



DIVISION ONE  
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 RUTH A. WILLINGHAM,  
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IN THE COURT OF APPEALS  
 STATE OF ARIZONA  
 DIVISION ONE

KINGS WORLD OF MARBLE; ALEXANDRA ) 1 CA-CV 11-0177  
 SEALS; SEAMUS KING, )  
 ) DEPARTMENT D  
 Plaintiffs/Appellants, )  
 v. ) Maricopa County  
 ) Superior Court  
 ) No. CV2010-053249  
 LARRY LONG, Relocation Specialist, )  
 City of Phoenix; MARY VIVION )  
 WITHROW, Deputy Director, City of ) **DECISION ORDER**  
 Phoenix Finance Department; JANE )  
 MORRIS, Assistant Aviation )  
 Director; CINDY LIZARRAGA, Aviation )  
 Special Project Administrator; )  
 FRANK FAIRBANKS, former City of )  
 Phoenix Manager; BILL NICKLEBERRY, )  
 City of Phoenix Finance/RE; BETH )  
 BARSTACK, City of Phoenix Attorney; )  
 CHRISTINA BRUNER, Acquisition )  
 Sciences; CAROLINE TILLMAN, )  
 Acquisition Services, )  
 )  
 Defendants/Appellees. )

Kings World of Marble and its owners, Alexandra Seals and Seamus King (collectively, "Kings World"), appeal the dismissal of their complaint against Larry Long, Mary Vivion Withrow, Jane Morris, Cindy Lizarraga, Frank Fairbanks, Bill Nickleberry, and Beth Barstack (collectively, "Phoenix Employees") and Christina Bruner and Caroline Tillman.<sup>1</sup> The superior court dismissed the

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<sup>1</sup> The superior court also granted motions to dismiss by other defendants, as well as the City's motion to dismiss state law claims. Another panel of this court determined that those

complaint on statute of limitations grounds pursuant to Rule 12(b)(6), Arizona Rules of Civil Procedure ("Rule").

Kings World's complaint is based on the forced relocation of its business when the City of Phoenix ("City") acquired the underlying property and, apparently, on allegedly inadequate and negligent relocation services provided under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601 through 4655, and related Arizona Revised Statutes ("A.R.S.") sections 11-961 through -974.

In reviewing a Rule 12(b)(6) dismissal order, we accept as true the well-pled facts of the complaint, and we resolve all reasonable inferences in favor of the plaintiff. *McDonald v. City of Prescott*, 197 Ariz. 566, 567, ¶ 5, 5 P.2d 900, 901 (App. 2000) (citation omitted). We will affirm a dismissal order only if the plaintiff would not be entitled to relief under any interpretation of the facts susceptible of proof in the statement of the claim. *Fid. Sec. Life Ins. Co. v. State*, 191 Ariz. 222, 224, ¶ 4, 954 P.2d 580, 582 (1998) (citation omitted); *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594, 667 P.2d 1304, 1309 (1983) (citations omitted). A lawsuit may be dismissed on statute of limitations grounds if the complaint,

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rulings were not final for purposes of this appeal. We therefore address only the judgments dismissing the claims against the Phoenix Employees and Bruner and Tillman.

on its face, demonstrates that the claim is barred. *McCloud v. State*, 217 Ariz. 82, 85, ¶ 8, 170 P.3d 691, 694 (App. 2007) (citation omitted).

The 30-page complaint filed in this matter names the City and 12 individual defendants, some of whom are City employees and others who were apparently hired by the City to provide specific services. The complaint covers at least from May 2007 to July 31, 2009, and alleges additional acts occurring at unspecified times in 2010. The complaint includes more than 20 pages of verbose and confusing narrative, describing the relocation process from Kings World's perspective. In reciting its "legal claims," the complaint states:

Defendants, by performing the above described acts, have violated the Plaintiffs Fifth Amendment Rights under the takings clause and the Fourteenth Amendment to the United States Constitution. By performing the above described acts, Defendants have committed the state law torts of Negligence, Breach of Contract, Negligence, [sic] and Misrepresentation. Furthermore, the defendants have violated the Federal and State relocation act.

Despite many readings of the complaint, we cannot discern what specific legal claims are being asserted against which defendants and based on which facts. It is unclear, for example, whether Kings World is seeking benefits under the relocation statutes, asserting a claim under U.S.C. § 1983, or seeking compensation for specific property that was damaged, in

addition to more general damages stemming from an alleged loss of business and corresponding income. Depending on what is in fact being alleged, some of Kings World's claims may have been timely filed. See, e.g., *Owens v. City of Phoenix*, 180 Ariz. 402, 884 P.2d 1100 (App. 1994) (discussing accrual of claims under state and federal relocation acts).

Without an understanding of Kings World's allegations, appellate review of the dismissal order is impossible. We would be reduced to rendering an advisory opinion about presumed claims. Cf. *Citibank v. Miller & Schroeder Fin., Inc.*, 168 Ariz. 178, 182, 812 P.2d 996, 1000 (App. 1990) (citation omitted) (courts should not render "advisory opinions anticipative of troubles which do not exist; may never exist; and the precise form of which, should they ever arise, we cannot predict").

One thing is clear, though: Kings World's complaint fails to comply with either Rule 8(a)(2), which requires a "short and plain statement of the claim showing that the pleader is entitled to relief," or with Rule 8(e), which mandates that "[e]ach averment of a pleading shall be simple, concise, and direct." In the context of Rule 8, our supreme court has defined "short" as "having little length" or "not lengthy or drawn out," and it identified synonyms of "short" as including "concise, condensed, direct, succinct, and terse." *Anserv Ins.*

*Servs., Inc. v. Albrecht*, 192 Ariz. 48, 49, ¶ 6, 960 P.2d 1159, 1160 (1998) (citation omitted). In *Anserv*, the court noted that the “length of [a] pleading and the inclusion of unnecessary material . . . alone [is] enough to justify dismissal.” *Id.* at 49-50, ¶¶ 6-8, 960 P.2d at 1160-61 (citation omitted). In addition, a complaint must be sufficiently clear for the court to decipher “who [is] being sued and what theories [are] being advanced against them.” *Id.* at ¶ 8 (citation omitted).<sup>2</sup>

Because of the deficiencies in the complaint, we cannot determine whether dismissal under Rule 12(b)(6) was appropriate as to some, all, or none of the legal claims. Although an imperfect resolution, we vacate the dismissal order based on Rule 12(b)(6) and remand this matter to the superior court for further appropriate action, which may include, but is not limited to, striking Kings World’s complaint for failure to comply with Rule 8(a)(2).<sup>3</sup>

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<sup>2</sup> Kings World’s complaint would have been a prime candidate for a motion for more definite statement. See Ariz. R. Civ. P. 12(e).

<sup>3</sup> Should that occur, the court will be required to consider whether appellants should be granted leave to amend. We express no opinion regarding this issue.

**IT IS ORDERED** vacating the order of dismissal and remanding this matter to the superior court for further appropriate proceedings.

/s/  
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
MICHAEL J. BROWN, Acting Presiding Judge

/s/  
JON W. THOMPSON, Judge