

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-095220

05/08/2017

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT
W. Tenoever
Deputy

BELL WEST RANCH HOMEOWNERS
ASSOCIATION INC

MARIA R KUPILLAS

v.

NANCY S BERENT, et al.

NANCY S BERENT
17974 N 167TH DR
SURPRISE AZ 85374

MICHAEL B BERENT
17974 N 167TH DR
SURPRISE AZ 85374
ALTERNATIVE DISPUTE
RESOLUTION - CCC

SCHEDULING CONFERENCE SET

Numerous filings are before the Court. All of them have been read and considered.

The February 2, 2017 filing by defendant Nancy Berent is Ms. Berent's response to the Application for Preliminary and Permanent Injunction filed December 9, 2016. No action is taken on this filing at this time. The Application will be addressed in future proceedings.

IT IS ORDERED the plaintiff's motion to strike is denied as to the February 2, 2017 filing.

The defendants' motion to dismiss filed February 24, 2017 argues that the plaintiffs are not entitled to prevail in this case because the facts do not support their claims, and because other

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facts create defenses to the claims. On a motion to dismiss, however, the court can decide only whether the law allows the plaintiff's claims. For that purpose (and only that purpose) the law requires the court to assume that the facts alleged by the plaintiff are true. Disputes about the facts cannot be resolved at the beginning of the case on a motion to dismiss.

IT IS ORDERED the defendants' February 24, 2017 motion to dismiss is denied.

The plaintiff's cross-motion to dismiss, filed March 6, 2017, asserts that the counterclaims contain "only conclusory statements, completely devoid of any factual detail." That is not an accurate description. The pleading alleges numerous facts. Whether those facts are true is a separate question that (as noted above) is not yet before the court.

The plaintiff also complains that the counterclaims are "vague and [do] not put the Association on notice." It does not follow that dismissal is required, especially not dismissal without leave to amend as the plaintiff requests. "Pleadings must be construed so as to do justice." Ariz. R. Civ. P. 8(f). It would be unjust to dismiss the counterclaims summarily without giving the defendants an opportunity to be heard.

The plaintiff could have asked for a more definite statement pursuant to Rule 9(e), but it chose not to do so. The plaintiff therefore must answer the counterclaims as best it can. The details will have to be hashed out through discovery.

Nothing in the counterclaims will be construed as an attempt to state a claim against any party other than Bell West Ranch Homeowners' Association, Inc. The references to non-parties (including Mr. Sewald) will be construed only as allegations relating to the claims against the HOA. Mr. Sewald can be called as a witness if necessary, by either party.

For those reasons,

IT IS ORDERED the Cross-Motion to Dismiss Defendants' Counterclaims is denied.

The filing by defendant Nancy Berent on February 8, 2017 entitled "malfeasance harassment, duress, coercion" the March 14, 2017 filing entitled "Harrasement" and the March 15, 2017 filing entitled "Breach of Contract" do not comply with Civil Rule 7.1(a) because these filings do not clearly set forth the relief sought and the grounds for that specific request for relief. Instead the filings are narratives that mention different forms of relief along the way. They are also repetitive. Future filings of this nature are likely to be rejected, but for now the Court will address the issues raised as guidance to the parties going forward.

IT IS ORDERED the plaintiffs' motion to strike these pleadings is denied.

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One of the forms of relief requested in the March 14 filing – a restraining order to keep the HOA from contacting the defendants – is available only in a different kind of lawsuit than this one. Other forms of requested relief – civil penalties, damages in the form of monetary compensation for “irreparable harm caused by the intentional ongoing retaliation,” payment of future medical expenses – are remedies that can be awarded only when the party requesting them prevails on a claim in the lawsuit, and then only if permitted or required by the law on that kind of claim. Accordingly, no action will be taken on any of those requests at this time.

Some of the filings also request dismissal of the plaintiff’s claims. For the reasons stated in connection with the February 24, 2017 motion to dismiss,

IT IS ORDERED the defendants’ requests for dismissal are denied.

The filing entitled “Harrassement” also includes a request for an order requiring the plaintiff to pay for a forensic psychiatric evaluation for Ms. Berent. No supporting law is cited in the motion.

IT IS ORDERED the request to require the plaintiff to pay for an evaluation is denied.

Finally, the plaintiff and the defendants have filed separate Rule 16 reports.

IT IS ORDERED setting a Rule 16(d) Scheduling Conference on **June 8, 2017 at 9:00 a.m.** before:

Hon. John R. Hannah
Maricopa County Superior Court
Northeast Regional Court Center
18380 N. 40th St
Courtroom 102
Phoenix, AZ 85032
(602) 372-0759

IT IS FURTHER ORDERED that the parties shall participate in a mandatory Settlement Conference. This case is referred to the Court's Alternative Dispute Resolution Office for the appointment of a judge pro tempore to conduct a settlement conference. Counsel and/or the parties will receive a minute entry from ADR appointing the judge pro tempore. Counsel and any "pro per" parties will contact the appointed judge pro tempore to arrange the date, time and location for the settlement conference. The judge pro tempore is requested to conduct a settlement conference as soon as practicable but in no event later than September 8, 2017. The

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Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office.

IT IS FURTHER ORDERED the plaintiff's request for a settlement conference by the end of June is denied because the ADR office requires a minimum of 120 days' notice.