

STATE OF NORTH CAROLINA
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 7622

AZURE DOLPHIN, LLC, a Nevada limited liability company; JPB HOLDINGS, INC., a California corporation, and JEAN-PIERRE BOESPFLUG, an individual,

Plaintiffs,

v.

JUSTIN BARTON, Individually; JANET BARTON, Individually, VIKING PROPERTIES, LLC, a California Limited Liability Company; SANUR BROKERAGE, a California Limited Liability Company; VIKING PROPERTY INVESTORS LLC, an Oregon Limited Liability Company; MONTPELIER INVESTORS, LLC, a Michigan Limited Liability Company; JAY'S CANBY FLORENCE, LLC, a South Carolina Limited Liability Company; WILLAMETTE RIVER ONE, LLC, an Oregon Limited Liability Company; VICTORIA PLACE GENERAL PARTNERSHIP, an Oregon General Partnership; and DOES 1-20; JAY'S COMMONWEALTH PHASE 1 LLC, a North Carolina Limited Liability Company; JAY'S COMMONWEALTH PHASE 2 LLC, a North Carolina Limited Liability Company; ASH CREEK, LLC, an Oregon Limited Liability Company; BARTON BOESPFLUG II, a California Limited Partnership; HESS CREEK, LLC, an Oregon Limited Liability Company; JAY

**ORDER DENYING PLAINTIFFS'
MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

CANBY, LLC, an Oregon Limited Liability Company; NEWBY HOUSE LLC, an Oregon Limited Liability Company; RICHMOND PARK LLC, an Oregon Limited Liability Company; RIVER VALLEY INVESTORS LLC, an Oregon Limited Liability Company; ROYAL ASCOT LLC, an Oregon Limited Liability Company; VINTAGE OAK II, a California Limited Partnership; and WILLAMETTE RIVER ONE, an Oregon General Partnership,

Defendants.

1. On May 12, 2017, Plaintiffs filed their Motion for Leave to File Second Amended Complaint (“Motion”). Defendants oppose the Motion. For the reasons discussed below, the Court **DENIES** the Motion.

2. This case has been pending since December 16, 2016, when Plaintiffs filed their original complaint. On February 10, 2017, Defendant Sanur Brokerage filed its answer, and the other Defendants moved to dismiss the complaint.

3. In response to the motion to dismiss, Plaintiffs filed a brief in opposition and also a motion for leave to amend the complaint, dated March 14, 2017. The proposed amended complaint added several individual Defendants, which Plaintiffs identified as “necessary parties previously unknown to the Plaintiffs.” (Pls.’ Mot. for Leave to File Am. Compl. ¶ 7.)

4. The Court granted the first motion to amend on April 6, 2017 and also denied Defendants’ motion to dismiss as moot. The April 6 Order directed Plaintiffs to file their amended complaint no later than April 11, 2017. Plaintiffs instead moved

for an extension of time, declaring their intent to move for leave to file a second amended complaint by April 17, 2017. The Court denied the motion for extension of time and again directed Plaintiffs to file the amended complaint attached to their March 14 motion.

5. Plaintiffs filed an amended complaint on April 18, 2017, but it was not the version approved by the Court. Upon Plaintiffs' request, the Court entered an order striking the amended complaint. Plaintiffs filed the correct version of the amended complaint on April 20, 2017.

6. On May 12, 2017—31 days after Plaintiffs first notified the Court that they intended to file a second motion for leave to amend—Plaintiffs filed the Motion. The proposed second amended complaint undoes many of the changes made in the first amended complaint. It seeks to remove Sanur Brokerage LLC, Viking Properties, LLC, and all individuals except for Justin and Janet Barton as defendants. It also removes all derivative claims and the civil conspiracy, unjust enrichment, and conversion claims. (Pls.' Mot. for Leave to File Second Am. Compl. ¶¶ 8–9 [“Pls.' Mot.”].) Plaintiffs argue that this Motion will simplify the pleadings, will cure alleged deficiencies, and is not futile. (Pls.' Mot. ¶¶ 7, 13.)

7. Rule 15(a) of the North Carolina Rules of Civil Procedure provides that courts should freely give leave to amend pleadings “when justice so requires.” “Acceptable reasons for which a motion to amend may be denied are undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice and

futility of the amendment.” *Nationsbank of N.C., N.A. v. Baines*, 116 N.C. App. 263, 268, 447 S.E.2d 812, 815 (1994) (citation and quotation marks omitted).

8. First, the Court finds that the Motion is the product of undue delay. This is Plaintiffs’ second effort to amend the complaint in approximately two months. The proposed amendments are not due to new facts learned through discovery (which has been stayed), and Plaintiffs have offered no reason that they could not have incorporated the proposed changes as part of the first amended complaint, or even the original complaint. Moreover, Plaintiffs stated that they would file this Motion by April 17, 2017 but instead filed it nearly four weeks later, without explanation.

9. Second, the timing and nature of the amendment suggest a dilatory motive. One purpose of Rule 15 is to fix the pleadings so that opposing parties may understand the allegations against them. Plaintiffs’ successive attempts to amend the complaint have made this impossible, and if granted, the Motion would (once again) moot Defendants’ motion to dismiss and require a third round of briefing.

10. The Court further notes that one result of the proposed amendment would be to remove parties that Plaintiffs added in the first amended complaint just a few weeks earlier. Plaintiffs’ statement that the additional parties are “not needed” casts a new and unfavorable light on their earlier representation that these individuals are “necessary parties.” If Plaintiffs’ true motive is to simplify the case, they may voluntarily dismiss claims or parties under Rule 41. *See Estate of Wooden v. Hillcrest Convalescent Ctr., Inc.*, 222 N.C. App. 396, 404, 731 S.E.2d 500, 506 (2012) (“Rule 41 allows for partial dismissals.”).

11. Third, without explanation, Plaintiffs have proposed to add Edward Hall Holdings Inc. as a plaintiff and to remove JPB Holdings Inc. as a plaintiff. It is unclear whether the change is a substitution of parties, corrects a clerical error, or does something else. The Motion makes no reference to Rule 25, for example. In addition, to the extent necessary, JPB Holdings Inc. has not dismissed its claims against Defendants.

12. Finally, Plaintiffs' Motion fails to comply with the Business Court Rules. As relevant here, the Motion is unaccompanied by a brief (as required by BCR 7.2) and does not reflect the position of opposing counsel (as required by BCR 7.3). Plaintiffs' first motion for leave to amend suffered from similar lapses. Under the Rules, "[a] motion unaccompanied by a required brief may, in the discretion of the Court, be summarily denied." BCR 7.2.

13. For these reasons, the Court **DENIES** Plaintiffs' Motion.

This the 30th day of May, 2017.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases