

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-010817

03/09/2020

HON. TERESA SANDERS

CLERK OF THE COURT
S. Perez
Deputy

SHANNON BERKMAN

CHRISTOPHER ANDREW MEYERS

v.

WALT DANLEY REALTY L L C, et al.

DONALD W BIVENS

JUDGE SANDERS

ORDER ENTERED BY THE COURT

The Court has read and considered Plaintiff's *Motion for Clarification* filed January 22, 2020, Defendants' response, and Plaintiff's reply. The Court has also considered the arguments of counsel made on March 5, 2020.

The pending motion is a "follow-up" motion filed by Plaintiffs seeking clarification from the Court regarding the effect of its denial of Plaintiff's *Motion for Leave to Amend the Complaint* filed September 13, 2019, and *Motion to Reconsider* filed December 11, 2019. In the pending motion, Plaintiff seeks an order from the Court permitting her to introduce evidence of, and argue, the facts and circumstances regarding the May 8, 2018, "whistleblower" allegations that are the subject of her request to amend her Complaint. Defendants urge the Court to deny her request, citing, among other reasons, that they would suffer unfair prejudice as a result of Plaintiff's late disclosure of "claims not framed by her Complaint."

As noted in the Court's minute entry dated November 12, 2019, the first time that it appeared to the Court that Plaintiff alleged the May 8, 2018, "whistleblower" claim was in her response to Defendants Walt Danley Realty and Walt Danley's *Motion for Summary Judgment*, which Plaintiff filed on November 4, 2019. The Court denied Plaintiff's request to amend her

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Complaint to allege the new claim because it was raised after the dispositive motion deadline and after discovery had been completed.

Although in her Initial Rule 26.1 Disclosure Statement she referred to witness Zach Bunch as a person “who may be called to testify as to the direction he received to change the appraisal for the 58th Place Property from Mr. Danley”, she never disclosed this event as a “whistleblower” claim with any specificity. In contrast to her disclosures regarding the May 23, 2018 event, she provided no information regarding the date, time, location, or any specific facts or circumstances to support such a claim. As a result, the Court finds that May 8, 2018 allegations were not sufficiently disclosed at that time. Subsequently, after discovery had closed, on or about August 23, 2019, Plaintiff submitted her final disclosure statement, which for the first time, disclosed to Defendants the May 8, 2018 “whistleblower” claim.

Plaintiff further asserts that because she was “extensively examined” regarding this subject in her deposition conducted on June 23, 2019, she put Defendants on notice regarding her May 8, 2018 allegations. Based upon the portions of the deposition transcript provided to the Court, the Court finds that the examination conducted by defense counsel, and the answers provided by Plaintiff, do not constitute Plaintiff’s disclosure of an allegation of an additional “whistleblower” claim.

For the reasons set forth above, and in the Court’s minute entry dated November 12, 2019, the Court finds that an additional “whistleblower” claim, based upon events occurring on May 8, 2018, was not sufficiently and/or timely disclosed. As a result, those events cannot be asserted in connection with a motion for summary judgment, or at trial in this matter.