

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 09-cv-02397-REB-KMT

KRISTINE L. BENSLER, a Colorado resident,
ANN H. NOYES, a Colorado resident, and
HAROLD A. NOYES, a Colorado resident, each in their individual capacities,

Plaintiffs,

v.

TRAILHEAD LODGE AT WILDHORSE MEADOWS, LLC, a Colorado limited liability
company,

Defendant.

ORDER

This matter is before the court on “Plaintiffs’ Unopposed Motion to File Their Third Amended Complaint” (Doc. No. 23, filed January 29, 2010).

Pursuant to Fed. R. Civ. P. 15(a), “The court should freely give leave (to amend the pleadings) when justice so requires.” *See also York v. Cherry Creek Sch. Dist. No. 5*, 232 F.R.D. 648, 649 (D. Colo. 2005); *Aspen Orthopaedics & Sports Medicine, LLC v. Aspen Valley Hosp. Dist.*, 353 F.3d 832, 842 (10th Cir.2003). The Supreme Court has explained the circumstances under which denial of leave to amend is appropriate.

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure

deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be “freely given.” Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Foman v. Davis, 371 U.S. 178, 182 (1962). *See also Triplett v. LeFlore County, Okl.*, 712 F.2d 444, 446 (10th Cir.1983).

Plaintiff seeks to add an additional defendant to this action. The motion is unopposed. The deadline for amending pleadings was set by this court at February 1, 2010. Therefore, the motion was timely filed. Further, the case is in the early stages of litigation. There has been no showing of, and the court does not find, undue delay, bad faith or dilatory motive, undue prejudice, or futility.

Therefore, it is **ORDERED**

1. “Plaintiffs’ Unopposed Motion to File Their Third Amended Complaint” (Doc. No. 23) is **GRANTED**;

2. Document number 24 is **STRICKEN**. Plaintiffs shall re-file their Third Amended Complaint together with the exhibits referenced in document number 26, no later than February 3, 2010.

Dated this 1st day of February, 2010.

BY THE COURT:



Kathleen M. Tafoya

United States Magistrate Judge