

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-016278

02/21/2017

JUDGE PRO TEM CAROLYN K.
PASSAMONTE
FOR HONORABLE HUGH HEGYI

CLERK OF THE COURT
P. Roe
Deputy

JAMES P FRY JR., et al.

JONATHAN A DESSAULES

v.

CIRCLE G RANCHES 4 HOMEOWNERS
ASSOCIATION

EDITH I RUDDER

MINUTE ENTRY

The Court has read and considered Defendant's Motion to Dismiss, filed 12-28-16, Response and Reply. Defendant requests dismissal of the complaint with prejudice, in part because independent of the Court action, Defendant has approved Plaintiff's already constructed chicken coop.

Analysis

Arizona is a notice pleading state. *See Coleman v. City of Mesa*, 284 P.3d 863, 867 (Ariz. 2012). A petition or complaint will survive dismissal if it states a claim on which relief can be granted. *See id.* All well-pled allegations are presumed true and all reasonable inferences are drawn from those alleged facts, "but mere conclusory statements are insufficient." *See id.* Dismissal is appropriate "only if as a matter of law Plaintiff would not be entitled to relief under any interpretation of the facts susceptible of proof." *See id.* Such a finding is appropriate here.

A motion to dismiss must be resolved based on the pleadings. *See id.* If the parties raise matters outside the pleading, the motion to dismiss becomes a motion for summary judgment. *See id.* However, exhibits to a complaint or related public records are not outside the pleading, so

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such documents do not convert “a Rule 12(b)(6) motion into a summary judgment motion.” *See id.* A motion to dismiss may be granted “only if as a matter of law plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.” *See id.*

Such a finding is not appropriate here. The Complaint presents sufficient "well-pled" facts to satisfy Plaintiffs' burden as set forth in *Coleman*, 230 Ariz. at 356, 284 P.3d at 867. Defendant also argues matters outside the pleadings, including action taken by Defendant subsequent to the filing of the Complaint, which they claim would render the complaint moot.

IT IS THEREFORE ORDERED denying Defendant's Motion to Dismiss. Any answer to the complaint shall be filed in accordance with the Arizona Rules of Civil Procedure.

IT IS FURTHER ORDERED any award of attorney fees and costs regarding this motion will abide the final resolution of this matter.