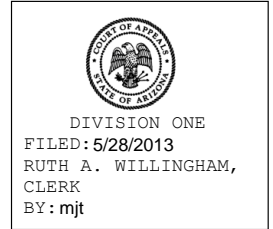


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



SOL JAFFE,) 1 CA-CV 12-0512
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 28, Arizona Rules of
JP MORGAN CHASE & CO.,) Civil Appellate Procedure)
)
Appellee.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-021812

The Honorable John C. Rea, Judge

AFFIRMED

Sol Jaffe
Appellant *In Propria Persona*

Phoenix

Lewis and Roca LLP
By Brent C. Gardner
Marvin C. Ruth
Attorneys for Appellee

Phoenix

C A T T A N I, Judge

¶1 Sol Jaffe appeals the superior court's judgment dismissing with prejudice his claims against JPMorgan Chase & Co. ("Chase"). Jaffe argues the court erred by dismissing his claims as barred by res judicata and for failure to state a claim. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 At some unspecified time, Jaffe was refused credit for a trip to California. Jaffe inspected his credit report and discovered several items he believed should be removed. Jaffe asserts that he "knew nothing about these listings; and even if he could recall, and something was owed, the items listed would be outside of the Statute of Limitations[.]"

¶3 When creditors -- apparently including Chase -- did not provide documentation of the debts to Jaffe's satisfaction, Jaffe filed suit. In addition to this case, Jaffe has filed at least four other lawsuits against various lenders, debt collectors, and credit bureaus alleging wrongful credit reporting and debt collection, all of which have been dismissed or summarily adjudicated against Jaffe; in the various lawsuits, Jaffe has asserted combinations of federal claims under the Fair

¹ On appeal from a dismissal under Arizona Rule of Civil Procedure 12(b)(6), we assume the truth of all well-pleaded factual allegations and consider all reasonable inferences in the light most favorable to the non-moving party. *Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶ 9, 284 P.3d 863, 867 (2012).

Credit Reporting Act ("FCRA") and Fair Debt Collection Practices Act ("FDCPA"), as well as state-law tort claims alleging, among other things, gross negligence, intentional infliction of emotional distress ("IIED"), harassment, and malicious prosecution. See *Jaffe v. St. Luke's Med. Ctr., LP*, 195 F. App'x 659 (9th Cir. 2006) (affirming summary judgment for credit bureau and debt collection company on Jaffe's federal FCRA and associated state-law tort claims), *cert. denied*, 547 U.S. 1077 (2006); *Jaffe v. HSBC N. Am. Holdings Inc.*, CV 11-01839-PHX-NVW (D. Ariz. Nov. 10, 2011) (dismissing Jaffe's FCRA, FDCPA, gross negligence, and IIED claims for failure to state a claim; with leave to amend complaint as against one bank, but without leave to amend as against Chase and nine other entities due to improper joinder); *Jaffe v. Gurstel Chargo, PA*, 1 CA-CV 12-0840 (Ariz. App. April 2, 2013) (finding no jurisdiction over Jaffe's appeal from superior court's dismissal of Jaffe's IIED, gross negligence, malicious prosecution, and harassment claims against two lenders and a law firm); *Jaffe v. Cardworks Servicing, LLC*, CV 12-1058-PHX-DGC, 2012 WL 4120502 (D. Ariz. Sept. 19, 2012) (dismissing similar complaint on res judicata grounds).

¶4 In this case, Jaffe filed a complaint in superior court asserting claims for intentional infliction of physical and emotional distress ("IIED"), gross negligence, and harassment against Chase and six other entities. Over the

course of the litigation, all other defendants were dismissed from the case, leaving Chase the sole remaining defendant. Chase removed the case to federal court, which found no basis for federal jurisdiction and remanded. See *Jaffe v. Bank of Am. Corp.*, CV 12-139-PHX-GMS, 2012 WL 466275 (D. Ariz. Feb. 14, 2012). Chase filed a motion to dismiss, which Jaffe opposed. The superior court ruled that Jaffe had failed to state a claim for which relief could be granted and that Jaffe's claims were barred by res judicata in light of earlier federal litigation between the parties. See *Jaffe v. HSBC*, CV 11-01839-PHX-NVW. The court granted Chase's motion and entered judgment dismissing Jaffe's complaint in its entirety.

¶15 Jaffe timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") Sections 12-120.21(A)(1) and - 2101(A)(1).²

DISCUSSION

¶16 As an initial matter, we note that Jaffe's briefs do not provide an adequate factual basis for his argument or adequately develop or support his argument on appeal. See ARCAP 13(a)(4) (requiring statement of relevant facts with appropriate references to the record); ARCAP 13(a)(6) (requiring argument

² Absent material revisions after the relevant date, we cite to the current version of the statute.

delineating appellant's position "and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"). Although Jaffe asserts that he should not be held to the same standards as an attorney, under Arizona, law a self-represented party is entitled to no more consideration from the court than a party represented by counsel, and is held to the same standards expected of a lawyer. *Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, 287, ¶ 16, 17 P.3d 790, 793 (App. 2000). Nevertheless, because we generally prefer to decide each case on its merits rather than to dismiss summarily on procedural grounds, *See Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984), we exercise our discretion and address the merits of Jaffe's general contention that the superior court erred by dismissing his complaint against Chase.

¶17 We review a dismissal for failure to state a claim under Arizona Rule of Civil Procedure ("Rule") 12(b)(6) de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7, 284 P.3d 863, 866 (2012). A complaint must contain "[a] short and plain statement of the claim showing that the pleader is entitled to relief." Ariz. R. Civ. P. 8(a)(2). The purpose of this "notice pleading standard" is to ensure the opponent receives "fair notice of the nature and basis of the claim and . . . 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)). Thus, although we assume all well-pleaded factual allegations to be true, "mere conclusory statements are insufficient." *Coleman*, 230 Ariz. at 356, ¶ 9, 284 P.3d at 867. Without the requisite supporting factual allegations, a complaint setting forth only legal conclusions does not give the opponent proper notice of the basis and nature of the claim, and thus does not satisfy Rule 8's notice pleading requirement. *Cullen*, 218 Ariz. at 419, ¶¶ 6-7, 189 P.3d at 346.

¶8 Although Jaffe concedes on appeal that dismissal of his claim for "harassment" was proper, Jaffe contends the superior court erred by dismissing his IIED and gross negligence claims. Jaffe's complaint alleged adverse items on his credit report that he "knew nothing about" and believed should be removed. Jaffe's pleading provided no detail as to what those adverse items were, what entity had reported them, or whether they were based on false reports. Although Jaffe's Chase-specific allegation stated "[Jaffe] believes that a series of adverse credit reports from CHASE should be removed from his credit report," Jaffe again failed to allege which reports were objectionable or the basis for his objection. These vague statements failed to provide Chase with adequate notice of the basis of Jaffe's claim.

¶9 Similarly, Jaffe's legal allegations fell short of Rule 8's notice pleading standard. Jaffe's IIED claim, for example, would require proof that Chase engaged in extreme and outrageous conduct intended to cause (or recklessly disregarded the near certainty of) emotional distress, which actually resulted in severe emotional distress. *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43, 734 P.2d 580, 585 (1987). Jaffe's allegations, however, do not delineate any particular conduct by Chase -- even whether Chase had offered Jaffe credit, had attempted to collect a debt, or had just reported information to a credit bureau -- instead stating general allegations about "the DEFENDANTS." Additionally, Jaffe's allegation that "the DEFENDANTS continued to issue information to the general public," even if erroneous credit information, does not reach the necessary level of "extreme" and "outrageous" behavior necessary to support an IIED claim. See *Mintz v. Bell Atl. Sys. Leasing Int'l, Inc.*, 183 Ariz. 550, 554, 905 P.2d 559, 563 (App. 1995) (conduct must "go beyond all possible bounds of decency, and [] be regarded as atrocious and utterly intolerable in a civilized community" (citation omitted)).

¶10 Jaffe's gross negligence allegations are similarly vague, conclusory, and insufficient. A gross negligence claim would require proof that Chase acted knowing or with reason to know its actions created "an unreasonable risk of bodily harm"

with a high probability that such harm would result. *Walls v. Ariz. Dep't of Pub. Safety*, 170 Ariz. 591, 595, 826 P.2d 1217, 1221 (App. 1991). Jaffe's complaint failed to specify any conduct by Chase (as opposed to by some other defendant) or to explain how a report to a credit bureau -- even if inaccurate -- could, without more, rise to the level of gross negligence. See *Kemp v. Pinal County*, 13 Ariz. App. 121, 124-25, 474 P.2d 840, 843-44 (1970) (Gross or wanton negligence "is highly potent, and when it is present it fairly proclaims itself in no uncertain terms. . . . It is flagrant and evinces a lawless and destructive spirit. . . . A person can be very negligent and still not be guilty of gross negligence.") (citation and internal quotation marks omitted).

¶11 Because Jaffe's vague and conclusory allegations failed to give Chase the requisite "fair notice of the nature and basis of the claim," *Cullen*, 218 Ariz. at 419, ¶ 6, 189 P.3d at 346 (citation omitted), the superior court did not err by dismissing Jaffe's complaint for failure to state a claim. Because we affirm the dismissal on this ground, we need not address Chase's alternative arguments that dismissal was proper on the basis of res judicata or federal preemption of FCRA claims.

CONCLUSION

¶12 For the foregoing reasons, the superior court's judgment is affirmed.

/S/
KENT E. CATTANI, Judge

CONCURRING:

/S/
JON W. THOMPSON, Presiding Judge

/S/
PHILIP HALL, Judge