

**IN THE SUPERIOR COURT  
OF  
Gila County, State of Arizona**

FILED in Court Record

01/28/2021

**HON. TIMOTHY M. WRIGHT**  
Div: 2

V GUADIANA  
Judicial Assistant

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

Plaintiff/Counter Defendants,

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/Counter Claimants.

**CV201900254**

**ORDER**

This matter comes before the Court on Plaintiff/Counter Defendant's (hereafter "Plaintiff") Rule 12(b)(6) Motion to Dismiss filed on November 23, 2020 ("the Motion"). As set forth below, the Court grants the Motion in part.

*Background.* For a more complete background (procedurally and factually) and the legal standard for dismissal under Rule 12(b)(6), see the Court's October 29, 2020 Order. For the purposes of the pending Motion, the Court notes that Counter Claimants filed their Amended Counterclaims and Complaint pursuant to this Court's October 29, 2020 Order on November 8, 2020 ("the Amended Counter Claim"). The Motion was then filed. Counter Claimants filed their Response on December 3, 2020 and Plaintiff filed a Reply on December 10, 2020.

The Court has reviewed the Amended Counter Claim, the Motion, the Response, and the Reply and makes the following findings/orders.

In its October 29, 2020 Order, the Court noted that the original Counter Claim, "despite its length, in places it was difficult for the Court to determine with clarity the basis of the relief sought." Although substantially shorter, the Amended Counter Claim continues to be difficult to follow in places. The fact that one Count essentially contains 5 sub claims (see Count 6) and the fact that Counter Claimants'

Response ask the Court to dismiss portions of some Counts and the entirety of other Counts,<sup>1</sup> further adds to the difficulty of following the Amended Counter Claim.

Below, the Court addresses the Amended Counter Claim count by count in the context of Rule 12(b)(6).

Count 1 of the Amended Counter Claim – Quiet Title

Plaintiff asks to have this count dismissed based upon the Court’s prior ruling that any claims “that Defendants have a legal interest in Tract B/D are Dismissed.”<sup>2</sup> In their Response, Counter Claimants indicate that paragraphs 12-16, 18, and 19 of Count 1 should not have been included in the Amended Counter Claim. With these deletions, the only allegations left as to Count 1 are paragraph 11 (incorporating the general allegations) and paragraph 17 (alleging that the Fire Station was built over water mains and that the Fire Station was conveyed to Plaintiff). Neither of these allegations provide a basis for a quiet title action and therefore Count 1 fails to state a claim upon which relief can be granted.

Count 2 of the Amended Counter Claim – Declaratory Relief

In Count 2, Counter Claimants seek declaratory relief that Tract B includes “utility easements and rights-of-way.” But the Court’s prior ruling dismissed “[a]ny claims alleging that Defendants have a legal property rights interest in Tract B . . . .” Counter Claimants have not alleged any new basis for such easement or rights-of-way.<sup>3</sup> Because of this, the Court has already ruled on the substance of this claim in its October 29, 2020 Order.

Count 3 of the Amended Counter Claim – Harassment

In Count 3, Counter Claimants make various claims against Plaintiff, Plaintiff’s Board Members, and Plaintiff’s ‘associates’ that could potentially constitute harassment. Although not explicitly stated in the Amended Counter Claim, the Amended Counter Claim implicitly alleges that the Board Members and ‘associates’ were acting on behalf of Plaintiff. Based upon this and the allegations set forth, Count 3 survives a Rule 12 Motion to Dismiss.

Count 4 of the Amended Counter Claim – Tampering with Utility Equipment and Service

In Count 4, Counter Claimants once again allege ‘easements and rights-of-ways’ and interference therewith. They also allege an “illegal tap” and an “illegally moved water service line and meter.” The allegations based upon the alleged easements and/or right-of-ways fail. But any allegations of illegal taps or illegally moving water lines/meters survive a Rule 12 challenge.

Count 5 of the Amended Counter Claim – Civil Racketeering – Fraud

In their Response, Counter Claimants stipulate to the dismissal of this Count.

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<sup>1</sup> Between the entire counts that Counter Claimant asks to have dismissed and the specific paragraphs, Counter Claimant asked to have 25 of the 90 paragraphs of the Counter Claim dismissed.

<sup>2</sup> In the Court’s October 29, 2020 Ruling, the Court indicated that it was unclear if the Fire Station was on Tract B, Tract D, or a portion of both. See Footnote 2 of the October 29, 2020 Order. In the subsequent pleadings, the Court now understands that the Fire Station is on Tract B.

<sup>3</sup> Counter Claimants attached Exhibit A to their Response. They appear to allege that these exhibits shows that there is a dispute as to the boundary line of Tract B. But the lines Counter Claimants allege create the dispute appear to be either (a) a building setback line (hashed lines); or (b) a fence line (squares).

Count 6 of the Amended Counter Claim – Civil Damages by Conspiracy

As Counter Claimants state in paragraph 64 of the Amended Counter Claim, “there is no such thing as a civil action for conspiracy.” Such claim must be based upon an underlying tort that a defendant conspired to commit against the claimant. Although not clear, it appears to the Court that in Count 6 alleges that Plaintiff conspired (thus the conspiracy allegation) with various persons to commit five underlying torts - (a) alter or damage utility facilities (see par. 72), (b) fail to maintain a waterway (see par. 73), (c) make false/frivolous claims to the USACE (see par. 74), (d) interfere with Counterclaimant’s operations (par. 75), and (e) commit libel/slander/defamation against Counter Claimants (par. 76).

Because Count 6 allege five separate underlying torts, the Court address each of these torts (‘sub counts’) separately:

Sub count (a) appears to reallege the portion of Count 4 relating to damage in the context of a conspiracy with others. In the same way that the allegation of affirmative damage in Count 4 survives a Rule 12 challenge, so does this sub count.

Sub count (b) alleges that Plaintiff conspired to fail to maintain a waterway. But Counter Claimants provide no allegations as to a basis (factual or legal) for Plaintiff being responsible to maintain such waterway. As such, it fails to state a claim.

Sub count (c) alleges that Plaintiff conspired to make false/frivolous claims to the USACE, but no factual allegations regarding these alleged claims is made. As such, this sub count fails to state a claim.

Sub count (d) alleges that Plaintiff conspired to interfere with Counter Claimants operations, but the only facts alleged for this allegation that the Court can determine are based upon the alleged easements and/or right-of-ways. Because the Court has found that these do not exist, this sub count fails to state a claim.

Sub count (e) alleges a conspiracy to libel/slander/defamation. Yet Counter Claimant alleges no specific statement(s), words, etc. that would be libelous, slanderous, or defaming. Mere reaching out to public officials or other property owners, even if it causes “additional financial expenses” to Counter Claimants, is not, in and of itself, libel, slander, or defamation. Because of this, sub count (e) fails to state a claim.

Count 7 of the Amended Counter Claim – Abuse of Process

Count 7 alleges that Plaintiff committed abuse of process because Plaintiff “willfully failed to exhaust all administrative remedies” before filing this action. Aside from Counter Claimant’s assertion that Plaintiff was required to pursue administrative remedied first, it provides no legal support for such assertion. The original complaint seeks (1) a declaratory judgment pursuant to A.R.S. §12-1831, (2) injunctive relief, and (3) quiet title pursuant to A.R.S. §12-256. Two of these remedies are based specifically on Statutes that do not require an exhaustion of administrative remedies. The third, in certain contexts, may require an exhaustion, but as stated, Counter Claimant has provided no legal support as to why injunctive relief as sought in this case could only be sought after exhausting administrative remedies. Because of this, Count 7 fails to state a claim upon which relief can be granted.

Count 8 of the Amended Counter Claim – Conflict of Interest  
In their Response, Counter Claimants stipulate to the dismissal of this Count.

Based upon the foregoing,

**IT IS ORDERED** dismissing the following portions of Counter Claimant’s Amended Counter Claim:

- Count 1 in its entirety.
- Count 2 in its entirety.
- Count 4 as is based upon the existence of easements/rights-of-way.
- Count 5 in its entirety.
- Count 6, sub counts (b) through (e).
- Count 7 in its entirety.
- Count 8 in its entirety.

**cc:**

TONY S. CULLUM  
14 E. DALE AVE.  
FLAGSTAFF, AZ 86001  
[tscullum@yahoo.com](mailto:tscullum@yahoo.com)

**Office Distribution:**

SHERRA KISSEE  
768 S. PALOMINO DR.  
PAYSON, AZ 85541  
[sherra@kisseesolutions.com](mailto:sherra@kisseesolutions.com)