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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 02/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

M.A.C. HOMES CONSTRUCTION,) Court of Appeals
L.L.C., an Arizona limited) Division One
liability company,) No. 1 CA-CV 10-0878
)
Plaintiff/Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
BANK OF AMERICA, N.A.,) Rule 28, Arizona Rules
) of Civil Appellate
Defendant/Appellee.) Procedure)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2010-007333

The Honorable Donald Daughton, Judge (Retired)

AFFIRMED

Law Office of Ronald W. Meyer Phoenix
By Ronald W. Meyer
Attorney for Plaintiff/Appellant

Bryan Cave LLP Phoenix
By Robert W. Shely
Coree E. Neumeyer
Attorneys for Defendant/Appellee

T H O M P S O N, Presiding Judge

¶1 Appellant M.A.C. Homes Construction, L.L.C. (M.A.C. Homes) appeals the trial court's order dismissing its claim

against Bank of America, N.A. pursuant to Arizona Rule of Civil Procedure 12(b)(6). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 M.A.C. Homes contracted with eleven homeowners to perform construction work. The construction agreement provided that the homeowner was responsible for payment of the contracted work. The homeowners allegedly obtained loans from Bank of America to make those payments. Upon completion of the construction work, the homeowners executed a "certificate of final completion and acceptance," a "mortgagor's letter of completion," as well as a "renovation completion certificate." M.A.C. Homes did not receive payment and filed a complaint in tort for conversion alleging that Bank of America was unlawfully holding \$120,934.34. Pursuant to Arizona Rule of Civil Procedure 12(b)(6), Bank of America filed a motion to dismiss, asserting that M.A.C. Homes lacked standing to bring claims against Bank of America, and that M.A.C. Homes failed to set forth a cause of action in which Bank of America would be liable to M.A.C. Homes for the homeowners' failure to pay. After oral argument was held, the trial court granted Bank of America's motion to dismiss. The court found that the conversion claim was not supported by Arizona case law, and that Bank of America had a contract to loan the homeowners money, but had no legal contract with M.A.C. Homes.

¶13 M.A.C. Homes timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) section 12-2101(B) (2003).

DISCUSSION

¶14 This court reviews the grant of a motion to dismiss de novo. *Fairway Constructors, Inc. v. Ahern*, 193 Ariz. 122, 124, ¶ 6, 970 P.2d 954, 956 (App. 1998). "In reviewing the trial court's decision to dismiss for failure to state a claim, we assume as true the facts alleged in the complaint and affirm the dismissal only if, as a matter of law, the plaintiff would not be entitled to relief on any interpretation of those facts." *Doe ex rel. Doe v. State*, 200 Ariz. 174, 175, ¶ 2, 24 P.3d 1269, 1270 (2001).

¶15 Arizona Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of Arizona's notice pleading standard is to "give the opponent fair notice of the nature and basis of the claim and indicate generally the type of litigation involved." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 6, 189 P.3d 344, 346 (2008) (quoting *Mackey v. Spangler*, 81 Ariz. 113, 115, 301 P.2d 1026, 1027-28 (1956)). Courts must assume the truth of well-pled factual allegations, but "mere conclusory statements are insufficient to state a claim upon which relief can be granted."

Id. at ¶ 7. While the inclusion of conclusory statements or legal conclusions would not invalidate a complaint per se, supporting factual allegations are necessary to satisfy the notice pleading standard under Rule 8. *Id.* Rule 8 does not permit a court "to speculate about hypothetical facts that might entitle the plaintiff to relief." *Id.* at 420, ¶ 14, 189 P.3d at 347 (citation omitted).

¶6 In reviewing the complaint, we find that M.A.C. Homes failed to state a claim on which relief can be granted. The trial court ruled that Bank of America had no legal contract with M.A.C. Homes. We agree. We also find that a claim for conversion would not exist on the facts pled in the complaint even if Bank of America had any contractual obligation to M.A.C. Homes.

¶7 The complaint alleges that upon completion of the construction work the homeowner signed a mortgagor's letter of completion directing Bank of America to distribute funds to M.A.C. Homes, which it did not do. M.A.C. Homes asserts that we must only rely on the allegations in the complaint and assume the truth of the statements therein. However, M.A.C. Homes attached the letter of completion and other documents to the complaint and refers to them to support its statements. In this situation, we are free to consider the documents attached to and referred to in the complaint in reviewing an order granting a

motion to dismiss. *Cullen v. Koty-Leavitt Ins. Agency, Inc.*, 216 Ariz. 509, 513-14, ¶¶ 8-10, 168 P.3d 917, 921-22 (App. 2007), *vacated on other grounds by Cullen*, 218 Ariz. 417, 189 P.3d 344 (documents attached to the complaint that are central to the plaintiffs' claims are not "outside the pleadings" for the purposes of Rule 12(b)(6) and the court may examine the documents in deciding the motion to dismiss). In examining the letter of completion, we find it does not direct Bank of America to distribute funds to M.A.C. Homes, but rather to the *homeowner* after Bank of America receives an "acceptable Final Compliance Inspection Report." The documents relied on and referred to by M.A.C. Homes in its complaint do not direct Bank of America to distribute funds to M.A.C. Homes and do not create a fiduciary obligation between Bank of America and M.A.C. Homes.

¶8 Furthermore, M.A.C. Homes would not be entitled to relief on its claim for conversion under any set of facts set forth in the complaint. Under Arizona law, conversion is "an act of wrongful dominion or control over personal property in denial of or inconsistent with the rights of another." *Case Corp. v. Gehrke*, 208 Ariz. 140, 143, ¶ 11, 91 P.3d 362, 365 (App. 2004) (citation omitted). M.A.C. Homes asserts that money can be converted. However, the case law in this area establishes that money can be converted only under certain circumstances. Money can only be the subject of a conversion

claim if the money itself "can be described, identified or segregated, and an obligation to treat it in a specific manner is established." *Id.* (quoting *Autoville, Inc. v. Friedman*, 20 Ariz. App. 89, 91, 510 P.2d 400, 402 (1973)). "[A] conversion claim cannot be maintained to collect on a debt that could be satisfied by money generally." *Id.*; see *Autoville*, 20 Ariz. App. at 92, 510 P.2d at 403 ("[C]onversion does not lie to enforce the mere obligation to pay a debt which may be discharged by the payment of money generally.").

¶19 Thus, conversion would require a possessory interest in the particular funds held. The *Autoville* decision is instructive for our purposes here. In *Autoville*, the plaintiff, Friedman, entered into an agreement to obtain vehicles at wholesale prices and provide them to Autoville for resale. 20 Ariz. App. at 90, 510 P.2d at 401. After the sale of a vehicle, Friedman was to receive his wholesale cost plus a service fee. *Id.* Friedman only received partial payment, and he filed an action for conversion for the proceeds owed to him. *Id.* at 90-91, 510 P.2d at 401-02. This court held that Friedman had no possessory interest in the vehicles and as such had none in the proceeds. *Id.* at 92, 510 P.2d at 403. Additionally, we held that the specific sale proceeds at issue in the case had not been set aside or segregated in a special account for Friedman and thus could not be the subject of a conversion claim. *Id.*

