Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002225 10/18/2024

HONORABLE JENNIFER RYAN-TOUHILL

CLERK OF THE COURT
A. Meza
Deputy

IQTUNHEIMR L L C

NATHAN BROWN

v.

VAL VISTA LAKES COMMUNITY ASSOCIATION, THE, et al.

KYLE BANFIELD

JUDGE RYAN-TOUHILL
STATE BAR OF ARIZONA

**RULING**

Before the Court are a number of pleadings. The Court will briefly revisit the procedural history of the case.

- February 5, 2024, Plaintiff filed suit.
- March 8, 2024, the Court held an OSC on Plaintiff's request for a preliminary and permanent injunction.
- March 13, 2024, Defendants filed motions to dismiss. Plaintiff responded, in part, on March 17, 2024, and Defendants replied on March 27, 2024.
- April 30, 2024, the Court issued an extensive Ruling. The Court dismissed multiple claims but allowed Plaintiff to proceed on Counts Two (against both Defendants) and Three (against the HOA only). The Court vacated the evidentiary hearing set on Plaintiff's request for a preliminary injunction.
- Plaintiff requested permission to file a derivative lawsuit; the Court denied that request.
- Plaintiff requested the Court issue a stay; the Court denied that request.
- May 23, 2024, the appellate court declined jurisdiction over Plaintiff's special action.
- May 24, 2024, Plaintiff filed his notice of "voluntary dismissal" of the remaining claims.

- May 29, 2024, Defendants sought leave of the court to apply for attorney's fees and costs. Additional pleadings were filed.
- June 4, 2024, Plaintiff filed "notice" that he appealed the Court's decision to deny allowing a derivative lawsuit.
- July 2, 2024, the Court allowed Defendants to apply for attorney's fees and costs.
- July 17, 2024, Defendants filed a motion for sanctions and application for attorney's fees and costs.
- July 31, 2024, parties notified the Court they stipulated to an extension of time for Plaintiff's responses.
- August 8, 2024, the Court gave Plaintiff until August 26, 2024, to respond.
- August 20, 2024, Plaintiff asked the appellate court to reconsider its ruling denying jurisdiction.
- August 21, 2024, the Court of Appeals denied Plaintiff's motion.
- August 26, 2024, Plaintiff asked the Court for more time to respond. Defendants opposed.
- September 2, 2024, Plaintiff filed his responses.
- September 16, 2024, Defendants replied.
- September 24, 2024, Defendants filed a *Notice of Errata*, stating they filed one reply twice instead of two separate replies (for two separate motions).
- October 8, 2024, Plaintiff filed an "objection" to the *Notice of Errata*.

**THE COURT FINDS** no cognizable legal argument in Plaintiff's objection to the *Notice of Errata* and therefore declines to consider this filing.

**THE COURT FURTHER FINDS** Plaintiff filed his responses untimely. However, over Defendants' objections to the late filings, the Court will consider Plaintiff's responses. Therefore, to the extent necessary,

**IT IS ORDERED** granting Plaintiff's request for his second motion to more time to respond to the pleadings.

Application for Fees and Costs

Before the Court is Defendants' July 17, 2024, *Application for Attorneys' Fees and Costs*, Plaintiff's September 2, 2024, *Response in Opposition to Application for Attorney Fees*, and Defendants' September 24, 2024, *Reply in Support of Application for Attorneys' Fees and Costs*. The Court has carefully considered the pleadings and reviewed the fee summary. Good cause appearing,

**IT IS ORDERED** granting Defendants' application for fees and costs.

**IT IS FURTHER ORDERED** Plaintiff shall pay $59,970.00 in attorneys' fees incurred and costs totaling $390.28. Contemporaneously with this Order, the Court has signed the Form of Final Judgment (excluding Rule 54(c) language).

Motion for Sanctions

Before the Court is Defendants' July 17, 2024, *Motion for A.R.S. § 12-349 Sanctions*, Plaintiff's September 2, 2024, *Response to Defendants' Motion for Sanctions*, Defendants' September 24, 2024, *Notice of Errata*, and Defendants' September 16, 2024, *Reply in Support of Application for* [Sanctions].

Our law states:

> A. Except as otherwise provide by and not inconsistent with another statute, in any civil action commenced . . . the court shall assess reasonable attorney fees, expenses and, at the Court's discretion, double damages of not to exceed five thousand dollars against an attorney or party. . . if the attorney or party does any of the following:
>
> 1. Brings or defends a claim without substantial justification.
>
> 2. Brings or defends a claim solely or primarily for delay or harassment.
>
> 3. Unreasonably expands or delays the proceeding.
>
> . . . .
>
> F. For the purposes of this section, "without substantial justification" means that the claim or defense is groundless and is not made in good faith.

A.R.S. § 12-349.

Our Supreme Court has found "[i]n the context of § 12-349, the term 'groundless' is synonymous with 'frivolous.'" *Arizona Republican Party v. Richer*, 257 Ariz. 210 ¶ 15 (2024)(internal citations omitted). The Court further stated, "Whether a claim is groundless is viewed through an objective lens, without regard to the attorney's or party's subjective beliefs." *Id*. (citation omitted). Additionally, a claim will be considered groundless if the proponent is unable to "present any rational argument, based on the law or the evidence, supporting that claim." *Evergreen West, Inc. v. Boyd*, 167 Ariz. 614, 619 (App. 1991).

The Court must consider whether Plaintiff acted in accordance with what other professional, competent attorneys would do in similar circumstances. Here, the Court finds Plaintiff did not act in good faith regarding those dismissed claims because Plaintiff, an attorney

representing himself and/or his own company,[1] knew or should have known the asserted claims were groundless. Further, the Court finds that even after the Court advised Plaintiff certain claims were groundless and other claims exceedingly tenuous, Plaintiff pursued his case, anyway. Only after Plaintiff realized he needed specific, final judgment language in order to appeal, did Plaintiff seek to dismiss the case in its entirety. In other words, Plaintiff did not dismiss his case because he now understood the law but, rather, to pursue additional litigation in our appellate courts. Thus, Plaintiff sought to maintain his sanctionable claims. *Richer*, 257 Ariz. 210 ¶ 41. *See also* Minute Entry filed 05/02/2024.

**THE COURT FINDS** Plaintiff's Counts One (to both Defendants) and Three (to Defendant Hedrick) were groundless and not made in good faith.

The Court declines to find Plaintiff *brought* the case (generally) primarily for delay or harassment. However, Plaintiff harassed Defendants through the course of litigation, which not only harmed Defendants but also unnecessarily expanded these proceedings. Specifically, the Court previously found that Plaintiff filed "notices" with the Court absent any legal authority, fought against Defendants' requests to strike the "notices," and the pleadings themselves were procedurally incorrect (including the "motion to strike" Defendants' "improper motion" to strike).

Plaintiff also used the judicial process to insult or demean others, including discussing irrelevant personal information pertaining to other members of the HOA. Minute Entry filed 05/02/2024. To quote from itself, the Court found "Plaintiff improperly inserts rhetoric into pleadings in order to support its request." *Id*., p. 4 ¶ 3. The Court further stated, "The Court cautions Plaintiff against unnecessary and unhelpful statements that only disparage a non-party and do nothing to further the case against Defendants." *Id*. Plaintiff chose to accuse Defendants of "kickbacks" and "self-dealing" and, in response to an application for attorney's fees and costs, and accused counsel for Defendants of "jack[ing] up their hourly rates." *Id*.; *see also Response in Opposition to Application for Attorneys' Fees*, p. 9 ¶ 3. The Court previously concluded and concludes again that Plaintiff harassed Defendants.

Plaintiff sought to interfere with the attorney-client relationship between Defendants and their law firm by asking for removal of the firm, which the Court denied. Considering the *Gomez* factors, the Court concluded that no basis existed to disqualify the firm. Plaintiff's request was meritless and contributed to expanding these proceedings unnecessarily.

[1] The Court is unclear about the nexus of the relationship between Nathan Brown, counsel, and Plaintiff, Iqtunheimr LLC. Mr. Brown, in his response, says Plaintiff is a property management company. However, other pleadings seem to indicate Plaintiff is a company owned, directed, or facilitated by Mr. Brown.

Plaintiff failed to properly respond to a motion to dismiss filed on behalf of Defendant Hedrick, a private citizen who volunteered for the HOA board. Plaintiff sought additional time in which to respond, which this Court ultimately denied.

Plaintiff threatened opposing counsel with sanctions and/or bar complaints, for which this Court finds no evidence exists supporting ethical violations. Plaintiff accused Defendants of material misrepresentations, failed to provide legal support for his arguments, and demanded recission of a motion to dismiss. *Defendants' Motion for Sanctions*, pp. 4-5, generally.

Plaintiff made multiple inflammatory statements throughout the course of the case, including claims that the HOA and attorneys were using the legal process to enrich friends and families who are members of the HOA. Minute Entry filed 05/02/2024. Rather than utilizing sound legal theory to defend his position, Plaintiff asserted Defendants "should spend less time on social media[.]" *Id*. Plaintiff has demonstrated a lack of adherence to acceptable, professional norms and has further shown disregard for our local and state procedural rules. Moreover, Plaintiff has failed to follow black-letter law regarding the subject matter of this suit, and instead accused others of rewriting our statutes and case history.

The Court now turns to Plaintiff's response: Plaintiff's lack of professionalism continues. Specifically, Plaintiff:

- Accused Defendants of labeling Plaintiff a "terrorist" and a "legal bully."
    - The Court has re-read the motion for sanctions three times and does not find these words. Of course, the Court may have failed to notice the terminology.
- Stated, "Defendants' attorneys are making these announcements so that the hate and ire in the community, *directed by them* and the HOA Board[,] can be directed toward an individual with a family instead of a small business." (Emphasis added.)
- Stated, "[T]he only thing the [HOA board] will spend money on is their relative's law firm, Carpenter Hazlewood. There appears to be no limit to that expense."
- Stated, "All the Defendants need to do is open their eyes and see the damage. . . ."
- Stated, "Defendants have turned this simple desire for non-ghetto facilities into a hate campaign directed at Plaintiff's attorney."
- Stated, "The sole purpose of the hate campaign is to intimidate Plaintiff's attorney. . . ."
- Accused "family members of a partner of the law firm of Carpenter Hazlewood" of bad faith.
    - The Court previously addressed this claim, along with the claim of familial enrichment, in a prior Ruling.
- Advised counsel for Defendant Hedrick to "talk with their client BEFORE stating anything of substance about HOA Board Member Timothy Hedrick. Better yet, Timothy Hedrick

should sign a sworn affidavit, under the penalty of perjury[,] that these allegations are groundless."
    - All claims against all Defendants are dismissed.
- Stated, ". . . Defendants have spent the community money on their family's law firm." Because of this, Plaintiff contends sanctions against Defendant Hedrick are unwarranted.
- Accused Defendants of "fabricating" CC&Rs and claimed Plaintiff was "forced to begin Rule 11 Sanctions[.]" Further stated, "For the Defendants to 'rewrite history' and now to demand sanctions because of their Rule 11 Sanctions, again shows a pattern."
    - Defendants corrected the record in their reply in support of their request for dismissal of the case.
    - The Court has no record of Plaintiff formally requesting Rule 11 sanctions against Defendants or their attorneys.
- Accused Defendants of destroying Plaintiff's business.
- Argued, "One does not determine the validity of claims if one actually believes their opposition has no claims under Rule 12(b)(6). Especially if Defendants actually believed the claims were groundless and not made in good faith."
- Claimed Defendants have taken legal positions to further "act[s] of intimidation to discourage judicial review."
- Stated, "Defendants should have requested sanctions from the Appeals Court [sic] if they believed that the Special Action was filed frivolously."
    - Plaintiff did not serve Defendants with a copy of Plaintiff's appellate action(s).
    - Division One of the Court of Appeals declined jurisdiction in this case.
- Stated, "Defendants' President Melvin McDonald has a horrific history of attempting to destroy his legal opponents [ ] through any means necessary."
- Asserted, "Any award to Defendants will send a clear message to the Defendant *and their attorney* [ ] that the way to win homeowner litigation is through intimidation." (Emphasis added.)
- Claimed Plaintiff "has remained silent throughout this litigation."
    - The pleadings, along with notices, belie this assertion.
- Accused Defendants of mocking Plaintiff.
    - What Defendants actually stated is, "First, the Plaintiff requests a 'Judicial Assessment' but undersigned counsel is unaware of any Arizona case law or statute that provides the avenue for the Plaintiff to request anything of the sort in a breach of contract lawsuit." *Motion to Dismiss*, p. 13 ¶ 4.
- Confuses the need for a check for professional conflicts with disqualification of counsel.

*See Response to Defendants' Motion for Sanctions*, generally.

The Court took time to include statements made by Plaintiff because the statements, above, are indicative of the tone of Plaintiff's filings throughout the course of the case. Rather than providing comprehensive, sustainable legal argument to the Court, Plaintiff instead attacks and besmirches others, which only weakens Plaintiff's case.

The Court understands, from the history of the case and multiple attachments to filings, that many members of the Val Vista Lakes Homeowner's Association have real, valid, and pressing concerns about the state of their community. Problematically, Plaintiff's case did not properly set out case law or provide cognizable legal authority for the claims made and relief requested. Rather, Plaintiff's ill-advised and spurious attacks upon others confused the issues, necessitated judicial involvement, and did nothing to serve the needs of the community as a whole. The Court advised Plaintiff of this in a prior ruling, but it appears the Court's gentle admonishment failed to curb Plaintiff's behavior.

Troubling to the Court is additional information in Defendants' *Reply*. One, Plaintiff's counsel, Nathan Brown, has allegedly threatened opposing counsel. Two, Plaintiff unnecessarily and unprofessionally attacked Ret. Judge Melvin McDonald. Mr. McDonald is the president of the HOA, which is his only relationship to the potential (yet dismissed) issues in this case. Plaintiff's improper actions in attaching old, irrelevant documents to his *Response* serves no other purpose than to attack the HOA President's credibility. Moreover, while this matter is pending, Adult Protective Services visited Mr. McDonald's home due to a referral of abuse and/or neglect.[2] If Defendants' suspicions are true, the Court cannot condone using taxpayer services to harass another.

Defendants request relief for these two additional (alleged) actions by Plaintiff and/or Plaintiff's attorney. The Court finds this is not the appropriate forum in which to review potentially unethical behavior committed by Mr. Brown. Rather, this matter properly belongs before the Arizona State Bar Association. Therefore,

**IT IS ORDERED** the State Bar shall investigate the allegations referenced in this Ruling, specifically addressing Mr. Brown's threatening behavior toward an attorney of record and Mr. Brown's harassment of Ret. Judge Melvin McDonald.

**IT IS FURTHER ORDERED** deferring the State Bar whether it will investigate the remaining potential ethical violations outlined in this Ruling and the Court's Minute Entry filed 05/02/2024. At the very least, it may behoove Mr. Brown to obtain a mentor.

[2] The Court makes no findings on who called APS; the Court understands Defendants and Mr. McDonald suspect it was Plaintiff's counsel who did so.

**IT IS FURTHER ORDERED** granting Defendants' request for sanctions.

**THE COURT FINDS** it has already granted attorney's fees and costs (see above). Therefore,

**IT IS ORDERED** sanctioning Nathan Brown, State Bar # 033482, $5,000.00 personally.

**IT IS FURTHER ORDERED** granting Defendants leave to file an application for fees and costs incurred in connection with their motion for sanctions. Defendants shall file their application within five business days of the filing date of this Ruling or the request is waived. Further, Defendants shall provide the Court with a form of judgment that includes Rule 54(c) language.