

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-092942

06/25/2008

HONORABLE JOSEPH KREAMER

CLERK OF THE COURT
T. Soto
Deputy

RANCHO MANANA HOMEOWNERS
ASSOCIATION

CHARLES E MAXWELL

v.

SHEILA M VOLF, et al.

JOHN C SHORB

VANETTE DUNN
NO ADDRESS ON RECORD
JIM PHILLIPS
NO ADDRESS ON RECORD
CHARLOTTE PHILLIPS
NO ADDRESS ON RECORD

MINUTE ENTRY

This matter is before the Court on Third-Party Defendants' Motion to Dismiss counts Two, Three and Four of Defendant/Third-Party Plaintiff's Volk's claim. Third-Party Defendants argued in their Motion that they should be dismissed because Volk failed to plead the elements necessary to "pierce the corporate veil" of the Association. After Volk filed a response pointing out that it was not necessary that she pierce the corporate veil to carry her claims, Third-Party Defendants switched their argument in their Reply and argued that the claims should be dismissed because Volk failed to establish the requisite elements of the individual causes of action. Before the Court held oral argument on the Motion, Volk filed a Motion to Strike the Third-Party Defendants' Reply on the grounds that it raised new issues not addressed in the original motion. While the Court agreed that the Reply changed course and made new arguments, rather than striking the Reply, at oral argument the Court gave both sides the

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opportunity to brief the issues raised in the Reply. Now that the parties have submitted their briefs, the Court rules as follows.

Third-Party Defendants argue that there was no “commercial transaction” at issue that would support a negligent misrepresentation claim, and that there is no contractual or other “special” relationship between Volk and Third-Party Defendants that would support any of the claims. Volk counters that at the pleading stage, a commercial transaction as well as a lack of good faith can be inferred from the facts alleged in the third-party complaint.

The Court agrees with Volk. Taking the facts pled in the third-party complaint to be true, there are sufficient facts to support the causes of action alleged. The homeowner-association relationship pled is sufficient to support a negligent misrepresentation claim. The complaint alleges a “fiduciary” duty (and breach thereof) sufficient to support any “special” relationship required to carry the fiduciary duty and breach of implied warranty of good faith and fair dealing claims. While subsequent discovery may reveal that the actual facts do not support the claims made in the third-party complaint, and this stage the pleadings alleges facts sufficient to survive a motion to dismiss.

Therefore, it is ordered **DENYING** Third-Party Defendants’ Motion to Dismiss Counts Two, Three and Four of the Third-Party Complaint.