

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-053962

01/19/2016

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT

W. Tenoever

Deputy

WAYNE L MULLINS

WAYNE L MULLINS

P O BOX 30623

PHOENIX AZ 85046

v.

NISBET GREENS HOMEOWNERS
ASSOCIATION INC, THE, et al.

MARK E LINES

BETH MULCAHY

ANDREA STEVENS

2946 E NISBET CT

PHOENIX AZ 85032

DOCKET-CIVIL-CCC

CASE DISMISSED - PARTIAL

Before the Court are two motions to dismiss. One was filed by defendants Nisbet Greens Homeowners Association (the "Association") and Bill Stevens, Ira Rose, Steven Scholfield, Kay Jacobson, Tina Stevens and Kathleen Baughman (the Board Members"). The other was filed by defendants The Mulcahy Law Firm and Beth Mulcahy ("Mulcahy"). The plaintiff moved to amend his complaint, in response to the motions, but he subsequently withdrew that request.

IT IS ORDERED denying the motion(s) for summary disposition. The motions will be decided on the merits.

IT IS ORDERED denying the request(s) for oral argument. Oral argument would not be helpful to the court in deciding these motions.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-053962

01/19/2016

LET THE RECORD REFLECT that the Court has read and considered the defendants' motions, the plaintiff's responses to the motions and the defendants' replies, and the relevant record in this case. The Court has not considered the plaintiff's responses to the defendants' replies, because those filings are not authorized by the Rules of Civil Procedure.

The plaintiff does not have standing to bring any of the claims against the Board Members personally. The duties of the Board Members are owed to the Association. The plaintiff may bring causes of action on behalf of the Association only if the causes of action are stated as derivative claims pursuant to A.R.S. sections 10-3631 and 10-3632. The plaintiff has not attempted to state his claims as derivative claims; and, even if he did attempt to do so, the statutory prerequisites are not satisfied.

IT IS THEREFORE ORDERED the motion to dismiss is granted as to the Board member defendants and the Board itself. The case is dismissed as to those parties.

The plaintiff likewise does not have the right to bring a lawsuit against Mulcahy for alleged breaches of her obligations to the Association. The Association's lawyer has no duty to individual members of the Association. Further, an attorney generally cannot be held to have "aided and abetted" her client's alleged tortious conduct. There may be very narrow exceptions to that rule, but none are alleged here.

IT IS THEREFORE ORDERED Mulcahy's motion to dismiss is granted. The claims against Beth Mulcahy and the Mulcahy law firm – Count 14, and Count 11 to the extent it attempts to state claims against Mulcahy -- are dismissed with prejudice.

The plaintiff does have the right to bring claims against the Association for breach of contract. The breach of contract claims (Counts One, Two, Three and Eight) are factually distinct. Any overlap in the claimed damages can be addressed in the course of the litigation. Though it is not clear that the Association owes a fiduciary duty to the plaintiff (Count Six), the Association does not develop that argument. The Association makes no substantive argument as to the unjust enrichment claim (Count 13).

IT IS THEREFORE ORDERED the motion to dismiss is denied as to Counts One, Two, Three, Six, Eight and Thirteen against the Association.

The sole remedy for the alleged statutory violations (Counts Four, Five and Seven) is an injunction. The statutes do not authorize or support claims for damages.

IT IS THEREFORE ORDERED dismissing Counts Four, Five and Seven.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-053962

01/19/2016

Arizona does not recognize a civil cause of action for extortion as such.

IT IS THEREFORE ORDERED dismissing Count Ten.

None of the facts in the Complaint rises to the level of outrageous conduct that would give rise to a claim for intentional or negligent infliction of emotional distress (Count Nine) or punitive damages (Count Twelve).

IT IS THEREFORE ORDERED dismissing Counts Nine and Twelve.

No tort causes of action remain that the Association or any individual could have “aided and abetted” (Count 11). There is no cause of action for aiding and abetting a breach of contract.

IT IS THEREFORE ORDERED dismissing Count 11.

/s/ John R. Hannah

John R. Hannah
Judge of the Superior Court