

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2018-052668

03/14/2019

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 Defendant Dove Valley Ranch Community Association's Motion for Judgment on the Pleadings, Plaintiffs' Response thereto, Defendant's Reply, Bea Baron's Joinder of Co-Defendant's Motion for Judgment on the Pleadings, the Complaint, and the applicable law.

Defendant Dove Valley Ranch Community Association (the HOA) contends that the Complaint fails to state a claim for relief under Rule 12(c) of the Arizona Rules of Civil Procedure as to Counts 1, 3 and 7. A Rule 12(c) motion tests the sufficiency of the complaint, and should be granted if the complaint fails to state a claim for relief. *Save Our Valley Association v. Arizona Corporation Commission*, 216 Ariz. 216, ¶6 (App. 2007); *Emmett McLoughlin Realty, Inc. v. Pima County*, 203 Ariz. 557, ¶4 (App. 2002); *Giles v. Hill Lewis Marce*, 195 Ariz. 358, ¶2 (App. 1999). On a motion for judgment on the pleadings, all of the allegations of the opposing party's pleadings must be accepted as true, and the moving party is entitled to judgment only if the position of the opposing party, as stated in its pleadings, clearly entitles the moving party to judgment. *Wenrich v. Household Finance Corp.*, 5 Ariz. App. 335, 338 (1967).

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The HOA filed a separate pleading, asking the Court to take judicial notice of Exhibit 1 to its Request, which is a copy of the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Dove Valley Ranch (the CCR). The HOA's Request for Judicial Notice in Support of Motion for Judgment on the Pleadings is granted, because the Court considered the CCR in Co-Defendant Schwartz' Motion to Dismiss.

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).

**Count 1: Breach of Contract – Governing Documents**

Count 1 alleges breach of contract against all of the Defendants, including the HOA. The Complaint adequately asserts facts to support its allegations and legal conclusions that the HOA breached the CCR.

**Count 3: Negligence *Per Se* - Association**

Count 3 alleges negligence *per se* against the HOA for alleged violations of A.R.S. §33-1804 (Open Meetings) & §10-11601 (Corporate Records).

Negligence *per se* applies when a person violates a specific legal requirement. *Reyes v. Frank's Service and Trucking, LLC*, 235 Ariz. 605, ¶¶34-5 (App. 2014). The statute must proscribe certain or specific acts; if a statute defines only a general standard of care, negligence *per se* is inappropriate. *Id.* A statute "enacted for the public safety, or governmental regulations made in pursuance thereof," which provides that a certain thing must or must not be done, can invoke a claim for negligence *per se*, if a failure to comply with the statute is the proximate cause of injury to another. *Griffith v. Valley of Sun Recovery and Adjustment Bureau, Inc.*, 126 Ariz. 227, 229 (App. 1980).

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Neither party provided any appellate authority that a violation of the Open Meetings or Corporate Records statute is or is not a basis for a claim of negligence *per se*. Without further briefing on this issue, this Court cannot determine it on the current pleadings. For purposes of a Rule 12(c) proceeding, the Court finds that the HOA has not met its burden to obtain a dismissal of Count 3.

**Count 7: Breach of Fiduciary Duty/Negligence**

The Court finds that it is unclear whether or not a 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 homeowner's 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 or other pre-trial proceeding.

As to the negligence component of Count 7, the Court finds that the Complaint is not limited to a contract claim, and, therefore, the economic loss rule does not apply.

The HOA has failed to meet its burden to obtain a Rule 12(c) dismissal of Count 7. For purposes of a Rule 12(c) proceeding, Plaintiff has adequately alleged a cause of action for breach of fiduciary duty and negligence.

IT IS ORDERED that Defendant Dove Valley Ranch Community Association's Request for Judicial Notice in Support of Motion for Judgment on the Pleadings is granted.

IT IS FURTHER ORDERED that Defendant Dove Valley Ranch Community Association's Motion for Judgment on the Pleadings is denied.

IT IS FURTHER ORDERED that Defendant Dove Valley Ranch Community Association shall file an Answer to the Complaint no later than **April 8, 2019**.