit should deny leave “*only when* the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile.” *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999); *see also Edell & Assoc., P.C. v. Law Offices of Peter G. Angelos*, 264 F.3d 424, 446 (4th Cir. 2001). Here, there is no prejudice to Defendants: the proposed second amended complaint—presumably drafted by Plaintiff’s new counsel, who was only recently

added to the case—drops two defendants and a cause of action from the lawsuit, and more concisely summarizes and more specifically states the factual allegations. The only possible “prejudice” to Defendants is postponing—again—a hearing on their motions to dismiss.<sup>1</sup> Even assuming Defendants wish to again file motions to dismiss and that in doing so, they will incur additional time (and, therefore, money) restructuring their memoranda to address Plaintiff’s new complaint, I cannot conclude that this prejudices Defendants. After all, the proposed second amended complaint contains the same (but fewer) causes of actions and is more specific with the factual allegations. Because there is no prejudice to Defendants, there is no bad faith on Plaintiff’s part, and because the amended complaint would not be futile, I will grant Plaintiff’s motion.

Accordingly:

(1) Plaintiff’s Motion for Leave to File a Second Amended Complaint (docket entry no. 80) is hereby GRANTED;

(2) Plaintiff is hereby ordered to FILE his Second Amended Complaint—forthwith—with the court’s electronic docketing system;

(3) pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Defendants shall thereafter have ten days within which to PLEAD IN RESPONSE to the Second Amended Complaint;<sup>2</sup>

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<sup>1</sup> The initial hearing on Defendants’ motions to dismiss the original complaint was cancelled to enable the Court to resolve a motion to disqualify Plaintiff’s original counsel. Plaintiff subsequently filed an amended complaint and Defendants filed motions that incorporated and added to their earlier-filed motions. A hearing on these renewed motions was set for Monday, August 20.

<sup>2</sup> Any motion filed in response to Plaintiff’s Second Amended Complaint shall be supported with a separately filed, complete-in-itself memorandum of law and shall not state that it is incorporating arguments made in motions or memoranda previously filed in this case.

(4) the hearing scheduled before this Court for Monday, August 20, 2007, is hereby CANCELED; and

(5) the following motions are hereby DISMISSED AS MOOT, but without prejudice to refile motions on similar grounds, should Defendants choose to so file:

- (a) Defendants' motion to dismiss (docket entry no. 64);
- (b) Defendants' motion to dismiss (docket entry no. 66);
- (c) Defendants' motion to dismiss (docket entry no. 68); and
- (d) Defendants' motion to sever and for a separate trial (docket entry no. 70).

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Memorandum Opinion and Order to all counsel of record.

ENTERED: \_\_\_\_\_  
United States District Judge  
  
\_\_\_\_\_  
Date