

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-001021

03/18/2021

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
K. Treftz
Deputy

RON HASSID

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2401 E ELM ST
PHOENIX AZ 85016

v.

LA FUENTE CONDOMINIUM ASSOCIATION
INC, et al.

LYDIA P LINSMEIER

JUDGE J. SMITH

MINUTE ENTRY

The Court considered Defendants' Motion to Dismiss (filed 02/22/2021), the Response, and the Reply.

J.R. Dahlberg and Thomas Lester own an upstairs condominium. A water leak developed. Gravity worked, so the downstairs unit suffered the consequences. Plaintiff's Complaint alleged that the HOA and the management company it hired, Vision Community Management, LLC, negligently handled the water leak and are responsible for damages to the downstairs unit. The complication is deciding who owns the downstairs unit and whether Plaintiff may bring these claims.

The HOA and Vision argued that Plaintiff does not own the unit and cannot bring the claims. Indeed, Plaintiff acknowledged that Orange Acre, LLC, owns the unit. But Plaintiff contended that he is the beneficial owner because he is the only member of Orange Acre. Also, he "transferred legal ownership of Orange Acre LLC to the SRH Trust, of which Plaintiff is Trustor and Trustee." But that effectively asked the Court to disregard Orange Acre's separate legal

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existence. It also would mean letting Plaintiff bring claims individually rather than as trustee of the SRH Trust, which would be the proper approach when litigating about trust property.¹

Next, Plaintiff argued that Orange Acre assigned its claims to him, so he may pursue them as a self-represented party. No one doubts that corporations and limited liability companies cannot represent themselves in Superior Court; a licensed lawyer must appear. But may a self-represented party like Plaintiff pursue claims assigned by the LLC he is a member of? No Arizona opinion addressed the issue, so the Court looked to other jurisdictions.

A recent opinion is *Zapata v. McHugh*, 893 N.W.2d 720 (Neb. 2017). An LLC assigned to its sole member claims for unpaid rent and damage to rental property. The Supreme Court of Nebraska held that the member could not pursue the assigned claim. “[T]he weight of authority from other jurisdictions is that an assignment does not erase the requirement that the suit arising from the entity’s status as a business must be represented by a duly licensed attorney.” *Id.* at 726 (citing opinions from the Second Circuit, Eleventh Circuit, Court of Federal Claims, District of Maryland, Eastern District of Michigan, Southern District of New York, District of Columbia, Illinois, and Missouri).

The Eleventh Circuit opinion is something of a benchmark on this topic. It rejected a business’ attempt to assign its antitrust claims to its executive after its lawyer withdrew. “We see no reason to permit any evasion of the general rule by the simple expedient of the assignment of corporate claims to the *pro se* plaintiff.” *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1386 (11th Cir. 1985); *see also, e.g., Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 23 (2d Cir. 1983) (sole shareholder could not pursue claim that the corporation assigned to him). “Having previously accepted the advantages of incorporation, Plaintiffs cannot be permitted to shed the corporate format as an inconvenience when doing so means disregarding the well-established rule that corporations be represented by counsel.” *Gottlieb v. Alphabet Inc.*, 2018 WL 2010976, at *5 (N.D. Cal. Apr. 30, 2018) (dismissing complaint; president and sole shareholder could not pursue claims assigned by the corporation).

The authority rejecting this type of assignment and self-representation is nearly unanimous. While not binding, it is very persuasive. Plaintiff chose to form a limited liability company. That provides him with the liability shield from tort claimants and other creditors. It also may lead to tax benefits. It would make little sense to allow someone like Plaintiff to benefit from our laws

¹ Plaintiff also cannot represent the trust in *propria persona*. “A non-lawyer trustee cannot appear *pro se* to represent a trust or trust beneficiaries.” *Danziger v. Univ. of Louisville*, 2019 WL 5103107, at *2 (D. Ariz. Oct. 10, 2019); *accord, e.g., C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697-98 (9th Cir. 1987); *Bell v. S. Bay European Corp.*, 486 F. Supp. 2d 257, 260 (S.D.N.Y. 2007).

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but, when expedient, toss off corporate formalities so he may pursue a claim without hiring a lawyer.

IT IS ORDERED granting the Motion and dismissing Plaintiff's claims. Of course, this ruling does not affect whether Orange Acre LLC or the SRH Trust may bring claims.

The Court's file does not include certificates of service on Defendants Dahlberg or Lester. But the Court cannot see why its analysis would not apply to those Defendants, too. The Court understands that Plaintiff likely disagrees with the foregoing analysis. But if Plaintiff believes that the foregoing analysis should not apply to Defendants Dahlberg or Lester, then he may file a statement explaining his argument within 10 days of the Clerk filing this order.

Defendants La Fuente Condominium Association, Inc. and Vision Community Management, LLC must submit a proposed form of judgment, statement of costs, and fee application (if they properly pleaded fees) within 20 days of the Clerk filing this order. The Court has not evaluated the propriety of a fee award here.