

ENTERED

August 24, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

SHELTON HOWARD,

Plaintiff,

VS.

AMERIHOM MORTGAGE
COMPANY, LLC,

Defendant.

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3:23-CV-105


ORDER

The defendant filed a Rule 12(c) motion for judgment on the pleadings. Dkt. 9. The plaintiff objected that he should be allowed to amend his complaint before the court considers the defendant’s 12(c) motion. Dkt. 10. The plaintiff then filed an amended complaint, without seeking leave of the court prior to filing. Dkt. 12.

After the time to amend as a matter of course has expired, as it has here, a “party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). However, “[t]he court should freely give leave [to amend] when justice so requires.” *Id.* When a plaintiff improperly fails to seek the court’s leave before filing an amended complaint, “the court may choose not to strike the pleading in the interests

of judicial economy.” *Lee v. Wells Fargo Bank, N.A.*, No. CIV.A. H-11-1334, 2012 WL 6132510 (S.D. Tex. Dec. 10, 2012). Under Rule 15(a)(2)’s lenient standard, the court recognizes the plaintiff’s amended complaint, Dkt. 12, as the live complaint. *See* 4 Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure*, § 1484 (3d ed.). Accordingly, the defendant’s 12(c) motion is denied without prejudice.

Signed on Galveston Island this 24th day of August, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE