

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-092936

11/04/2021

HONORABLE RODRICK COFFEY

CLERK OF THE COURT  
K. Tiero  
Deputy

SILVERTON DEER VILLAGE HOMEOWNERS ASSOCIATION INC      MARK W WALDRON

v.

JANET DEFINE

MICHAEL S DEFINE

HAVEN LEE DOVE  
CHAD M GALLACHER  
SCOTT B HUMBLE  
JUDGE COFFEY

MINUTE ENTRY

The Court has considered Third-Party Defendant, Direct Access Legal Services' Motion for Judgment on the Pleadings; Third-Party Plaintiff, Janet Define's Response to that Motion; and Third-Party Defendant's Reply in support of its Motion. Although oral argument was requested, the Court does not believe that oral argument would assist the Court in deciding the pending Motion.

Third-Party Defendant seeks judgment on the pleadings on the abuse of process claim that has been asserted against it. A Rule 12(c) motion tests the sufficiency of the complaint and should be granted if the complaint fails to state a claim for relief. *Emmett McLoughlin Realty, Inc. v. Pima Cty.*, 203 Ariz. 557, 558 (App. 2002); *Giles v. Hill Lewis Marce*, 195 Ariz. 358, 359 (App. 1999). A motion for judgment on the pleadings is appropriately granted if the complaint fails to set forth a claim for which relief can be granted. *Save Our Valley Ass'n v. Ariz. Corp. Comm'n*, 216 Ariz. 216, 218 (App. 2007). "On a motion for judgment on the pleadings, all of the allegations of the opposing party's pleadings must be accepted as true and the moving party is entitled to judgment

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only if the position of the opposing party, as stated in its pleadings, clearly entitles the moving party to judgment.” *Wenrich v. Household Fin. Corp.*, 5 Ariz. App. 335, 338 (1967).

“[T]o establish a claim for abuse of process there must be a showing that the defendant has (1) used a legal process against the plaintiff; (2) primarily to accomplish a purpose for which the process was not designed; and, (3) harm has been caused to the plaintiff by such misuse of process.” *Nienstedt v. Wetzel*, 133 Ariz. 348, 353, 651 P.2d 876, 881 (App. 1982). “It is immaterial that the process may have been properly obtained or issued as a normal incident of the litigation involved. It is the subsequent misuse which constitutes the misconduct for which liability is imposed.” *Id.* The Third-Party Complaint alleges sufficient facts, which, if proven true, could warrant a judgment in favor of Third-Party Plaintiff and against Direct Access Legal Services (“DALs”). Whether DALs used the legal process primarily to accomplish a purpose for which the process was not designed is a factual issue that cannot be resolved through a motion for judgment on the pleadings. Accordingly,

**IT IS ORDERED** denying DALs’ Motion for Judgment on the Pleadings.