

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

12/12/2024

HONORABLE RODRICK COFFEY

CLERK OF THE COURT
S. Motzer
Deputy

SANDRA RODRIGUEZ

SANDRA RODRIGUEZ
4375 E BETSY LN
GILBERT AZ 85296

v.

GARDENS GILBERT COMMUNITY
ASSOCIATION, et al.

AUGUSTUS H SHAW IV

D&C MATERIALS-CSC
JUDGE COFFEY

MINUTE ENTRY

The parties in this case have filed an inordinate number of motions. The flurry of motions that have been filed make the electronic docket for this case very difficult to navigate. The Court ruled on multiple motions on August 27, 2024. The Court also entered a Judgment dismissing some of the Defendants and awarding them their attorneys' fees and costs on August 26, 2024. Thereafter, Plaintiff filed a Notice of Appeal on October 7, 2024, but in the interim, she continued filing motions in this Court. That appeal was dismissed by the Arizona Court of Appeals on November 12, 2024. While the appeal was pending, the Court was divested of jurisdiction to rule on any of the other pending motions. *City of Phoenix v. Leroy's Liquors, Inc.*, 177 Ariz. 375, 381, 868 P.2d 958, 964 (App. 1993). As a result of the parties filing so many motions and the Court being unable to rule on them during the pendency of the appeal, this minute entry will address many more motions than most minute entries typically do.

The Court has considered Plaintiff's Motion Plaintiff's Motion to Accept Late-Filed Notice of Appeal Due to Due Process Violations; Defendants' Motion to Strike Defendant's Invalid Notice of Appeal and Response to Plaintiff's Motion to Accept Late-Filed Notice of Appeal Due

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

12/12/2024

to Due Process Violations; and Plaintiff's Motion to Strike Defendant's Motion to Strike Notice of Appeal and Cease Harassment – Obstruction Justice. Plaintiff's Notice of Appeal was untimely because it was filed more than 30 days after the Court entered a Judgment.

Rule 9(f) of the Arizona Rules of Civil Appellate Procedure provides:

The superior court may on motion reopen the time for filing a notice of appeal for a period of 14 days after entry of its order granting a motion to reopen, but only if all of the following conditions are satisfied:

- (1) The court finds that the moving party did not receive notice under Rule 58(c) of the Arizona Rules of Civil Procedure, or Rule 78(h) of the Arizona Rules of Family Law Procedure, of entry of the judgment or order that the party seeks to appeal within 21 days after entry;
- (2) The motion is filed within 30 days after the expiration of the time for appeal, or within 7 days of receipt of the notice of entry of the judgment or order, whichever is earlier; and
- (3) The court finds that no party would be prejudiced.

Plaintiff states that she did not receive the Judgment that was entered on August 26, 2024 until October 2, 2024, when she received a copy of it from Defendants' attorney. Given how quickly Plaintiff typically responds to anything that is filed by Defendants, the Court finds her statement to be credible. She filed her Motion less than 30 days after the expiration of the time for appeal and less than seven days after she claims to have first received notice of the Judgment. The Court does not find that any party would be prejudiced by the Court extending the deadline for Plaintiff to file her appeal. Accordingly,

IT IS ORDERED granting Plaintiff's Motion and reopening the time for Plaintiff to file a new notice of appeal of the August 26, 2024 Judgment until December 26, 2024. If a new notice of appeal is timely filed, in the interests of judicial economy, with the exception of any post-judgment collection procedures that may be utilized by Defendants, the entire case will likely be stayed until the appeal is fully resolved by the Court of Appeals.

IT IS FURTHER ORDERED denying Defendants' Motion to Strike Plaintiff's Invalid Notice of Appeal as moot because that appeal was dismissed by the Court of Appeals.

The Court has also considered Plaintiff's MTS Defendants' Partial Motion to Dismiss & Related Filings With Substantive Opposition, Presentation of New Evidence and Support Allegations; and Defendants' Response to that Motion.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

12/12/2024

As a preliminary matter, the parties in this case have filed an astonishing number of motions to strike even though the Court previously expressly admonished them to refrain from doing so. “[A] motion to strike may be filed only if it is expressly authorized by statute or other rule, or if it seeks to strike any part of a filing or submission on the ground that it is prohibited, or not authorized, by a specific statute, rule, or court order.” Rule 7.1(f), Arizona Rules of Civil Procedure. Motions to strike are highly disfavored, especially by this Division. Such motions are not granted unless it clearly appears that a filing or the portion thereof to be stricken has no possible relation to the subject of the litigation and the moving party demonstrates prejudice as a result of its retention. *Blankenbaker v. Jonovich*, 203Ariz. 226, 230 52 P.3d 795, 799 (App. 2002).

From this Division’s perspective, motions to strike are the most over-used and least effective filings by civil litigators. **Motions to strike are not and should never be used as a substitute for a substantive response to a motion or as a substitute for a reply in support of a motion.** Plaintiff consistently improperly files motions to strike Defendants’ motions and their responses to motions. Motions to strike clutter the docket unnecessarily and they significantly delay the briefing process for motions. The parties are strongly encouraged to refrain from filing motions to strike in this Division. They are very rarely granted and should be very rarely filed. From this point forward, **unless the Court expressly grants any motion to strike filed by either party, they shall be deemed to have been denied.** Going forward, if the parties continue to file motions to strike instead of substantive responses or replies, the Court will likely impose monetary sanctions against each party who does so in the amount of at least \$100.00 for every improper motion to strike that is filed.

Rather than seeking to actually strike anything, this Motion appears to be yet another in a long series of repetitive motions filed by Plaintiff in which she seeks a reconsideration of prior rulings by the Court. In the August 27, 2024 minute entry, the Court previously stated, “Plaintiff must refrain from filing repetitive motions that ask for essentially the same relief when the Court has already denied similar requests. . . . Restating the same or virtually identical arguments over and over again in serial filings is not going to change the Court’s disposition. And, doing so, may very well lead to the imposition of monetary sanctions against Plaintiff.” Despite that admonition, Plaintiff continues to file repetitive motions that seek the same relief.

IT IS ORDERED denying Plaintiff’s MTS Defendants’ Partial Motion to Dismiss & Related Filings With Substantive Opposition.

The Court has also considered Plaintiff’s Motion to Vacate Judgment Entered on August 30, 2024; Defendants’ Response to that Motion; Plaintiff’s Motion to Strike Defendants’ Response, which the Court is treating as a reply in support of her Motion since there is absolutely no reason for Plaintiff to have filed a motion to strike Defendants’ Response to her Motion.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

12/12/2024

IT IS ORDERED denying Plaintiff's Motion to Vacate Judgment Entered on August 30, 2024.

The Court has also considered Plaintiff's Motion to Stay (Emergency Order); Plaintiff's Motion to Stay (Appeal Pending); Defendants' Response to Plaintiff's Motion to Stay; Plaintiff's Response to Defendants' [sic] Response to Plaintiff's Motion to Stay; and Plaintiff's Motion to Strike Defendants' Response to Plaintiff's Motion to Stay. Because the appeal was dismissed and there is no valid reason for staying the case at this point,

IT IS ORDERED denying Plaintiff's Motion to Stay (Emergency Order) and Plaintiff's Motion to Stay (Appeal Pending).

The Court has also considered Plaintiff's Request to Reconsider/Clarification Settlement Conference or Mediation Order; Defendants' Response to that Motion; Plaintiff's Motion to Strike Defendants' Response; and Defendant's Response to Plaintiff's Motion to Strike.

IT IS ORDERED denying Plaintiff's Request to Reconsider/Clarification Settlement Conference or Mediation Order.

The Court has also considered Defendants' Partial Motion to Dismiss Complaint; Plaintiff's MTS Defendants' Filings on September 9, 2024 and Response to Defendants' Action; Defendants' Reply in support of their Motion; and Plaintiff's MTS Defendants' Response Filed on September 29, 2024 and Request to Amend Civil Lawsuit.

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). That is especially true when such motions are based on pleading insufficiencies. *E.g., Cagle v. Carr*, 101 Ariz. 225, 227, 418 P.2d 381, 382 (1966); *see generally Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, 533, ¶10, 115 P.3d 124, 127 (App. 2005) (reversing summary judgment for defendant and recognizing sufficiency of complaint despite "numerous technical deficiencies in the document"). In ruling on a Rule 12(b)(6) motion to dismiss, the Court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). The Court will grant the motion only if the plaintiff is not entitled to relief "under any facts susceptible of proof in the statement of the claim." *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289 (App. 2010), *quoting Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). The Court will not "speculate about hypothetical facts that might entitle the plaintiff to relief." *Cullen, id.* at 420. Nor will the Court "accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

12/12/2024

facts, or legal conclusions alleged as facts.” *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389 (App. 2005).

Plaintiff has properly pled her breach of contract claims and Defendants have not shown a basis under the terms of the CC&Rs for dismissal. Accordingly,

IT IS ORDERED denying Defendants’ Partial Motion to Dismiss Complaint.

IT IS FURTHER ORDERED denying Plaintiff’s request to amend her Complaint.

The Court has also considered Plaintiff’s Motion to Seal Medical and Financial Documents Attached in Plaintiff’s Response filed 09/16/2024. No response appears to have been filed and the deadline for filing a response has expired.

IT IS ORDERED granting in part Plaintiff’s Motion with regard to Exhibits 4, 5 and 6 of the filing on docket entry number 76 only.

IT IS FURTHER ORDERED denying in part Plaintiff’s Motion with regard to Exhibits 1, 2, and 3 of the filing on docket entry number 76.

The Court has also considered Plaintiff’s Motion to Seal Financial Documents (Appeal Pending). No response appears to have been filed and the deadline for filing a response has expired.

IT IS ORDERED denying Plaintiff’s Motion to Seal Financial Documents (Appeal Pending).

The Court has also considered Plaintiff’s Response to Defendant’s Harassment and Attempts to Silence Her. No response appears to have been filed and the deadline for filing a response has expired. To the extent that this filing seeks affirmative relief from the Court,

IT IS ORDERED denying Plaintiff’s Response to Defendant’s Harassment and Attempts to Silence Her.

The Court has also considered Plaintiff’s Motion to Cease Lien, Retaliatory Discriminatory & Harassing Behavior Request for Court Intervention; Defendants’ Response to that Motion and Request for Sanctions; Plaintiff’s Motion to Strike Defendants’ Response; and Defendants’ Response to the Motion to Strike.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

12/12/2024

IT IS ORDERED denying Plaintiff's Motion to Cease Lien, Retaliatory Discriminatory & Harassing Behavior Request for Court Intervention.

The Court has also considered Plaintiff's Motion to Report Improper [sic] Service and Request for Default Judgment or Sanctions; Defendants' Response to that Motion; Plaintiff's Motion to Dismiss Defendant's Response, which the Court is treating as reply in support of Plaintiff's Motion; and Plaintiff's Motion to Strike Defendants' Response.

IT IS ORDERED denying Plaintiff's Motion to Report Improper [sic] Service and Request for Default Judgment or Sanctions.

The Court has also considered Plaintiff's Emergency Motion: Injunction Against Harassment, Order of Protection, Lien Quashing and Damages; and Defendants' Response to that Motion.

As the Court previously explained in a prior minute entry, "[r]equests for injunctions against harassment must be filed in a separate action following the rules and procedures set forth in the Arizona Rules of Protective Order Procedure. Such claims are not appropriate in a standard civil action such as this." The same applies to orders of protection.

IT IS ORDERED denying Plaintiff's Emergency Motion: Injunction Against Harassment, Order of Protection, Lien Quashing and Damages.

IT IS FURTHER ORDERED that because Plaintiff has repeatedly requested relief that the Court has previously told her she must seek through filing a separate action, if Plaintiff requests an injunction against harassment or an order of protection in this case again, the Court will likely impose monetary sanctions against her in the amount of at least \$100.00 and she will likely be required to pay the attorneys' fees incurred by Defendants in responding to such requests.

The Court has also considered Plaintiff's Motion in Support To Vacate Judgment; Rule 60(b) Motion to Quash Judgment filed on November 20, 2024 and her second Motion with the same title, which was filed on December 2, 2024; and Defendants' Response to Plaintiff's Rule 60 Motion and various motions to strike, which seem to apply to these motions.

IT IS ORDERED denying: 1) Plaintiff's Motion in Support To Vacate Judgment; 2) Rule 60(b) Motion to Quash Judgment filed on November 20, 2024; and 3) Plaintiff's second Motion to Quash Judgment, which was filed on December 2, 2024.

The Court has also considered Defendants' General Response to Motions Filed by Plaintiff filed on October 14, 2024 and Request for Rule 16(D) Ariz. Civ. P Scheduling Conference and Defendants' Request for Sanctions; Defendants' second General Response to Motions Filed by

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

12/12/2024

Plaintiff filed on October 21, 2024; Plaintiff's Motions multiple Motions to Strike Defendants' October 14 and 21, 2024 filings; and Defendants' Response to the Motion to Strike.

IT IS ORDERED denying Defendants' request for an award of sanctions subject to the more general ruling, which is set forth below.

IT IS FURTHER ORDERED setting a telephonic Rule 16 conference on January 6, 2025 at 3:30 p.m. Prior to that scheduling conference, the parties shall submit to the Court a Joint Report as required by Rule 16 and a proposed scheduling order or if they are unable to agree on a scheduling order, they may submit separate proposed scheduling orders by no later than December 31, 2024. If a joint report with an agreed upon scheduling order is provided to the Court before the January 6, 2025 hearing, the Court will likely vacate that hearing because it will no longer be necessary.

IT IS FURTHER ORDERED that with the exception of any motions to continue the January 6, 2025 hearing, no further motions shall be filed with the Court before that date. As the Court explained above, if Plaintiff files a timely notice of appeal, in the interests of judicial economy, the Court will likely stay the entire case until that appeal is resolved. If a timely notice of appeal is filed, a motion to set a supersedeas bond amount may be filed before January 6, 2025.

Finally, Defendants have repeatedly requested an award of their attorneys' fees or other sanctions against Plaintiff for because she has filed so many baseless motions. In the August 27, 2024 minute entry, the Court expressly admonished Plaintiff about filing repetitive motions. More specifically, in that minute entry, the Court stated, "Plaintiff must refrain from filing repetitive motions that ask for essentially the same relief when the Court has already denied similar requests. . . . Restating the same or virtually identical arguments over and over again in serial filings is not going to change the Court's disposition. And, doing so, may very well lead to the imposition of monetary sanctions against Plaintiff." Plaintiff has not followed the Court's admonition. Some of the motions addressed in this minute entry were not redundant or repetitive of prior motions, but many were and Plaintiff filed numerous motions to strike even though the Court admonished her to refrain from doing so. Plaintiff also filed several motions that bore different titles, but all sought a reconsideration of the Judgment that was entered against her for essentially the same reasons.

Given that the Court already included an award of attorneys' fees in the Judgment it entered on August 26, 2024, Plaintiff should be well aware of the hourly rates charged by Defendants' attorney and how large awards of attorneys' fees can be. If the Court were to award Defendants all of the attorneys' fees that they have incurred in responding to Plaintiff's meritless and repetitive motions, that award would likely be substantial and well into the five figures range. The Court is going to exercise its discretion to deny Defendants' numerous requests for sanctions without prejudice at this point, but if Plaintiff continues to file repetitive motions asking for the same relief

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005940

12/12/2024

over and over again even though the Court has already denied virtually identical motions; if she continues to file motions to strike every time Defendants file a motion or a response to a motion; and/or if she continues to request relief in the form of injunctions against harassment and orders of protection, which the Court has told her she cannot obtain as part of this lawsuit, it is highly likely that the Court will award Defendants the reasonable attorneys' fees they incur in responding to such filings and the Court will be open to considering a motion by Defendants to reconsider its denial of sanctions in this minute entry.

As the Court previously explained, Plaintiff's case will proceed on a standard civil litigation track and the Court expects the parties to work together to come up with a proposed scheduling order.