

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 08-cv-00955-WYD-CBS

SECURITY SERVICE FEDERAL CREDIT UNION,

Plaintiff,

v.

FIRST AMERICAN MORTGAGE FUNDING, LLC;
CONSTRUCTION DISBURSEMENT SERVICES, INC.;
KENNETH E. NORTH;
PARADISE VIEW RANCHO MIRAGE, LLC;
GILGER HOMES, LLC;
KIRK GILGER;
NEW CENTURY BUILDERS, INC.;
SUNDANCE MORTGAGE, LLC;
THE ARTISAN GROUP, LLC, d/b/a ARTISAN DEVELOPMENT GROUP;
EHLIN CO.; and
RICHARD EHLIN,

Defendants.

ORDER

THIS MATTER is before the court on the Motion to Dismiss Plaintiff's Third, Fourth, Fifth, Sixth and Eleventh Claims for Relief, and Seventh Claim for Relief as to First American Mortgage Funding, LLC, filed by Defendants First American Mortgage Funding, LLC, Construction Disbursement Systems, Inc., and Kevin B. Jordan on July 28, 2008 [doc. #15]. Plaintiff Security Service Federal Credit Union filed a response on August 28, 2008 [doc. #23]. That same day, Plaintiff filed an Unopposed Motion for Leave to Amend Complaint [doc. #22], providing as reasoning that it sought to provide "additional facts to address the argument raised in the Motion to Dismiss regarding

insufficient facts and failure to plead fraud with particularity.” On September 2, 2008, Magistrate Judge Craig B. Shaffer granted that motion in a Minute Order [doc. #25]. Plaintiff then filed its First Amended Complaint that same day [doc. #26]. On September 15, 2008, Defendants filed their reply to the present Motion [doc. #29], in which they stated that “plaintiff’s First Amended Complaint does not remedy the factual deficiencies of its initial Complaint,” and Defendants proceeded to address the First Amended Complaint. On January 20, 2009, after again obtaining leave of the Court, Plaintiff filed a Second Amended Complaint [doc. #80], in which it added defendants as well as details regarding the alleged fraud.

I find that I must deny the present Motion without prejudice, for two reasons. First, even though Defendants addressed Plaintiff’s First Amended Complaint in their reply, Plaintiff has not yet argued the Motion since amending its original Complaint. Second, neither party has argued whether the Second Amended Complaint should be dismissed, notwithstanding Plaintiff’s second round of amendments. Accordingly, Defendants can file another motion to dismiss, in which they specifically address the Second Amended Complaint. It is hereby

ORDERED that the Motion to Dismiss Plaintiff’s Third, Fourth, Fifth, Sixth and Eleventh Claims for Relief, and Seventh Claim for Relief as to First American Mortgage Funding, LLC, filed by Defendants First American Mortgage Funding, LLC, Construction Disbursement Systems, Inc., and Kevin B. Jordan on July 28, 2008 [doc. #15] is **DENIED AS MOOT WITHOUT PREJUDICE**. Defendants may file a new motion to

dismiss with respect to the Second Amended Complaint [doc. #82, filed January 20, 2009].

Dated: March 18, 2009

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge