

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-002759

06/09/2023

HONORABLE SUSANNA C. PINEDA

CLERK OF THE COURT
A. Meza
Deputy

PAUL GOUNDER

PAUL GOUNDER
3655 N 5TH AVE # 205
PHOENIX AZ 85013

v.

ROYAL RIVIERA H O A

CHARLES D ONOFRY

JUDGE PINEDA

MINUTE ENTRY

This Court has reviewed Defendant's Motion to Dismiss filed on May 15, 2023 and Plaintiff's Response. No reply has been filed.

Plaintiff has filed a complaint against the HOA of the condominium complex where he is an owner. No other Defendants have been named or served. Thus, to the extent that Plaintiff makes any claims against other "Defendants",

IT IS ORDERED dismissing Counts 46, 48, 49, 50, 51, 52, 53, 54-1, 54-2, 54-3, 54-4, 68, 79, 80 and 81 to any individual named therein as well as any injunctive relief sought against these non-defendants.

Plaintiff further alleges "racism" or racist acts by the HOA against an individual "Tina Gounder." Plaintiff has no standing to bring a claim of action for a 3rd party.

IT IS THEREFORE ORDERED dismissing Counts 41, 51, and 54.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-002759

06/09/2023

Defendant also properly argue that Plaintiff has failed to state a claim for punitive damages.

A motion to dismiss is not a procedure for resolving disputes about the facts or merits of a case. *Coleman v. City of Mesa*, 230 Ariz. 352, 363, ¶46, 284 P.3d 863, 874 (2012). Instead, the narrow question presented by a motion to dismiss for failure to state a claim is whether facts alleged in a complaint are sufficient “to warrant allowing the [plaintiff] to attempt to prove his case.” *Id.* at 363, ¶46, 284 P.3d at 874 (emphasis added). Dismissal is permitted only when a “plaintiff[] would not be entitled to relief under any interpretation of the facts susceptible of proof.” *Fid. Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224, ¶4, 954 P.2d 580, 582 (1998) (emphasis added). Moreover, a motion to dismiss requires a court to accept all material facts alleged by the nonmoving party as true [*Acker v. CSO Chevira*, 188 Ariz. 252, 255, 934 P.2d 816, 819 (App. 1997) (citing *Lakin Cattle Co. v. Engelthaler*, 101 Ariz. 282, 284, 419 P.2d 66, 68 (1966))], view those facts “in the light most favorable to the nonmoving party” [*Mirchandani v. BMO Harris Bank, N.A.*, 235 Ariz. 68, 69, ¶2, 326 P.3d 335, 336 (App. 2014)], and “indulge [the nonmoving party] all reasonable inferences” that the pleaded facts permit [*Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶7, 189 P.2d 344, 346 (2008)].

“Arizona follows a notice pleading standard.” *Coleman v. City of Mesa*, 230 Ariz. 352, 356 (2012), quoting *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). 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, id.*, quoting *Mackey v. Spangler*, 81 Ariz. 113, 115 (1956). A complaint that states only legal conclusions, without supporting factual allegations, does not comply with Rule 8’s notice pleading standard. *Cullen, id.* If a complaint does not comply with Rule 8, the defendant may move to dismiss for failure to state a claim. *Cullen, id.*; Ariz. R. Civ. P. 12(b)(6).

A court must submit the issue of punitive damages to a jury if any reasonable view of the evidence would support an award of punitive damages. *Quintero v. Rogers*, 221 Ariz. 536, 542 (App. 2009). The issue of punitive damages should be left to the jury *if there is any reasonable evidence* to support them; however, the evidence must be more than slight and inconclusive so as to border on conjecture. *Farr v. Transam. Occidental Life Ins. Co. of Cal.*, 145 Ariz. 1, 9 (App. 1984); *see also Thompson v. Better-Bilt Aluminum Prods. Co.*, 171 Ariz. 550, 558 (1992).

To recover punitive damages, a plaintiff must show more than the “mere commission of a tort”; among other things, a plaintiff must establish that the defendant’s conduct was aggravated and outrageous and guided by an “evil mind.” *Rawlings v. Apodaca*, 151 Ariz. 149, 161 (1986); *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 330 (1986). Punitive damages are awarded in the most egregious of cases, where there is clear and convincing evidence that the defendant engaged in reprehensible conduct and acted with an evil mind. *Sec. Title Agency, Inc. v. Pope*, 219 Ariz. 480, 498 (App. 2008) (citations omitted). Such proof may be found where the defendant

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-002759

06/09/2023

intended to injure the plaintiff or “consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others.” *Rawlings, id.* at 162. A defendant acts with the requisite evil mind when he intends to injure or defraud, or deliberately interferes with the rights of others, consciously disregarding the unjustifiable substantial risk of significant harm to them.” *Hyatt Regency Phx. Hotel Co. v. Winston & Strawn*, 184 Ariz. 120, 132 (App. 1995) (internal quotation and citations omitted). In determining whether a defendant acted with an evil mind, “a court examines factors such as the reprehensibility of the conduct, the severity of harm that was actually or potentially imposed and the defendant’s awareness of it, the duration of the misconduct, and any concealment of the risk of harm.” *Hudgins v. Sw. Airlines, Co.*, 221 Ariz. 472, 487 (App. 2009). “An evil mind can be established by a defendant’s statements or inferred from its expressions, conduct, or objectives.” *Id.* “[T]he right to an award of punitive damages must be grounded upon a cause of action for actual damages.” *Quiroga v. Allstate Ins. Co.*, 151 Ariz. 127, 129 (App. 1986); *see also Saucedo ex rel. Sinaloa v. Salvation Army*, 200 Ariz. 179, 185- 86 (App. 2001) (“[C]ommon law mandates that a plaintiff suffer actual damages as a result of the underlying tort before a claim of punitive damages can be entertained.”). The requirement for actual damages does not require that the party claiming punitive damages be the net winner after setoffs. It simply means that the “requisite intent and outrageous and egregious conduct must occur in tandem with the conduct giving rise to the injury in order to recover punitive damages.” *Saucedo, id.* at 182.

Due process principles limit the size of a punitive damage award. *Nardelli v. Metro. Grp. Prop. & Cas. Ins. Co.*, 230 Ariz. 592, 609 (App. 2012). “The United States Supreme Court has instructed courts to consider three guideposts when reviewing punitive damages awards: “(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” *Security Title Agency, Inc. v. Pope*, 219 Ariz. 480, 501 (App. 2008), *quoting State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003).

An appropriate amount of punitive damages is a fact sensitive; there is no bright-line ratio between compensatory and punitive damages. *Nardelli, id.* at 611. However, “single-digit multipliers are more likely to comport with due process, [and] a factor more than four comes ‘close to the line’ of constitutional impropriety.” *Hudgins v. Sw. Airlines, Co.*, 221 Ariz. 472, 491 (App. 2009), *quoting BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 581-82 (1996).

Here, with the above-stated law in mind, review of Plaintiff’s complaint indicates that it contains absolutely no facts upon which the relief sought (punitive damages) can be granted. Plaintiff merely makes conclusory requests for punitive damages without providing any facts which would permit such an award.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-002759

06/09/2023

IT IS ORDERED dismissing Plaintiff's request for punitive damages as listed in allegation p.3 ¶7, and Counts 1-3, 54-1, 54-2, 54-3, 54-4 and 55-81.

Defendant's asks that the Court dismiss Plaintiff's Allegation 7 and 9, as well as Count 1 ¶7 regarding his allegation of emotional distress. His claim that the HOA failed to have a quorum or used improper procedure in conducting meetings does not raise a claim for emotional distress.

IT IS ORDERED dismissing Allegation 7 and 9, as well as Count 1 ¶7.

Defendant also ask that Counts 46, 47 and 48, as well as similar allegations in Counts 49, 50, 51, 52, 53, 54-1, 54-2, 54-3, and 54-4 be dismissed for failure to state a claim upon which relief may be obtained. Defendant argues that Plaintiff's allegation fails to state any basis for damages. Plaintiff argues that the Bylaws were violated. Without more, Plaintiff fails to state a colorable claim of action.

IT IS ORDERED granting Defendant's Motion to Dismiss Counts 46, 47 and 48, as well as similar allegations contained in Counts 49, 50, 51, 52, 53, 54-1, 54-2, 54-3, and 54-4.