

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FLAGSTAR BANK,

No. C 10-03190 CRB

Plaintiff,

**ORDER DENYING MOTION FOR  
LEAVE TO AMEND CROSS-CLAIM**

v.

LOAN EXPERTS, et al.,

Defendants.  

---

On August 27, 2010, The Loan Experts filed a Cross-Claim against Stewart Title. See dk. 56. On July 9, 2012, Stewart Title moved for summary judgment on the Cross-Claim. See dk. 166. The Court held a hearing on that Motion on September 28, 2012, see dk. 214, and filed an Order granting the Motion as well as a Judgment in Stewart Title's favor on October 10, 2012, see dk.s. 218, 219.

In between the hearing and when the Court filed its Order and Judgment, The Loan Experts filed a Motion for Leave to Amend the Cross-Claim, see dk. 215, as well as a letter asking the Court to consider the Motion "as part of the Court's ongoing consideration of Stewart Title's Summary Judgment motion," see dk. 216 at 2. The Court also received a letter from counsel for Stewart Title, objecting to the letter and "untimely motion." See dk. 217.

The Federal Rules of Civil Procedure provide that a court should freely give leave to

1 amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). A court nevertheless has  
2 discretion to deny leave to amend due to “undue delay, bad faith or dilatory motive on the  
3 part of the movant, repeated failure to cure deficiencies by amendments previously allowed,  
4 undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility  
5 of amendment.” Leadsinger, Inc. v. BMG Music Pub., 512 F.3d 522, 532 (9th Cir. 2008)  
6 (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

7 The Court finds that The Loan Experts unduly delayed in bringing its Motion, and that  
8 allowing amendment at this point would unduly prejudice Stewart Title. Of course, it makes  
9 sense that a party would seek to amend its pleading to include additional bases for recovery  
10 after sitting in a summary judgment hearing and learning of the Court’s “tentative  
11 conclusions” in favor of the other side. See dkt. 215 at 1. But allowing such amendment  
12 would be highly unfair to the other side, which in this case litigated for two years (and  
13 briefed and argued a motion for summary judgment) based on the original pleading. Justice  
14 does not require that The Loan Experts be allowed to amend. Especially as the Court has  
15 now granted summary judgment for Stewart Title, the time for amendment has passed. The  
16 Motion for Leave to Amend is therefore DENIED.

17 **IT IS SO ORDERED.**

18  
19 Dated: October 10, 2012

  
\_\_\_\_\_  
CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE