

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-092333

04/20/2007

HONORABLE HELENE ABRAMS

CLERK OF THE COURT
A. Sedillo
Deputy

VICKI WIRTZ

STEVEN W CHEIFETZ

v.

DREAMLAND VILLA COMMUNITY CLUB
INC

CHARLES E MAXWELL

MINUTE ENTRY

The Court having reviewed and considered the following:

- Defendant's *Motion to Dismiss Amended Complaint*
- Plaintiff's *Response to Defendant's Motion to Dismiss Amended Complaint*
- *Reply Regarding Motion to Dismiss Amended Complaint*

THE COURT NOTES a request for oral argument, pursuant to Rule 7.1(c)(2), Ariz. R.Civ.P.

Therefore, the request for oral argument is denied.

Defendants seek dismissal pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Motions to dismiss for failure to state a claim are not favored. However, the Court notes that Plaintiff, in lieu of dismissal, was granted the opportunity to file an amended complaint. The *Amended Complaint* is the subject of this motion.

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While both parties used this opportunity to advise the Court about previous discussions between the parties, the Motion is to be decided on the allegations in the *Complaint*. The Court must accept all allegations as true and resolve all inferences in favor of Plaintiff.

Dreamland argues for dismissal for three reasons:

1. Because the documents requested were produced, and presumably, provided to prior counsel for Plaintiff.
2. Because Plaintiff's claim pursuant to A.R.S. §33-1805 is not ripe. Mandatory assessments will not apply until April 1, 2008, and
3. Because Plaintiff accepted the revocation/termination of her voluntary membership.

The Court will not consider the documents outside the *Amended Complaint* and the arguments in the papers filed regarding the *Motion to Dismiss*.

Plaintiff alleges that she is still a member of Dreamland. She argues that Dreamland attempted to revoke her membership. Accordingly, if still a member, Plaintiff has rights to the records.

Therefore, the *Motion to Dismiss* is denied.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at <http://www.superiorcourt.maricopa.gov/sschome.html>.