

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-053367

08/23/2018

HONORABLE BRUCE R. COHEN

CLERK OF THE COURT  
W. Tenover  
Deputy

SANDRA ZINN

SANDRA ZINN  
8262 E VISTA DE VALLE  
SCOTTSDALE AZ 85255

v.

SUSANNE HAASS, et al.

SUSANNE HAASS  
20100 N 78TH PL # 1111  
SCOTTSDALE AZ 85255

GARY DEAN  
NO ADDRESS ON RECORD  
GREGG HOPLEY  
8261 E VISTA DE VALLE  
SCOTTSDALE AZ 85255  
DAWN HOPLEY  
8261 E VISTA DE VALLE  
SCOTTSDALE AZ 85255  
JOHN A KLECAN  
CARLOTTA L TURMAN  
JEM WELSH  
NO ADDRESS ON RECORD  
DOCKET - NE  
JUDGE BRUCE COHEN

**ORDER RE: MOTIONS TO DISMISS**

Both Defendant Susanne Haass (hereinafter referred to as "Haass") and Defendants Dawn and Greg Hopley (hereinafter referred to collectively as "Hopley") have filed Motions to Dismiss.

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The court further notes that these motions have not been previously ruled upon, as specifically noted in Judge Brnovich's minute entry dated June 14, 2018.<sup>1</sup>

The court has considered the motions, as well as the responses filed by Plaintiff, Sandra Zinn (hereinafter referred to as "Zinn"), the presentations made in open court on August 22, 2018, the case file and prior orders. For the purpose of this order, the court is treating each motion as seeking relief under Rule 12(b)(6).

**Issue Presented**

There are two counts that have been alleged against Haass and Hopley. The first count is for Civil Trespass and the second count is for Conversion. Both Haass and Hopley claim or appear to claim that Zinn failed to satisfy the "minimal notice" pleading requirements under Rule 12(b)(6).

**Legal Standards and Analysis**

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). A "liberal pleading standard" in favor of a plaintiff is to be applied. *Verduzco v American Valet*, 240 Ariz. 221, 225, 377 P.3d. 1016, 1020 (2016). A claim based upon fraud requires a heightened level of notice in accordance with Rule 9(b). See *Vess v Ciba-Geigy Corp USA*, 317 F.3d. 1097, 1104 (9<sup>th</sup> Circuit, 2003).

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). However, a complaint that states only legal conclusions, without supporting factual allegations, does not comply with the notice pleading standard under Rule 8. *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).

In ruling on a Rule 12(b)(6) motion to dismiss, the Court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). The Court will grant the motion only if the plaintiff is not entitled to relief "under any facts susceptible of proof in the statement of the claim." *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289 (App. 2010), quoting *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). This level of scrutiny is particularly appropriate "given the

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<sup>1</sup> The court notes that there was an oral motion to dismiss raised by Haass that was denied but at the end of the minute entry from June 14, 2018, Judge Brnovich specifically referenced the written motions and that they were not ripe for judicial determination.

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limited record on a motion to dismiss for failure to state a claim, which does not include disclosures, discovery or other external evidence.” *Verduzco, id.*

As a general policy matter, Rule 12(b)(6) motions to dismiss are not favored under Arizona law. *State ex. rel. Corbin v. Pickrell*, 136 Ariz. 589, 594, 667 P.2d 1304, 1309 (1983). That is especially true when such motions are based on pleading insufficiencies. *E.g., Cagle v. Carr*, 101 Ariz. 225, 227, 418 P.2d 381, 382 (1966); *see generally Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, 533, ¶10, 115 P.3d 124, 127 (App. 2005) (reversing summary judgment for defendant and recognizing sufficiency of complaint despite “numerous technical deficiencies in the document”). Further, 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).

In addressing the specific counts, it is clear to the court that nowhere within to Complaint does Zinn even allude to the fact that Haass had been previously residing in the residence and that her presence therein was lawful. This court believes that this is a fact that is central to the trespass claim. In fact, Haass supplied the court with court documentation that suggested not only that she was permitted in and on the subject property, but that her use was to the exclusion of others. This is quite persuasive in her favor. However, as noted above in citing *Coleman*, factual disputes are not to be resolved by this procedure.

As for Hopley, a different conclusion is reached that is not based upon a factual dispute. Nowhere within the Complaint does Zinn allege that Hopley had knowledge that Haass was not authorized to enter the premises. It is not sufficient to state that Haass was not authorized and, therefore, when Hopley accompanied Haass, they were not authorized. Zinn must allege some element of knowledge that when Hopley assisted Haass, they knew or should have known that Haass was trespassing. The mere allegation that someone entered a property is not, in itself, sufficient to meet the threshold of trespass. There are no facts alleged even to provide notice to Hopley to support a claim that their actions were intentional or with reckless disregard to Zinn

Therefore, only as to Hopley, the Motion to Dismiss the Civil Trespass count is well-taken.

Addressing the Conversion count, nothing factually appears within the Complaint as to how Hopley engaged in conduct that would give rise to a Conversion claim. Rather, taken as a whole, the Complaint alleges that it was Haass that removed property. Since the complaint allegations against Hopley are that they exercised dominion and control over Zinn’s property, there must be more than a conclusory legal statement to that effect for the Complaint to be supported. None exist. At best, the interpretation of the actions alleged by Zinn against Hopley is that they aided and abetted in some form, but that is not the claim herein.

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Therefore, only as to Hopley, the Motion to Dismiss the Conversion count is well-taken.

As to Haass, her “defense” is that she removed her own property. Therefore, there is at least the minimal showing of a factual basis to support the claim of Conversion in that Zinn alleges that Haass removed Zinn’s property. Only as to Haass, these claims made against her by Zinn may not withstand the scrutiny of a motion for summary judgment or be sufficient for a jury to render a verdict in favor of Plaintiff. They are, however, more than sufficient to withstand a Rule 12(b)(6) challenge.

**Conclusions of Law**

Defendants Dawn and Greg Hopley have met their burden under Rule 12(b)(6) as the two counts against them in the Complaint do not even meet the low bar of providing sufficient notice as to the basis for the claims against them, together or individually.

**Order/Ruling**

**IT IS ORDERED granting Dawn and Greg Hopley’s Motions To Dismiss and they are no longer part of this litigation.**

**IT IS ORDERED denying Defendant Haass’ Motion To Dismiss.**

/s/ Bruce R. Cohen

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Bruce R. Cohen  
Judge of the Superior Court