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| ADAMS COUNTY DISTRICT COURT STATE OF COLORADO  Court Address:  1100 Judicial Center Drive Brighton, Colorado 80601 | DATE FILED: August 1, 2018 9:59 AM  FILING ID: 6DFBB1958DFC3 CASE NUMBER: 2018CV30347  Court Use Only |
| **Plaintiff(s):** | Case Number: 18 CV 030347 |
| **Defendant(s):** | Division/ Courtroom: W |
| *Attorneys for Plaintiff:*  ADRESS:  Phone Number:  Fax Number: |  |
| **PLAINTIFF’S MOTION FOR LEAVE TO AMEND COMPLAINT TO CLARIFY RELIEF SOUGHT** | |

**COMES NOW,** the Plaintiff, Judith Makowski, by and through her counsel, Anderson Hemmat, LLC, and for her Motion for Leave to Amend Complaint to Clarify Relief Sought, states and alleges as follows:

# CERTIFICATION PURSUANT TO C.R.C.P. 121 § 1-15 (8)

Plaintiff has conferred with counsel for Defendants, Amy Twohey, Esq., who has indicated that Defendants are opposed to the relief sought herein.

# INTRODUCTION

1. This case arises out of an incident that occurred on February 2, 2017 wherein Edward J. Makowski (“Decedent”) was looking for an apartment with an employee/agent for The Oslo Apartments located at 11501 North Washington Street in the City of Northglenn, County of Adams, State of Colorado. Upon information and belief, during the tour conducted by Defendants’ employee/agent, Decedent slipped on stairs on the property that were either icy or had ice melt placed on them without need, resulting in a slipper condition, and fell resulting in his death.
2. Additionally, the employee/agent conducting the tour of the apartments observed what she described as Decedent’s frail condition, had reservations about his ability to ascend the stairs leading to the model apartment located on the second floor of one of the apartment buildings, but led him up those stairs regardless. It was on those stairs that Decedent fell, resulting in his death.
3. Plaintiff was only able to take the deposition of this employee/agent that conducted the tour, a Ms. Sandar Roe recently, on July 26, 2018, and as a result of this deposition, the above information contained in the second paragraph of this Motion only just came to Plaintiff’s attention.
4. Therefore, Plaintiff now brings this Motion for Leave to Amend Complaint to Clarify Relief Sought so that she may incorporate this recently obtained information into her claims in this action.

# LEGAL STANDARD

1. If an amendment to a pleading is filed after 21 days of the original pleading, “a party may amend his pleading only by leave of court or by written consent of the adverse party.”

C.R.C.P. 15(a). “[L]eave shall be freely given when justice so requires.” *Id.*

1. Clarification of the relief sought constitutes proper grounds for amendments to a complaint. *Gilligan v. Blakesley*, 26 P.2d 808, 810 (Colo. 1933).
2. “Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” C.R.C.P. 15(c).

# ARGUMENT

1. Plaintiff’s Complaint was filed on March 1, 2018, and Plaintiff’s first Amended Complaint was filed the next day, on March 2, 2018. Twenty-one days after March 2, 2018 was March 23, 2018. Accordingly, leave of Court is required before Plaintiff may amend her Complaint in this matter.
2. As mentioned above, Plaintiff was only just recently able to take the deposition of Ms. Sandra Roe, who was the only person present with Decedent at the time of his fall and death. Ms. Roe’s deposition was taken on July 26, 2018. New information came to light in this deposition, and Plaintiff therefore hereby seeks to incorporate this newly obtained information into her claim for relief.
3. More specifically, Ms. Roe, the leasing consultant for the Oslo Apartments, testified that when she first saw Decedent, she thought his ability to walk was significantly impaired. She testified that Decedent walked with a limp and that he walked very slowly. She further testified that his feet pointed inwards in a “V” shape. Ms. Roe went so far as to state that

Decedent appeared physically disabled. Ms. Roe also testified that Decedent informed her that he was looking for a first-floor apartment because he did not walk well. Ms. Roe even testified that she was scared about Decedent going up the stairs.

1. Ms. Roe testified that there were no model apartments on the first floor, and that the model apartment was on the second floor. In spite of all her observations and misgivings, Ms. Roe still began the tour with Decedent, and walked with him over to the stairs that led up to the modal apartment. It was on this stairs that Decedent fell and died.
2. In light of this new information, Plaintiff’s claims against Defendants are bolstered, as not only was there a dangerous condition on the property, but there was no model apartment on the first floor of the apartments as there should have been for those tenants and potential tenants who did not have the health to use the stairs. Additionally, the employee of Defendants, Ms. Roe, immediately became concerned about Decedent’s ability to safely ascend the stairs in order to complete the tour of the model apartment, yet she took him on this tour anyway. Additionally, this tour was taken during poor weather conditions.
3. That this use of the property and the resultant injuries are properly within the purview of Colorado’s Premises Liability Act (“PLA”) was established by the Colorado Supreme Court in *Larrieu v. Best Buy Stores, L.P.*, which held that claims brought under the PLA are not restricted to activities that are “directly or inherently related to the land,” but include “conditions, activities, and circumstances on the property that the landowner is liable for in its legal capacity as a landowner.” 303 P.3d 558, 563 (Colo. 2013). In *Larrieu*, the court found that the PLA applied to a claim by a plaintiff wherein a Best Buy employee was helping the plaintiff load a freezer he had purchased from Best Buy onto his truck and the plaintiff sustained injuries. *Id.* at

564. The court agreed with the plaintiff that Best Buy “in its capacity as a landowner, was responsible for the activities conducted and conditions on its premises.” *Id.*

1. Here too, Defendants were responsible for the activities conducted on their property, and for the condition their property was in. The combination of poor weather conditions, the lack of a first-floor model apartment, and Ms. Roe’s decision to take Decedent up the stairs to the second-floor modal apartment despite her reservations about his ability to safely climb those stairs, constitutes a dangerous condition of which Defendants, through their employee, knew, and this hazard resulted in the death of Decedent.
2. Therefore, Plaintiff seeks leave of this Court to incorporate this newly obtained information into her Complaint against Defendants.

**WHEREFORE**, the Plaintiff respectfully requests that this Court grant her Motion for Leave to Amend Complaint to Clarify Relief Sought and for such other and further relief as to the Court appears proper in the premises.

Respectfully submitted this 1st day of August, 2018.

FIRM NAME

*s/LAWYER NAME*

*Attorneys for Plaintiff*