

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00212-PAB-KLM

LEHMAN BROTHERS HOLDINGS, INC.,

Plaintiff,

v.

PRIMELENDING, a PlainsCapital Company,

Defendant.

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ORDER

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**ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX**

This matter is before the Court on an **Unopposed Motion of Defendant Primelending to Amend Its Answer** [Docket No. 71; Filed December 23, 2009] (the “Motion”). Defendant seeks leave to amend its answer with three additional defenses: no actual damages, impossibility of performance, and ratification.

Fed. R. Civ. P. 15(a) provides for liberal amendment of pleadings. Leave to amend is discretionary with the court. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Viernow v. Euripides Dev. Corp.*, 157 F.3d 785, 799 (10th Cir. 1998). Amendment under the rule has been freely granted. *Castleglenn, Inc. v. Resolution Trust Company*, 984 F.2d 1571 (10th Cir. 1993) (internal citations omitted). “If the underlying facts or circumstances relied upon by a [party] may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman*, 371 U.S. at 182. “Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or

futility of amendment." *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993).

The Court finds that there is no basis for denying Defendant's motion to amend. There has not been undue delay or undue prejudice. The discovery cut-off is March 30, 2010. Plaintiff does not object to the Motion. Accordingly,

**IT IS HEREBY ORDERED** that the Motion is **GRANTED**.

**IT IS FURTHER ORDERED** that the Court **accepts** for filing Defendant's Amended Answer and Counterclaim [Docket No. 71-2].

Dated: December 30, 2009

BY THE COURT:

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s/ Kristen L. Mix  
United States Magistrate Judge