

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2018-052668

02/26/2019

HONORABLE THEODORE CAMPAGNOLO

CLERK OF THE COURT  
K. Hartley  
Deputy

ROWLEY FAMILY TRUST, THE, et al.

JUSTIN R COOLEY

v.

DOVE VALLEY RANCH COMMUNITY  
ASSOCIATION, et al.

B AUSTIN BAILLIO

AMANDA E NELSON  
JUDGE CAMPAGNOLO

MINUTE ENTRY

The Court has reviewed and considered the Motion to Dismiss with Prejudice filed by Defendant Bea Baron (Baron), Plaintiffs' Response thereto, Baron's Reply, the Complaint, and the applicable law. The Court finds that oral arguments would not significantly assist the Court in ruling on the Motion.

Baron contends that the Complaint fails to state a claim for relief against her as to any of the causes of action contained therein, pursuant to Rule 12(b)(6) of the Arizona Rules of Civil Procedure. Baron attached a number of documents as exhibits to its Motion. In considering a motion to dismiss for failure to state a claim, if the trial court considers matters outside the pleadings (extraneous matters), it must treat the motion as a Rule 56 motion for summary judgment and allow the non-movant a reasonable opportunity to present all pertinent material in response. *Strategic Development and Construction, Inc. v. 7<sup>th</sup> and Roosevelt Partners, LLC*, 224 Ariz. 60, ¶1 (App. 2010). Matters of public record or matters that are central to a complaint are not considered "extraneous matters." *Id.* Referring to documents attached to a complaint are not extraneous matters. *Id.* at ¶10. However, none of the exhibits attached to the Motion were attached

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to the Complaint. The Court finds that all of the exhibits attached to the Motion, with the possible exception of Exhibit F, are extraneous matters, which attempt to create issues of fact. Exhibit F appears to be a page from the “CCR’s” of the Homeowners Association. Generally, such CCR’s are filed of public record, thereby removing them from the category of extraneous matters. However, Baron failed to provide evidence of such a public filing. Therefore, the Court finds that Exhibit F is also an extraneous matter, and cannot be considered by the Court in a Rule 12(b)(6) proceeding. The Court does not believe this matter is ripe for summary judgment consideration. Therefore, Exhibits A through F attached to the Motion to Dismiss are extraneous matters, and the Court has not considered them in making its determination on the Motion to Dismiss.

As a general policy matter, Rule 12(b)(6) motions are not favored under Arizona law. *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). That is especially true when such motions are based on pleading insufficiencies. *See e.g., Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, ¶10 (App. 2005) (reversing summary judgment for defendant and recognizing sufficiency of complaint despite numerous technical deficiencies in the document).

The court assumes the truth of plaintiff’s factual allegations when analyzing a complaint for failure to state a claim upon which relief can be granted. *Hogan v. Washington Mutual Bank, N.A.*, 230 Ariz. 584 (2012). Arizona follows a notice pleading standard. *Coleman v. City of Mesa*, 230 Ariz. 352, 356 (2012). Rule 8 of the Arizona Rules of Civil Procedure provides that a plaintiff must provide a “short and plain statement of the claim showing that the pleader is entitled to relief.” The purpose of a complaint is to give the opponent fair notice of the nature and basis of the claim and indicate generally the type of litigation involved. *Cullen v. Auto-Owners Insurance Co.*, 218 Ariz. 417, ¶7 (2008). A complaint that states only legal conclusions, without supporting factual allegations, does not comply with Rule 8’s notice pleading standard. *Cullen v. Auto-Owners Insurance Co.*, 218 Ariz. 417, ¶7 (2008). A Court cannot accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts. *Jeter v. Mayo Clinic Arizona*, 211 Ariz. 386, 389 (App. 2005).

The Court finds that the Complaint sufficiently alleges causes of action as pled against Baron. The Complaint adequately asserts facts to support its allegations and legal conclusions that Baron breached her contractual duties under the CCR’s as to a party wall dispute, and interfered with a contract between Plaintiffs and the Association. By virtue of adequately alleging a breach of contract, Plaintiff has also adequately alleged a breach of the covenant of good faith and fair dealing, because such a covenant is implied in every contract. *Kuehn v. Stanley*, 208 Ariz. 124, ¶29 (App. 2004).

Additionally, the Complaint adequately alleges a cause of action for aiding and abetting a fiduciary duty held by the Association. The Court finds that it is unclear whether or not a

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homeowners association or the association's board of directors owes a fiduciary duty to a member of the association, and under what circumstances such a duty may or may not exist. In *Rohde v. Beztak of Arizona, Inc.*, 164 Ariz. 383,388 (App. 1990), the Court of Appeals held that no such duty exists. However, a subsequent appellate decision held that, on remand, the trial court should have considered the plaintiff's claim of breach of fiduciary duty in a homeowners association lawsuit. *Johnson v. Pointe Community Association, Inc.*, 205 Ariz. 485, ¶38 (App. 2003). Arizona law implies a duty upon a homeowners association to treat members fairly and to act reasonably in the exercise of its discretionary powers including rulemaking, enforcement, and design-control powers. *Tierra Ranchos Homeowners Association v. Kitchukov*, 216 Ariz. 195, ¶25 (App. 2007). This is not the appropriate avenue to interpret this area of the law without substantially more briefing, perhaps in a summary judgment proceeding.

The Court noted that Baron's Motion repeatedly argued that the allegations in the Complaint were false or wrong. A motion to dismiss is not a procedure for resolving disputes about the facts or merits of a case. *Coleman v. City of Mesa*, 230 Ariz. 352, ¶46 (2012). Instead, the narrow question presented by a Rule 12(b)(6) motion is whether facts alleged in a complaint are sufficient to warrant allowing a plaintiff to attempt to prove his or her case. *Id.* Dismissal is permitted only when a plaintiff would not be entitled to relief under any interpretation of the facts susceptible of proof. *Fidelity Security Life Insurance. Co. v. State Department of Insurance*, 191 Ariz. 222, ¶4 (1998).

If a complaint reasonably states a cause of action under Rule 8, the motion must be denied. The more effective and efficient way to deal with the issue is through the disclosure and discovery process. *See e.g., State ex. rel. Corbin*, 136 Ariz. at 594. If disclosure and discovery fail to establish proof sufficient to meet the plaintiffs' *prima facie* burden, then Baron is allowed to file a motion for summary judgment under the principle stated in *Orme School v. Reeves*, 166 Ariz. 301, 310 (1990).

The Complaint sufficiently states the elements of the causes of action and states claims for relief as to each count against Baron, pursuant to Rule 8. It is not subject to dismissal under Rule 12(b)(6).

The Court also noted that the pleadings from both sides contained language of a personal nature criticizing the opposing party or parties, opposing counsel and the other side's arguments. The Court believes that such personalized criticisms against the other side do not advance either side's substantive arguments, and certainly do not assist the Court in making its decision. In fact, such unnecessary language generally detracts from counsel's arguments. The Court understands that the parties themselves may not like each other. A primary purpose of having legal counsel is to serve as a buffer of such sentiments, rather than to adopt the clients' personal sentiments towards

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the other side in the pleadings. The Court is hopeful that it will not see any further examples of this.

IT IS ORDERED that Defendant Bea Baron's Motion to Dismiss with Prejudice is DENIED.