

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-096070

12/11/2012

HON. MARK F. ACETO

CLERK OF THE COURT
M. Scott
Deputy

VELDA ROSE ESTATES HOMEOWNERS
ASSOCIATION

CHARLES E MAXWELL

v.

EDITH POGGI

EDITH POGGI
PO BOX 4103
CAVE CREEK AZ 85327

EAST MESA JUSTICE COURT
4811 E. JULEP
#128
MESA AZ 85205
STEPHANIE F VAN SPLUNDER
DOCKET-CIVIL-SE

MINUTE ENTRY

MOTION TO DISMISS COUNTERCLAIM

On July 11, 2012, Plaintiff filed a Complaint against Edith Poggi (“Defendant”). On September 28, 2012, Defendant filed “Counterclaim”. In the first sentence of the Counterclaim, Defendant identifies her claims as being “for breach of contract, breach of good faith and fair dealing, slander and defamation.” On October 16, 2012, Plaintiff filed a “Motion to Dismiss Counterclaims”. The Court has reviewed the pleadings. Pursuant to Rule 7.1, the Court declines to schedule oral argument.

Regarding Defendant’s “breach of contract” and “breach of good faith and fair dealing” claims, the Court makes note of the following:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-096070

12/11/2012

- Defendant alleges that Bob, a representative of Plaintiff, broke a promise to call Defendant. Defendant does not allege that this promise was supported by consideration. Such bare promises do not constitute actionable contracts.
- Defendant cites no specific contract provision that has been breached by Plaintiff.
- Defendant simply conclusorly alleges that Plaintiff is guilty of a “breach of good faith and fair dealing”. Defendant never identifies any contract provision that implies duties that Defendant alleges were breached. Such conclusory allegations fail to state a claim upon which relief can be granted.
- “Breach of contract” and “breach of good faith and fair dealing” would be actionable only if such breaches caused damages. Defendant’s counterclaim neither alleges nor seeks recovery for any damages allegedly caused by any “breach of contract” or “breach of good faith and fair dealing”.
- Defendant’s “breach of contract” and “breach of good faith and fair dealing” claims fail to state claims upon which relief can be granted.

Regarding Defendant’s slander and defamation claims, the Court makes note of the following:

- Defendant alleges that a representative of Plaintiff called Defendant a “rich bitch”.
- While vulgar and abusive, such a description is not normally actionable as defamation. *Vinson v. O’Malley* 25 Ariz. 552 (1923).
- Mere conclusory allegations are deficient. Regarding the alleged “rich b----“ slur, Defendant has neither alleged nor described circumstances that would support an inference that the comment in any way imputed crime or unchastity to Defendant. Defendant has also neither alleged nor suggested circumstances under which the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-096070

12/11/2012

alleged slur could have harmed Defendant in any business or occupation. In the context of Defendant's Counterclaim, the alleged "rich b----" statement can in no way be deemed to be slander per se.

- Defendant has not alleged any special damages.
- Defendant has failed to state a viable slander or defamation claim.

Under the circumstances,

IT IS ORDERED granting Plaintiff's "Motion to Dismiss Counterclaims". In other words, Defendant's "Counterclaim" is dismissed.

REMAND TO JUSTICE COURT

The Court makes note of the following:

- Plaintiff filed its Complaint in East Mesa Justice Court. Through its Complaint, Plaintiff seeks judgment in the principle amount of \$1,797.77.
- After Defendant filed her Counterclaim, the Justice found that the Counterclaim fell outside of Justice Court jurisdiction and ordered that this case be transferred to Superior Court.
- As noted above, Defendant's Counterclaim has been dismissed.
- The only remaining claims in this case are those asserted in Plaintiff's Complaint.
- This case now falls within the jurisdiction of Justice Court.

Under the circumstances, pursuant to A.R.S. §22-201(G),

IT IS ORDERED remanding this case to East Mesa Justice Court.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-096070

12/11/2012

/s/ HON. MARK F. ACETO

JUDICIAL OFFICER OF THE SUPERIOR COURT

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.