

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-011505

11/16/2017

HONORABLE CONNIE CONTES

CLERK OF THE COURT  
D Arrieta  
Deputy

DARRYL J ROBERTS, et al.

MARK BAINBRIDGE

v.

WINDY WALK HOMEOWNERS  
ASSOCIATION, et al.

MICHAEL H ORCUTT

**UNDER ADVISEMENT RULING**

The Court took under advisement the ruling on the motion to dismiss filed on behalf of the four (4) Association defendants and the four (4) Individual Committee Member defendants. The Court has considered the motion, response and reply, matters of record including the First Amended Verified Complaint and Exhibits A (CC&Rs for Windy Walk) and B (Cost-Sharing Agreement) thereto, arguments of counsel, and the applicable law.

First, 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). 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 [its] case.” *Coleman v. City of Mesa*, 230 Ariz. 352, 363, 284 P.3d 863, 874 (2012). Dismissal is permitted only when a plaintiff would not be entitled to relief under any interpretation of the facts susceptible of proof. Moreover, a motion to dismiss requires a court to accept all material facts alleged by the nonmoving party as true, to view those facts in the light most favorable to the nonmoving party, and to indulge the nonmoving party all reasonable inferences that the pleaded facts permit. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, 189 P.2d 344, 346 (2008).

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Defendants' motion to dismiss is predicated substantially on asserted pleading deficiencies, highlighting the plaintiff's conclusory statements and general accusations as reflected in ¶¶ 23, 29, 35, 36 and 42 of the First Amended Complaint. But, unless a complaint is so lacking that a defendant cannot understand "the basis for the claim and its general nature," a motion to dismiss is unwarranted. *Guerrero v. Copper Queen Hosp.*, 112 Ariz. 104, 106-07, 537 P.2d 1329, 1331-32 (1975)(reversing trial court's decision to grant motion to dismiss). 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. Paragraphs 30-32, 39, and 44-50 comply with the notice pleading standards followed by Arizona law.

Finally, even if a complaint is afflicted with pleading deficiencies, before it can be dismissed, the nonmoving party "should be given an opportunity to amend the complaint if such an amendment cures its defects." *Wigglesworth v. Mauldin*, 195 Ariz. 432, 439, 990 P.2d 26, 33 (App. 1999).

To the extent that defendants do not fully understand what plaintiff is claiming, thus inhibiting or preventing the preparation of a defense, the more effective and efficient way to deal with the issue is through the mandatory disclosure process. If disclosure and discovery fail to establish proof sufficient to meet plaintiff's *prima facie* burden, then a motion for summary judgment would be warranted under the principle stated in *Celotex Corp. v. Catrett* [477 U.S. 317, 324 (1986)] and adopted in *Orme School v. Reeves* [166 Ariz. 301, 310, 802 P.2d 1000, 1009 (1990)].

Defendants' reliance on Section 10-3304(B)(2) of the Nonprofit Corporation Act and the *Rohde* case is misplaced and inapposite. The more applicable statutory sections include A.R.S. §§ 10-3825 and -3830, referencing the general standards and rebuttable presumption for the acts, omissions and/or other discharge of duties of committee members, as well as A.R.S. § 10-11602 and -11620. The rights and obligations of the plaintiff and the defendants are governed by the terms set forth in Exhibits A and B to the First Amended Complaint.

**IT IS THEREFORE ORDERED** denying defendants' motion to dismiss without prejudice, subject to the following conditions.

1. Should defendants later choose to file a new or renewed motion to dismiss for failure to state a claim based upon an asserted pleading deficiency, defendants must first comply with the following requirements:
  - a. Before such a motion to dismiss may be filed, the affected parties must meet and confer for the purpose of determining whether that motion can be avoided by curing

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- any purported pleading deficiencies with an amended complaint or a disclosure statement.
- b. Consequently, if defendants wish to file a new or renewed motion to dismiss, it must include a certification stating that the parties have conferred and have been unable to agree that the pleading is curable by a permissible amendment or disclosure statement. For these purposes, “confer” requires personal and not written communication. Failure to comply with this procedure may be grounds for rejecting a new or renewed motion to dismiss.
2. If plaintiff has not already done so, within 30 days of the date of entry of this order plaintiff must provide defendants with a detailed, fact-specific disclosure statement, understanding that notice pleading in such statements is insufficient.