

IN THE SUPERIOR COURT
OF
Gila County, State of Arizona

FILED in Court Record

10/29/2020

HON. TIMOTHY M. WRIGHT
Div: 2

V GUADIANA
Judicial Assistant

**BEAVER VALLEY IMPROVEMENT
ASSOCIATION, a domestic nonprofit
Corporation,**

Plaintiff,

vs.

**BEAVER LAND, LLC, a domestic limited
liability company; its member MICHAEL
ARMSTEAD; BEAVER VALLEY WATER
COMPANY, INC., a domestic for-profit
corporation; its sole director and president
MICHAEL ARMSTEAD,**

Defendants.

CV201900254

ORDER

This matter comes before the Court on Plaintiff/Counter Defendant's Motion to Dismiss Defendants' Counterclaims pursuant to Rule 12(b)(6) (filed on September 24, 2020). The Court has reviewed the Motion, the Response filed by Defendants/Counter Claimants (filed October 3, 2020) and the Reply (filed October 13, 2020). As set forth below, the Court grants the Motion in part.

Procedural Background. On September 3, 2020, Defendants¹ filed *Counterclaims and Complaint*. On September 8, 2020, Defendants filed a notice of Errata and *Counterclaims and Complaint (Corrected)*. The Counterclaim is 37 pages, 126 paragraphs, 9 counts, with 37 pages of exhibits. The Counterclaim in places comingles multiple claims, theories of claims, and dates of alleged activities. Despite its length, in places it was difficult for the Court to determine with clarity the basis of the relief sought. Plaintiff's Motion to Dismiss is equally hard to follow in places. As best the Court can determine, Plaintiff argues that in general (1) Defendants have no standing to bring some, or portions of some, of the nine counts and (2) that Defendants do not have a property interest or legal easement for their water line and therefore some, or portions of some, of the nine counts should be dismissed. As to Counts six (conspiracy) and nine (Notice of Claim), Plaintiff does make specific arguments.

Factual Background. Plaintiff is a homeowners association whose existence dates to the 1960's. Defendant Beaver Land, LLC was formed on August 17, 2017. Defendant Beaver Valley Water Company was formed on May 8, 2017 and is regulated by the Arizona Corporation Commission ("the

¹ For the purpose of this Ruling, the Court will refer to the Parties based upon their title in the original Complaint. I.e., for short, Plaintiff/Counter Defendant will simply be referred to as Plaintiff and Defendants/Counter Claimants will simply be referred to as Defendants.

ACC”). Beaver Land LLC and Beaver Valley Water Company are collectively referred to as “the Corporate Defendants.” In 1998, a fire station was constructed on Tract B and/or D.² An addition to the fire station was constructed in 2005. Defendants have a main water line(s) that cross Tract B/D and may be under the fire station. The dispute originally arose between these Parties based upon this water line, but has expanded into numerous other areas.

Legal Standard. Plaintiff argues that they are entitled to judgment under two different legal theories – Standing and Failure to State a Claim under Rule 12(b)(6). The Court finds that the Standing argument is really a subsection of Rule 12(b)(6). If one doesn’t have standing, one doesn’t have a claim and therefore there is no claim (for that person/entity) upon which relief can be granted.

When reviewing a Motion to Dismiss under Rule 12(b)(6), the Court assumes the truth of all well pleaded factual allegations. *Belen Loan Investors, LLC v. Bradley*, 231 Ariz. 448, 296 P.3d 984 (App. 2012). A Rule 12(b)(6) Motion to Dismiss should be granted only if a plaintiff is not entitled to relief under any facts susceptible of proof in the stated claim. *Coleman v. City of Mesa*, 230 Ariz. 352, 284 P.3d 863 (2012), *Menendez v. Paddock Pool Const. Co.*, 172 Ariz. 258, 836 P.2d 968 (App. 1991). For these and other reasons, dismissals under Rule 12(b)(6) are not favored. *Gatecliff v. Great Republic Life Ins. Co.*, 154 Ariz. 502, 744 P.2d 29 (App. 1987).

Analysis

1. Defendants lack standing to challenge and fail to state a claim for any of Plaintiff’s actions that occurred prior to the Corporate Defendants’ existence or Mr. Armstead’s involvement with Plaintiff. On numerous occasions in the Counterclaim, Defendants’ allege actions that predate their creation and/or Mr. Armstead’s involvement in the area.³ Defendants have put forth no facts that they were harmed at the time of these allegations (before the Corporate Defendants existence) or any legal theories as to why they should be able to obtain relief from harm to others. Although they acquired the assets and CCN from Davoren and/or Davoren’s companies (the previous water company), they cannot pursue claims/wrong done to Davoren.
2. Defendants lack standing to challenge and fail to state a claim for any wrongful acts committed by Plaintiff against Gila County, Plaintiff itself, and/or any fiduciary issues related to Plaintiff’s members. Even assuming Plaintiff submitted fraudulent materials to Gila County or any division of Gila County, Defendants’ have no remedy to correct that. Even assuming Plaintiff violated its own internal procedures, articles, or bylaws, Defendants have not plead a legal theory under which they would have a remedy. They are not home owners. They are not members of Plaintiff. Assuming Plaintiff violated its fiduciary duties to its members or there was a conflict of interest by one of Plaintiff’s board members, as a non member, Defendant has no remedy or action against Plaintiff.
3. Defendants fail to state a claim related to their alleged easement or any other legal property interest in or over Tract B/D. Defendants claim that they have an easement over Tract B/D based upon three independent grounds – their Gila County Franchise; Exhibits H and I (permanent

² The Court has been unable to determine from the Parties’ pleadings if the fire station is on Tract B, Tract D, or a portion of both. The Parties’ exhibits are similarly not helpful because the copies are so degraded.

³ For example, see paragraphs 13, 14, 52, 64, 75, and 92 alleging actions by Plaintiff in 2005; paragraph 31 alleging actions by Plaintiff in 2010; paragraph 62 alleging actions by Plaintiff in 1988.

easements); and their licensing from the ACC and the Arizona Administrative Code (“AAC”).⁴ Each of these grounds, on its face, fails to provide Defendants with a legal interest in Tract B/D.

The Franchise provides that the Franchisee may “construct, maintain, and operate water lines . . . along, upon, under and across public highways, roads and alleys and thoroughfares” within specific portions of Gila County. The franchise does not provide for any right as to privately held parcels. Gila County has the right to issue franchise rights for its property, i.e., highways, roads, etc, but it does not have the right to issue rights over privately owned property. There is no allegation that Tract B/D is a public highway, road, alley, or thoroughfare.

The Permanent Easements and Rights-of-Way recorded document (“the Permanent Easements”) likewise fails by its language to provide Defendants with an interest in Tract B/D. Defendants are nowhere mentioned in Permanent Easement. The Permanent Easement does grant “permanent easements . . . in and across lots and tracts,” but the Grantee, i.e., beneficiary of such easements, is, ironically the Plaintiff – “BEAVER VALLEY IMPROVEMENT ASSOCIATION, a non-profit organization herein-after referred to as ‘Grantee.’”

Likewise, the AAC fails to provide Defendants with any legal interest in Tract B/D. The AAC does provide for a limited easement on a customer’s property. But such easement is limited to that which is necessary to provide that customer with proper service. The AAC also sets forth a specific remedy if this limited easement is not made available to the provider, i.e., the provider may refuse service to the customer. The Court’s understanding regarding the water line and the claimed easement on Tract B/D is that the water line is a main line and not a service line for the customer on Tract B/D. As such, the claimed easement is not created by the AAC.

4. Count 6 alleges conspiracy based on numerous underlying actions, many of which are alleged elsewhere in the Counter Claim. Because of these numerous underlying actions, the Court does not rule specifically on the conspiracy count, but rather refers to the ruling of law listed above.
5. Count 9 is based upon Arizona’s Notice of Claim Statute, A.R.S. §12-821.01. Plaintiff argues about whether Defendants are a public entity subject to the Notice of Claim Statute. Both Parties fundamentally misunderstand the Notice of Claim Statute. The Notice of Claim Statute does not create a cause of action. It is a procedural statute that must be followed before a person may file a legal action, based on an independent underlying legal claim, against a public entity. If the notice of claim is not filed timely, then the underlying cause of action “is barred and no action may be maintained thereon.” It is a statute that provides an additional defense to public entities. It does not create a new substantive claim. If Defendants believe the Notice of Claim Statute potentially creates a defense for them, such defense should be alleged in their Answer, not a Counter Claim.

⁴ Defendants do not claim an adverse possession interest. See page 8 of Defendant’s Response – “the inclusion of Adverse Possession in the title of this section was in no way meant to claim that Defendants are seeking to acquire property [i.e., the easement] by adverse possession.”

Based upon the foregoing, the Court makes the following Orders⁵:

The Court grants Plaintiff's Motion to Dismiss the Counter Claim in part as follows:

1. Any claims challenging any lot line adjustments, variances from Gila County, building permits, or similar external governmental approvals obtained by Plaintiffs are Dismissed.
2. Any claims alleging that Plaintiff violated its own internal rules, articles, or bylaws; or that Plaintiff violated any fiduciary duties it has toward its members or any conflict of interest violations are Dismissed.
3. Any claims for torts, violations, or damages occurring before the creation of the Corporate Defendants or Defendant Armstead's legal interest in the Corporate Defendants are Dismissed.
4. Any claims alleging that Defendants have a legal property rights interest in Tract B/D are Dismissed.
5. Count 9 is Dismissed.
6. Defendants are granted leave to file an amended Counter Claim with any claims they believe survive this ruling within ten days of this Ruling.⁶ Plaintiff's time to file an Answer to the Counter Claims shall run from such date.

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⁵ Because of the length of the complaint, the comingling/crossing over of the facts and legal theories of the various counts, the Court is unable to issue a ruling that is count specific (except as to Count 9). If the Court were to try and do so, the Court would most likely dismiss all or nearly all of the counts. In the interest of caution, the Court has issued the first four Orders below based upon the legal theories ruled upon and in Order 6 allows Defendants leave to file an amend Counter Claim with any counts they believe survive the Court's ruling.

⁶ If Defendants choose to file an amended Counter Claim, the Court takes this opportunity to remind Defendants that a complaint is a "short and plain statement of the claim." See Rule 8(a)(2). "Because Arizona is a notice pleading state, extensive factual recitations are not required." *Anserv Ins. Services Inc. v. Albrecht*, 192 Ariz. 48, 49 (1998). The Court appreciates appropriate brevity.