


IN THE  
**COURT OF APPEALS**  
STATE OF ARIZONA  
DIVISION ONE

  
DIVISION ONE  
FILED: 09/05/2025  
MATTHEW J. MARTIN,  
CLERK  
BY: JR

CLERK OF THE SUPERIOR COURT  
FILED

SEP - 5 2025 4:33 pm  
S. Rochford, Deputy

SANDRA RODRIGUEZ, )  
 ) Court of Appeals  
 ) Division One  
Plaintiff/Appellant, ) No. 1 CA-CV 24-0790  
 ) 1 CA-CV 25-0040  
 ) (Consolidated)  
 )  
v. )  
 )  
FOCUS HOA MANAGEMENT, LLC, et ) Maricopa County  
al., ) Superior Court  
 ) No. CV2024-005940  
Defendants/Appellees. ) CV2024-013806  
 )  
 )

**MANDATE**

TO: The Maricopa County Superior Court and the Honorable Melissa Iyer Julian, Judge, Rodrick J Coffey, Judge, in relation to Cause No. CV2024-013806 AND CV2024-005940.

This cause was brought before Division One of the Arizona Court of Appeals in the manner prescribed by law. This Court rendered its MEMORANDUM DECISION and it was filed on August 12, 2025.

The motion for reconsideration was denied and notice thereof was given on August 14, 2025. The time for the filing of a petition for review has expired and no such petition was filed.

NOW, THEREFORE, YOU ARE COMMANDED to conduct such proceedings as required to comply with the MEMORANDUM DECISION of this court; a copy of which is attached hereto.

**COSTS: \$636.99 (Appellant)**

I, Matthew J. Martin, Clerk of the Court of Appeals, Division One, hereby certify the attachment to be a full and accurate copy of the MEMORANDUM DECISION filed in this cause on August 12, 2025.

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of the Arizona Court of Appeals, Division One, on September 5, 2025.



MATTHEW J. MARTIN, CLERK

By jr  
Deputy Clerk

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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SANDRA RODRIGUEZ, *Plaintiff/Appellant*,

*v.*

FOCUS HOA MANAGEMENT, LLC, et al., *Defendants/Appellees*.

No. 1 CA-CV 24-0790, 1 CA-CV 25-0040  
(Consolidated)

FILED 08-12-2025

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Appeal from the Superior Court in Maricopa County  
Nos. CV2024-005940 and CV2024-013806  
The Honorable Melissa Iyer Julian, Judge  
The Honorable Roderick Coffey, Judge

**AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART,  
AND REMANDED**

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COUNSEL

Sandra Rodriguez, Gilbert  
*Plaintiff/Appellant*

Shaw & Lines, LLC, Phoenix  
By Augustus H. Shaw, IV  
*Counsel for Defendants/Appellees*

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**MEMORANDUM DECISION**

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Angela K. Paton joined.

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**C A T T A N I**, Judge:

¶1 Sandra Rodriguez appeals from two dismissals of complaints she filed against her community association, its management company, and some of their individual employees for failure to maintain the community according to its governing documents. We consolidated the cases on appeal under ARCAP 8(g). For reasons that follow, we affirm in part, reverse in part, vacate in part, and remand for proceedings consistent with this decision.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Rodriguez owns a home in the Gardens/Gilbert Community, a residential community in Gilbert. The HOA Gardens/Gilbert Community Association (“Gardens/Gilbert”) governs the housing community according to its declaration of covenants, conditions, and restrictions (“CC&Rs”), and Anna Schultz is a member of the Gardens/Gilbert Board of Directors. Focus HOA Management (“Focus”) is the managing agent for Gardens/Gilbert, and Brooke Sortor and Harmin Cadis are its employees.

**I. The Gardens/Gilbert Case (CV2024-005940).**

¶3 In March 2024, Rodriguez sued defendants Gardens/Gilbert, Focus, Sortor, Cadis, and Schultz and asserted claims for breach of contract and duty, gross negligence, and intentional torts. She also arguably asserted other claims regarding discrimination, failure to maintain and provide access to financial records, and violation of her First Amendment rights. All the defendants except Gardens/Gilbert moved to dismiss Rodriguez’s complaint under Arizona Rule of Civil Procedure (“Rule”) 12(b)(6) for failure to state a claim upon which relief may be granted. They argued Rodriguez’s claims were better directed against Gardens/Gilbert than its employees because as agents they would not be liable for actions taken on behalf of Gardens/Gilbert. In May 2024, the superior court granted the motion and dismissed Rodriguez’s claims against Focus, Sortor,

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Cadis, and Schultz by minute entry, expressly stating that the dismissal was “without prejudice.”<sup>1</sup>

¶4 In late August 2024, the court in the Gardens/Gilbert Case certified a partial final judgment under Rule 54(b) dismissing Rodriguez’s claims against Focus, Sortor, Cadis, and Schultz. This judgment—entered on the proposed form of final judgment lodged by the defendants—designated the dismissal as *with* prejudice (contrary to the minute entry ruling and with no explanation for the change). The court also awarded those defendants their attorney’s fees and costs. Rodriguez timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(1).

**II. The Focus Case (CV2024-013806).**

¶5 In June 2024, while the parties litigated attorney’s fees (and before the final judgment) in the Gardens/Gilbert Case, Rodriguez filed a new case against Focus, Cadis, and Sortor (the “Focus Defendants”). Rodriguez’s operative pleading in the Focus Case (her amended complaint filed June 24, 2024, pursuant to Rule 15(a)) reasserted all claims from the Gardens/Gilbert Case and added claims for fraud, defamation, attorney misconduct, intentional infliction of emotional distress, and unfair and deceptive trade practices.

¶6 Later in June 2024, the Focus Defendants moved to dismiss the Focus Case under Rule 12(b)(6) on the basis of claim preclusion, stating that the Gardens/Gilbert Case had been dismissed with prejudice. In that motion, the Focus Defendants also cited the CC&Rs’ Waiver of Damages Clause relieving Gardens/Gilbert and its officers, directors, employees, and agents from liability arising from mistakes of judgment, negligence, malfeasance, or nonfeasance. In July 2024, the court granted the Focus Defendants’ motion, dismissing Rodriguez’s claims on the basis of claim preclusion, without addressing the defendants’ argument about the CC&Rs.

¶7 In September 2024, the court in the Focus Case entered a final judgment under Rule 54(c), dismissing Rodriguez’s complaint with prejudice and awarding the Focus Defendants their attorney’s fees and costs. Rodriguez timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(1).

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<sup>1</sup> Rodriguez’s claims against Gardens/Gilbert in this case remain ongoing in superior court.

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DISCUSSION

¶8 Rodriguez challenges the dismissal of the Gardens/Gilbert Case complaint as to Focus, Sortor, Cadis, and Schultz, the dismissal of the Focus Case, and the awards of attorney's fees and costs to the defendants in both cases.

I. The Gardens/Gilbert Case.

¶9 We review the dismissal of a complaint under Rule 12(b)(6) de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012). Dismissal on this basis is appropriate only if "as a matter of law [ ] plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof." *Id.* at 356, ¶ 8 (alteration in original) (quoting *Fid. Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224, ¶ 4 (1998)). The court looks only to the pleading itself, assuming the truth of all well-pleaded factual allegations and indulging all reasonable inferences from those facts. *Id.* at ¶ 9. Arizona follows a notice pleading standard under Rule 8, which requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief" and is aimed toward "giv[ing] the opponent fair notice of the nature and basis of the claim and indicat[ing] generally the type of litigation involved." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 6 (2008).

¶10 In their motion to dismiss, Focus, Sortor, Cadis, and Schultz relied on principles of agency liability, arguing that they cannot be personally liable for any acts relevant to Rodriguez's allegations because those fell within the scope of their employment with Gardens/Gilbert. While these defendants assert on appeal that Rodriguez agreed to limit their personal liability through the CC&Rs' Waiver of Damages Clause, they did not raise this argument before the superior court until their reply in support of the motion to dismiss and thereby waived it. *See Westin Tucson Hotel Co. v. Dep't of Revenue*, 188 Ariz. 360, 364 (App. 1997) (arguments raised for the first time in a reply are waived).

¶11 Turning to the specific claims Rodriguez asserted in the Gardens/Gilbert Case, Rodriguez does not dispute that Focus, Sortor, Cadis, and Schultz are agents of Gardens/Gilbert. As to her contract claims, the CC&Rs govern the relationship between Rodriguez and Gardens/Gilbert, and agents are not personally liable for their disclosed principal's obligations arising under a contract. *Ferrarrell v. Robinson*, 11 Ariz. App. 473, 475 (App. 1970); *see* Restatement (Second) of Agency § 328 (1958). Likewise, disclosed agents are generally not personally liable for

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their principal's alleged failure to provide access to financial records or alleged First Amendment violations committed in the context of breach of contract. See A.R.S. § 33-1805 (dictating the *association's* obligations regarding financial and other records) (emphasis added); Restatement (Second) of Agency § 328. Thus, Focus, Sortor, Cadis, and Schultz are not subject to personal liability for the alleged breach of the contract, failure to provide access to financial records, or First Amendment violations. Restatement (Second) of Agency §§ 328, 350. The superior court therefore properly dismissed these claims with respect to those defendants.<sup>2</sup>

¶12 Rodriguez also argued negligence in the Gardens/Gilbert Case. An agent can be liable for negligence to third parties even when acting on behalf of a principal. *Lombardo v. Albu*, 199 Ariz. 97, 100, ¶ 11 (2000) (citing Restatement (Second) of Agency §§ 348, 350 ("An agent is subject to liability if, by his acts, he creates an unreasonable risk of harm to the interests of others protected against negligent invasion.")). The superior court thus erred by dismissing on this basis.

¶13 Nevertheless, an agent owes no greater duty of care than their principal, which can contract to relieve itself of liability for harm caused by ordinary negligence. Restatement (Second) of Agency § 350 cmt. d. Because Focus, Sortor, Cadis, and Schultz have waived any argument that the CC&Rs' Waiver of Damages Clause relieves them of liability for negligence by failing to raise it until their reply in support of their motion to dismiss, see *Westin Tucson Hotel Co.*, 188 Ariz. at 364, we do not address this argument. Even assuming the contract between Gardens/Gilbert and its homeowners—the CC&Rs—included a clause that relieved Gardens/Gilbert and its agents of liability for mistakes in judgment, negligence, malfeasance, and nonfeasance, this waiver does not reach gross negligence or intentional torts. Restatement (Second) of Agency § 350 cmt. d. ("An agent acting for a master or other principal normally owes no greater duty of care than his principal, who by contract with another can relieve himself from liability for harm caused by ordinary negligence."); see generally *Lombardo*, 199 Ariz. at 100, ¶ 11 (establishing agent liability for negligence to third parties when acting on behalf of a principal).

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<sup>2</sup> Rodriguez also alleged the defendants in the Gardens/Gilbert Case discriminated and/or retaliated against her, but her complaint did not provide supporting facts sufficient to sustain the claim against the dismissed defendants. This claim may more properly lie against Gardens/Gilbert, as the alleged discrimination and retaliation occurred as part of Gardens/Gilbert's actions to enforce the provisions of the CC&Rs.

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¶14 In her Gardens/Gilbert Case complaint, Rodriguez asserted that the defendants were grossly negligent by failing to maintain the community to the standards specified in the CC&Rs by failing to enforce rules requiring owners to keep their dogs on leashes and pick up their dogs' waste, resulting in unclean communal areas. Rodriguez also alleged facts indicating the defendants blocked her access to the community resident portal, restricted her participation in community meetings, misrepresented community policies, and improperly fined her for violations. She alleged that these actions resulted in financial strain and physical health issues for her and her children, including allergic reactions, sinus infections, and respiratory problems. Rodriguez requested monetary relief and a myriad of other equitable remedies.

¶15 Under Arizona's notice pleading standard, a complaint need only have "a statement of the ground upon which the court's jurisdiction depends, a statement of the claim showing that the pleader is entitled to relief and a demand for judgment." *Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, 533, ¶ 10 (App. 2005) (quoting *Morn v. City of Phoenix*, 152 Ariz. 164, 166 (App. 1986)); *Cullen*, 218 Ariz. at 419, ¶ 6; *see also* Ariz. R. Civ. P. 8(a). While the inclusion of conclusory statements does not invalidate a complaint, a complaint that states only legal conclusions with no supporting factual allegations does not satisfy Arizona's notice pleading standard under Rule 8. *Cullen*, 218 Ariz. at 419, ¶ 7. "Pleadings must be construed so as to do justice." Ariz. R. Civ. P. 8(f).

¶16 While not precise, Rodriguez's complaint included sufficient factual allegations to notify the defendants in the Gardens/Gilbert Case of her gross negligence and intentional tort claims against them. *See Rowland*, 210 Ariz. at 533, ¶ 10. Those claims fall outside the superior court's basis for dismissal, which was premised on principles limiting an agent's liability for certain acts undertaken on behalf of a principal. Neither their roles as agents nor contractual limitations of liability shield Focus, Sortor, Cadis, and Schultz from personal liability for gross negligence or intentional torts. *See Lombardo*, 199 Ariz. at 100, ¶ 11; Restatement (Second) of Agency § 350 cmt. d. Rodriguez has alleged facts that, at this stage of the proceedings, are sufficient to support her gross negligence and intentional tort claims against Focus, Sortor, Cadis, and Schultz in their individual capacities. *See Coleman*, 230 Ariz. at 356, ¶ 8.

¶17 Thus, we vacate the partial final judgment in the Gardens/Gilbert Case. We reverse the order dismissing Rodriguez's claims of negligence, gross negligence, and intentional torts as against Focus,

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Sortor, Cadis, and Schultz, but we affirm the dismissal of Rodriguez's other claims with respect to those defendants.

¶18 In doing so, we note that the dismissal of the other claims is without prejudice. The superior court's minute entry ruling dismissed Rodriguez's claims against Focus, Sortor, Cadis, and Schultz, but did so expressly "without prejudice." The form of judgment submitted by counsel for the defendants, however, inexplicably purported to dismiss the claims "in their entirety, with prejudice." Although the judgment was entered on the form provided, the record gives no indication that the court changed its mind about its prior without-prejudice ruling, and we are aware of no authority permitting a party to submit a form of judgment contrary to the court's ruling. Our vacatur of that judgment renders moot the anomalous conversion of a dismissal without prejudice to one with prejudice. We clarify, however, that Rodriguez's claims that remain dismissed from the Gardens/Gilbert Case have been dismissed, as the superior court ruled, "without prejudice."

¶19 Finally, Rodriguez argues that the superior court ignored her financial hardship and imposed excessive fees by awarding the defendants their attorney's fees and costs. In light of our decision reversing the superior court's dismissal in part, we vacate the award of attorney's fees and costs, without prejudice to reconsidering an award following resolution of the merits of the remaining claims.

## II. The Focus Case.

¶20 Rodriguez argues that the superior court's dismissal based on claim preclusion in the Focus Case was erroneous, as the only ruling from the Gardens/Gilbert Case at the time was the partial dismissal without prejudice. *Airfreight Exp. Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 108, ¶ 13 (App. 2007) ("A dismissal without prejudice, however, is not an adjudication on the merits and does not bar a second action under the doctrine of claim preclusion.") (citing *Union Interchange, Inc. v. Van Aalsburg*, 102 Ariz. 461, 464 (1967)). Because no final judgment of any sort had been issued in the Gardens/Gilbert Case at the time the court granted the motion to dismiss in the Focus Case, there was no judgment that would have allowed the application of claim preclusion. See *In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 212 Ariz. 64, 69-70, ¶ 14 (2006) (claim preclusion requires, among other things, "a final judgment on the merits in the previous litigation"). Moreover, because we have vacated the final judgment in the Gardens/Gilbert Case, reversed in part the order dismissing some of those claims, and concluded that the dismissal of the

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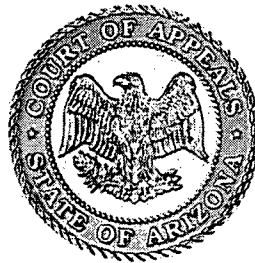
others was without prejudice, *see supra* ¶¶ 9-17, we reverse the dismissal of Rodriguez's complaint in the Focus Case, vacate the award of fees and costs, and remand.

**III. Attorney's Fees and Costs on Appeal.**

¶21 Because Focus, Sortor, Cadis, and Schultz are not the prevailing parties, we deny their requests for attorney's fees and costs on appeal. *See* A.R.S. §§ 12-341.01, -341. As the prevailing party on appeal, Rodriguez is entitled to an award of her costs on appeal upon compliance with ARCAP 21.

**CONCLUSION**

¶22 In the Gardens/Gilbert Case, we (1) affirm the dismissal as to Rodriguez's claims for breach of contract and duty, First Amendment violations, failure to provide access to financial records, and discrimination/retaliation, but clarify that the dismissal remains "without prejudice"; (2) reverse the dismissal as to Rodriguez's claims for negligence, gross negligence, and intentional torts; and (3) vacate the award of attorney's fees and costs. In the Focus Case, we reverse the dismissal of Rodriguez's complaint and vacate the award of fees and costs. Both cases are remanded to the superior court for further proceedings consistent with this decision.



MATTHEW J. MARTIN • Clerk of the Court

FILED: JR