

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01578-PAB-KLM

MARVIN WILLIAMS, JR.,

Plaintiff,

v.

OCWEN LOAN SERVICING LLC,
HSBC MORTGAGE SERVICE,
HAMMERSMITH MANAGEMENT FOR TUSCANY SOUTH RECREATION ASSOCIATION,
and
COLBY STRUCTURAL ANALYSIS LLC,

Defendants.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion for Leave to Amend** [Docket No. 16; Filed September 13, 2010] (the "Motion"). Plaintiff seeks permission to file a second amended complaint.¹

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

¹Plaintiff's proposed document is titled "Amendment to Complaint" but I construe it as a Second Amended Complaint.

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).

Plaintiff’s Motion was not untimely. Defendants have yet to answer or otherwise respond to the First Amended Complaint. There is no basis for denying leave to amend. On preliminary review, District Judge Brimmer determined that the proposed Second Amended Complaint is not likely to succeed on the merits pursuant to the Fed. R. Civ. P. 65 standard for entry of a temporary restraining order. *Order* [Docket No. 18]. Regardless, at this early stage of the litigation, and in the interest of justice, Plaintiff should be permitted to file a Second Amended Complaint with his additional allegations. See Fed. R. Civ. P. 15(a)(2) (“[t]he court should freely give leave when justice so requires.”). Accordingly,

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

IT IS FURTHER **ORDERED** that the Court accepts Plaintiff’s Second Amended Complaint [Docket No. 16-1] for filing as of the date of this Order.

BY THE COURT:

____s/ Kristen L. Mix_____
United States Magistrate Judge

Dated: September 20, 2010