

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-008445

09/29/2014

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT
S. Brown
Deputy

GREG BILBRO, et al.

JAMES O BELL

v.

OPTIMA CAMELVIEW VILLAGE
CONDOMINIUM ASSOCIATION, et al.

LYDIA P LINSMEIER

MINUTE ENTRY

On June 3, 2014, Plaintiffs Greg Bilbro, Richard F. Haitbrink and Jo. B. Haitbrink filed a Complaint against Defendants Optima Camelview Village Condominium Association and Optima Camelview Village, LLC, seeking declaratory judgment.

Defendants filed a Motion to Dismiss on July 25, 2014, to which Plaintiffs responded and Defendants replied. On September 8, 2014, the Court granted Plaintiffs' Motion to Amend the Complaint (with no objection from Defendants); the Court has thus considered the Motion to Dismiss in reference to the First Amended Complaint.

Motions to dismiss for failure to state a claim are disfavored, and should be granted only when it appears certain that the non-movant would not be entitled to relief under any state of the facts susceptible to proof. *Fid. Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224, ¶ 4, 954 P.2d 580, 582 (1998). In considering such a motion, the Court must assume all the material allegations of the complaint to be true. *Turley v. Ethington*, 213 Ariz. 640, 642, ¶ 2, 146 P.3d 1282, 1284 (App. 2006). However, the court is not required to accept the truth of legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-008445

09/29/2014

Plaintiffs Bilbro and the Haitbrinks seek Declaratory Relief, in the form of a judgment stating that Defendants have violated A.R.S. § 33-1242(A)(11), as well as the Arizona and United States Constitutions. (First Amended Complaint at 5-6). In their Reply, Plaintiffs concede that dismissal of their claims based upon alleged due process violations under the Arizona and United States Constitutions is appropriate.

Bilbro argues he has standing to bring this action because he will be required to pay any fines levied by Defendants, and thus has a personal economic stake in the litigation. However, Arizona law provides that condominium unit owners' associations may "after notice and an opportunity to be heard, impose reasonable monetary penalties upon **unit owners** for violations of the declaration, bylaws and rules of the association." A.R.S. § 33-1242 (11) (emphasis added). As Defendants point out, this statute does not authorize the association to impose any penalty on Bilbro, who is not the unit owner, but instead a tenant.

Standing requires an injury in fact, caused by the complained-of conduct, which results in a distinct and palpable injury, thus giving the plaintiff a personal stake in the outcome of the controversy. *Karbal v. Arizona Dept. of Revenue*, 215 Ariz. 114, 116, ¶ 7, 158 P.3d 243, 245 (App. 2007). Here, as set forth in the Complaint, Defendants imposed fines against the Haitbrinks. (First Amended Complaint at 3-4.) The fact that the Haitbrinks and Bilbro have a separate agreement that passes the cost on the Bilbro does not confer standing on him, when Defendants have no claim against him. Moreover, while fines have been imposed against the Haitbrinks, none have been paid, either by them or Bilbro.

The Court also notes that Plaintiffs seek attorneys' fees, because their action arises out of a contract. (First Amended Complaint at 5.) But that contract is between Defendants and the Haitbrinks; Bilbro is not a party to it.

For the foregoing reasons, the Motion to Dismiss is granted in part and denied in part.

IT IS ORDERED granting the Motion to Dismiss as to Plaintiff Bilbro, and as to the claim that the Defendants violated the due process provisions of the United States and Arizona Constitutions. In all other respects, the Motion to Dismiss is denied.