Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005545 05/22/2024

HONORABLE FRANK W. MOSKOWITZ

CLERK OF THE COURT
S. Motzer
Deputy

SHEILA JANISCH FRANK M FOX

v.

SCOTTSDALE MOUNTAIN COMMUNITY ASSOCIATION NICHOLAS C NOGAMI

JUDGE MOSKOWITZ

MINUTE ENTRY

Pending before the Court is Defendant's Combined Motion to Partial Dismissal and Motion for More Definite Statement ("the Motion"). It was filed on April 29, 2024. It is fully briefed. Neither side requested oral argument and the Court does not need oral argument to resolve the Motion.

THE COURT FINDS AS FOLLOWS:

"[M]otions to dismiss for failure to state a claim are not favored in Arizona." *Acker v. CSO Chevira,* 188 Ariz. 252, 255 (App. 1997).

"Dismissal is appropriate under Arizona Rule of Civil Procedure 12(b)(6) if, 'as a matter of law ... plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.'" *CVS Pharmacy, Inc. v. Bostwick in & for county of Pima,* 251 Ariz. 511, 515–16 (2021).

"[A] complaint need not set forth every fact that may be associated with a claim…. Instead, 'Arizona follows a notice pleading standard, the purpose of which is to 'give the opponent fair notice of the nature and basis of the claim and indicate generally the type of litigation involved.'" *Shepherd v. Costco Wholesale Corp.*, 250 Ariz. 511, 514 (2021) (citations omitted).

Rule 8 of the Arizona Rules of Civil Procedure merely requires a short and plain statement of the claim. That said, "mere conclusory statements are insufficient to state a claim upon which relief can be granted. The inclusion of conclusory statements does not invalidate a complaint, but a complaint that states only legal conclusions, without any supporting factual allegations, does not satisfy Arizona's notice pleading standard under Rule 8." *Cullen v. Auto-Owners Ins. Co*., 218 Ariz. 417, 419 (2008) (citation omitted).

"In adjudicating a Rule 12(b)(6) motion to dismiss … a court does not resolve factual disputes between the parties on an undeveloped record." *Coleman v. City of Mesa*, 230 Ariz. 352 (2012).

A motion to dismiss for failure to state a claim must be accompanied by a good faith consultation certificate pursuant to Rule 12(j), Ariz. R. Civ. Pro. No such certificate accompanied the Motion.

"Whether a fiduciary relationship exists is generally a question of fact unless the evidence would be insufficient to support a verdict, in which case the court may rule as a matter of law." *See Cook v. Orkin Exterminating Co.*, 227 Ariz. 331, 333-34 (App. 2011) (stating that "[g]enerally, commercial transactions do not create a fiduciary relationship unless one party agrees to serve in a fiduciary capacity…The law does not create a fiduciary relation in every business transaction involving one party with greater knowledge, skill, or training, but requires peculiar intimacy or an express agreement to serve as a fiduciary.").

Rule 26.1, Ariz. R. Civ. Pro. governs the disclosure of the factual basis and legal theories in support of a claim.

Applying the above legal principles to the circumstances of this case, and based on the current undeveloped record,

IT IS ORDERED denying the Motion.