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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-198**

Carlos Illisaca,
Appellant,

vs.

Victor Idrovo, et al.,
Defendants,

Banco Popular North America, et al.,
Respondents.

**Filed August 1, 2011
Affirmed
Collins, Judge***

Hennepin County District Court
File No. 27-CV-10-145

Bryan R. Battina, Battina Law, PLLC, Wayzata, Minnesota (for appellant)

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Considered and decided by Shumaker, Presiding Judge; Worke, Judge; and
Collins, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

In this dispute over the ownership of restaurant equipment, appellant argues that the district court erred by dismissing his declaratory-judgment action for failure to state a claim upon which relief can be granted. We affirm.

FACTS

Apparently, due to the case's procedural posture when the district court dismissed it, the record for this appeal is not well developed. The following, however, appear to be the relevant facts. Appellant Carlos Illisaca purchased real property in Minneapolis on a contract for deed in 2003 and operated a restaurant there. In March 2008, Illisaca was helped by a relative, Victor Idrovo, to arrange financing in order to pay off the contract for deed. Idrovo obtained a loan of \$315,000 from respondent Banco Popular North America. Idrovo secured the loan with a mortgage on the real property and a commercial security agreement that granted Banco Popular a security interest in "all Equipment and Fixtures" that "may be located" on the property. The record is unclear whether and how Illisaca transferred interests in the real property or the restaurant equipment to Idrovo so that Idrovo could use them as collateral to secure the loan from the bank. Banco Popular recorded the mortgage in July 2008, and, in December 2008, filed a financing statement to perfect its security interest in the equipment and fixtures.

Illisaca alleged in his amended complaint that he, not Idrovo, made all the monthly payments on the mortgage to Banco Popular. Illisaca alleged that in June 2008, he and Idrovo clashed over who owned the property, and that Illisaca stopped making mortgage

payments in July 2008. Banco Popular assigned the mortgage to its mortgage servicer, respondent Popular Mortgage Servicing Inc. (PMSI). PMSI later foreclosed the mortgage and purchased the property at a sheriff's sale in March 2010. The redemption period expired in September 2010. The district court found, and the parties do not dispute, that Banco Popular now owns the real property.

The record does not reveal whether Banco Popular foreclosed its interest in the restaurant equipment, but it appears from Illisaca's amended complaint that the equipment he seeks in this action is still on the property.

Illisaca filed this action in February 2010 and amended his complaint in August 2010. The amended complaint names as defendants Idrovo, Banco Popular, PMSI, and Marcos Pinguil, to whom Illisaca had leased the property and certain restaurant equipment in March 2009. The amended complaint asserts three causes of action: partition of the property between Illisaca and Idrovo; unjust enrichment against Idrovo; and a declaratory judgment voiding the Pinguil lease and ordering the return of the restaurant equipment to Illisaca.

In October 2010, Banco Popular and PMSI moved the district court to dismiss the partition claim and the declaratory-judgment action, arguing that Illisaca had failed to state a claim upon which relief can be granted. In his memorandum in opposition to this motion, Illisaca abandoned the partition claim but argued that his complaint "met the relatively low bar" to survive the motion to dismiss the declaratory-judgment claim. Following a hearing, the district court granted the motion and ordered dismissal of the declaratory-judgment claim on December 13, 2010. The district court concluded that

there were no facts in the complaint to suggest that Illisaca had an ownership interest in the restaurant equipment he sought to obtain through the declaratory judgment. Illisaca moved for reconsideration of the order, which the district court denied. Illisaca's appeal followed.

D E C I S I O N

A complaint must be dismissed if it fails to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e); *In re Milk Indirect Purchaser Antitrust Litig.*, 588 N.W.2d 772, 774 (Minn. App. 1999). The question before an appellate court in reviewing a dismissal under rule 12.02(e) is whether the complaint sets forth a “legally sufficient claim for relief.” *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). This court conducts a de novo review of the sufficiency of the claim and accepts as true all allegations stated in the complaint. *Radke v. Cnty. of Freeborn*, 694 N.W.2d 788, 793 (Minn. 2005).

I

As a threshold matter, we address the district court's decision to review certain documents submitted by the respondents in support of their motion to dismiss. “If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment. . . .” Minn. R. Civ. P. 12.02. But the district court may consider documents referenced in or attached to a complaint without converting the motion to dismiss into one for summary judgment. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn. 2000); *see also In re*

Hennepin Cnty. 1986 Recycling Bond Litig., 540 N.W.2d 494, 497 (Minn. 1995) (approving district court’s review of bond agreement submitted by defendants, portions of which were cited in plaintiffs’ complaint, in consideration of motion to dismiss).

The district court noted that, in considering the motion to dismiss, it reviewed three documents submitted by Banco Popular and PMSI pertaining to the March 2008 loan agreement between Banco Popular and Idrovo: the promissory note, the mortgage agreement, and the commercial security agreement. Although Illisaca did not attach these documents to his pleadings, in his amended complaint Illisaca stated that “Idrovo obtained a mortgage loan of \$315,000 through Banco Popular” and that “Idrovo granted Banco Popular a security interest in the furnishings and fixtures in The Property.” On this record, we read these statements as sufficiently “referencing” the promissory note, mortgage, and security agreement to fall within the ambit of *Martens*. See *Martens*, 616 N.W.2d at 739 n.7 (limiting review of materials outside the pleadings to these “referenced” in the complaint). Therefore, we conclude that the district court’s review of these documents did not convert the respondents’ motion to dismiss into one for summary judgment.

II

We turn next to the substantive question of whether the district court erred by dismissing Illisaca’s declaratory-judgment action for failure to state a claim upon which relief can be granted. See Minn. R. Civ. P. 12.02(e). A pleading will not be dismissed unless “it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *Bahr v. Capella*

Univ., 788 N.W.2d 76, 80 (Minn. 2010) (quoting *N. States Power Co. v. Franklin*, 265 Minn. 391, 395, 122 N.W.2d 26, 29 (1963)). As stated above, this court accepts as true all allegations stated in the complaint. *Radke*, 694 N.W.2d at 793. But an allegation that amounts to “a legal conclusion is not binding on” an appellate court. *Bahr*, 788 N.W. 2d at 80.

In his amended complaint, Illisaca sought a declaratory judgment that he is entitled to the return of certain restaurant equipment. But his complaint fails to assert facts essential to demonstrating that he is the owner of the equipment he seeks to receive. Although a plaintiff must make only a “minimal” showing to survive a motion to dismiss, the plaintiff must nevertheless “allege sufficient facts to state a claim.” *Noske v. Friedberg*, 670 N.W.2d 740, 742 (Minn. 2003). Illisaca’s amended complaint provides no facts regarding, for example, the circumstances surrounding his acquisition of the equipment, his previous use of the equipment, or his maintenance of the equipment. Instead, the complaint baldly assumes that Illisaca owns the equipment at issue, referring to it alternatively as: “Plaintiff’s equipment,” “the equipment of Plaintiff,” “his restaurant equipment,” and “his equipment.” Without more, these characterizations do not assert facts; they simply assert or assume the legal conclusion about ownership of the equipment that Illisaca wanted the district court to reach. Because Illisaca’s amended complaint does not provide even minimal facts to support his claimed ownership of the restaurant equipment, his assertions therein are insufficient to state a claim upon which relief can be granted. *See Bahr*, 788 N.W.2d at 80 (“A plaintiff must provide more than labels and conclusions.” (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct.

1955, 1965 (2007), and *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008)).

The sufficiency of the amended complaint is diminished further by its vague description of the equipment that Illisaca purports to own. Illisaca alleged that Idrovo wrongfully granted Banco Popular a security interest “in Plaintiff’s equipment which remained on The Property.” Neither Illisaca’s complaint nor the rest of the record further identify the equipment in which Idrovo granted Banco Popular a security interest. Illisaca also alleged that he leased “his restaurant equipment to Pinguil.” Attached to that lease was a handwritten list of items. From these statements, we cannot deduce whether Illisaca claims ownership only to the items on the Pinguil list, to all of the equipment that was on the property at the time Idrovo granted Banco Popular the security interest, or even whether these two categories of equipment included the same items. Illisaca even highlights this ambiguity in his brief, stating that he “should have been allowed to present the facts that apply to each item” on the list. But Illisaca had the opportunity to assert and support such facts in his amended complaint. Absent such facts, Illisaca fails to set forth a legally sufficient claim to the equipment.

Illisaca also argues that the district court erred by characterizing the equipment as fixtures and concluding that they passed with the property at the foreclosure. He argues further that the district court improperly relied on the commercial security agreement executed by Idrovo and Banco Popular because Idrovo lacked the legal authority to grant Banco Popular a security interest in the equipment. But neither argument overcomes the reality that Illisaca’s complaint failed to allege facts supporting his assertion of ownership

of the equipment. Whether Idrovo was authorized to tender a security interest in the equipment, or whether the equipment constitutes a fixture, is not relevant to the question on appeal: whether Illisaca's amended complaint sets forth a legally sufficient claim for relief.

Illisaca failed to state a claim upon which relief can be granted because his amended complaint failed to allege facts sufficient to identify the equipment as well as supporting his ownership thereof. The district court did not err by dismissing Illisaca's amended complaint pursuant to Minn. R. Civ. P. 12.02(e).

Affirmed.