

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

KEITH AND KATHY CAMPBELL,
HUSBAND AND WIFE,
Plaintiffs/Appellants/Cross-Appellees,

v.

FLORENCE GARDENS MOBILE HOME ASSOCIATION,
AN ARIZONA NON-PROFIT CORPORATION; GAIL AND STEVEN HASKETT, WIFE
AND HUSBAND; NICK AND JOANN TREINEN, HUSBAND AND WIFE; EMILY J.
WEBSTER, AN INDIVIDUAL; GERALD C. AND PATRICIA M. PALMATIER,
HUSBAND AND WIFE; JUDITH A. AND MARTIN C. WEBER, WIFE AND HUSBAND,
Defendants/Appellees/Cross-Appellants.

No. 2 CA-CV 2021-0091
Filed July 5, 2022

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV201901839
The Honorable Steven J. Fuller, Judge

AFFIRMED IN PART; VACATED IN PART AND REMENDED

COUNSEL

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Eppich and Vice Chief Judge Staring concurred.

BREARCLIFFE, Judge:

¶1 Keith and Kathy Campbell, husband and wife, appeal the trial court's dismissal of their complaints against the Florence Gardens Mobile Home Association and individual members of its board of directors (collectively "the Association"). And, in its cross-appeal, the Association contends the court erred in denying the Association's request for attorney fees and costs below. For the following reasons, we affirm in part, vacate in part and remand.

Factual and Procedural Background

¶2 We "assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts." *Coleman v. City of Mesa*, 230 Ariz. 352, ¶ 9 (2012). The Campbells own real property in the Florence Gardens Mobile Home Association Community ("the Community"). The Association is a non-profit corporation serving "as the entity responsible for maintaining the Community, enforcing the governing documents for the Community, and generally acting for the general welfare of the Community as a whole." The Association, and all owners of property within the Association, are governed by the Community's covenants, conditions, and restrictions ("CC&Rs"). Until 2019, the CC&Rs recorded in 1998 had been in effect.¹

¶3 In March 2019, the Association's board of directors sent a letter to the owners explaining that it had amended the 1998 CC&Rs. A copy of the amended and restated CC&Rs and a summary of "what the new document does and does not do" were included with the letter, along with a concurrence form to be used to approve the new CC&Rs. The form to be returned stated:

My signature herein signifies my written
concurrence to replace the Amended

¹Neither the old nor new CC&Rs appear in the record; citations to the CC&Rs' language comes from the parties' filings.

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Declaration of [CC&Rs] for Florence Gardens
. . . dated 16 April 1998 with the Amended and
Restated Declaration of [CC&Rs] for Florence
Gardens . . . dated 8 February 2019.

The board's letter explained that, for the new CC&Rs to be adopted, the Association needed the written concurrence of 878 owners of the assessed lots—two-thirds of the total assessed lots. The owners were instructed to sign the attached concurrence form to approve of the new CC&Rs and were asked to "[p]lease sign each one you received and return in the stamped envelope provided or bring them to the office in the next thirty (30) days." No consequences for failing to return the form was stated.

¶4 The Association received a sufficient number of concurrences to adopt the amended CC&Rs "shortly after the 30-day window." Keith Campbell—who was, at the time, president of the board of directors of the Association—brought his concerns to the board that concurrences received after the 30-day deadline for their return expired thereafter and should not have been counted.² The board disagreed, ultimately counting all the concurrences received³ and Campbell resigned from the board. Campbell and his wife then filed their verified complaint against the Association in December 2019.

¶5 The Campbells' original complaint alleged that the Association had committed breach of contract, negligence per se, breach of the duty of good faith and fair dealing, and breach of fiduciary duty/negligence. They claimed the Association breached its contract with the owners (ostensibly the CC&Rs) "[b]y failing to provide a return date on the ballot, by failing to properly notice any vote after the vote was unsuccessful and by failing to ensure the 'then owners' were represented by the vote." The Campbells alleged the Association was negligent per se by not providing a time and date for the return of the concurrence forms in violation of A.R.S. § 33-1804(A); by counting the ballots after the thirty-day window ended in violation of A.R.S. § 33-1812(A)(3); and by not providing proper notice "in advance of required meetings of the Board" in violation of § 33-1804(D). They also asserted the Association breached its duty of good faith and fair dealing by "preventing [the Campbells] from receiving the benefits and entitlements arising from the parties' contractual

²The record does not reflect when and how Campbell brought his concerns to the board.

³The record also does not reflect how or by whom the concurrences were tallied.

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agreement.” The Campbells further alleged that the Association breached its fiduciary duty to the owners or, alternatively, was negligent. The Campbells sought declaratory and permanent injunctive relief.

¶6 In response to the complaint, the Association filed a combined motion to dismiss the fiduciary duty claim under Rule 12(b)(6), Ariz. R. Civ. P., and motion for a more definite statement under Rule 12(e) as to the remaining claims. As to the fiduciary duty claim, the Association asserted that, as a matter of law, “homeowner associations and their Boards of Directors do not owe any fiduciary duties to individual homeowners.” As to the motion for a more definite statement, the Association said:

The Association obtained the votes necessary for the proposed amendment shortly after the 30-day window referenced in Exhibit 1. Plaintiffs allege that Defendants violated A.R.S. § 33-1812 by allowing members to submit their voting documents after that 30-day period. The crux of this argument is that the voting document was sent to the membership in advance of a meeting of the membership or Board and therefore expired following that meeting

It argued:

Plaintiffs’ claims are dependent upon the Association holding a meeting of its membership and/or Board at some point related to the collection of written concurrences for the amendment to the 1998 CC&Rs. This is because, without a meeting, A.R.S. § 33-1817 and § 33-1804 do not apply to the Association’s conduct.

And:

Point of fact, the Association has regular meetings of its Board and membership, but Defendants cannot discern which of those meetings are germane to the allegations in the Complaint; therefore, it is impossible for Defendants to respond to the allegations therein.

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¶7 Notwithstanding its claim that the Campbells needed to more definitely state the date of the meeting (or meetings) alluded to in the complaint, the Association acknowledged in its motion that there was no meeting of the board or membership held in relation to the concurrences: “Plaintiffs do not provide a date for the alleged meeting . . . or provide other specificity for when such a meeting was held. Candidly, the reason Plaintiffs did not give a date is because there *was* no such meeting.” (Emphasis added.) And “[i]n fact, there was no meeting of the membership related to the collection of the concurrences.”

¶8 In their response to the Association’s motion, the Campbells generally argued that they had provided sufficient detail and that the Association was aware of its conduct. The most detailed response they gave was that “the ballot must contain a return date, beyond which the ballot is ineffective. No meeting is even required. If the meeting is the return date, after the meeting the ballot is ineffective as a matter of law.” Following a hearing, the trial court granted the motion for a more definite statement and ordered the Campbells to submit an amended complaint providing “additional specificity regarding their claims, including, but not limited to, the specific dates of the membership and/or Board meeting referenced in the complaint.” The order did not state that the suit would be dismissed if a sufficient amended complaint were not filed. The court took the motion to dismiss the fiduciary duty claim under advisement but ultimately granted it, dismissing that claim because the Campbells “failed to cite any controlling legal authority that the directors of a homeowner association owe a fiduciary duty to the members.”

¶9 The Campbells filed an amended complaint on June 3, 2020, in which they, again, did not identify any specific meeting dates relevant to their claims. In response, the Association filed a motion to strike the Campbells’ amended complaint because it was untimely and because they had still not provided the meeting dates as the trial court ordered. The Campbells responded to the motion to strike, stating again that it was the Association’s “failure to hold a meeting pursuant to the Planned Community Act that is at issue in this case.”

¶10 The trial court granted the Association’s motion to strike, signing a form of order submitted by the Association stating that the Campbells’ amended complaint was “not a proper amendment” to their complaint because it did “not provide the necessary information for the [Association] to provide a responsive pleading.” The order further stated that the court found the Campbells had “failed to provide a complaint to which a response [could] be provided, in spite of the Court’s order to do so,” and dismissed their suit with prejudice. The Association then

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requested its attorney fees and costs, which the Campbells objected to on the grounds that the Association needed to have made their request for fees and costs in their original combined motion to dismiss and motion for a more definite statement, pursuant to Rule 54(g), Ariz. R. Civ. P. The court denied the Association's request for fees and costs and entered a final judgment under Rule 54(c). This appeal and cross-appeal followed.⁴ We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Analysis

¶11 The Campbells argue that the trial court incorrectly dismissed their claim against the Association and its individual directors for breach of fiduciary duty as a matter of law and their remaining claims solely based on their failure to comply with the order for more definite statement.⁵ We review the trial court's dismissal of a complaint de novo. *Coleman*, 230 Ariz. 352, ¶ 7.

Dismissal of Fiduciary Duty Claim

¶12 The Campbells argue that the dismissal of their claim for breach of fiduciary duty was improper because "the existence of the duty and breach are determined at trial." They claim that "whether there was a breach of the duty is a factual inquiry that . . . cannot be resolved on summary judgment and cannot be summarily dismissed."

¶13 A dismissal under Rule 12(b)(6) is only appropriate if, as a matter of law, "plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof." *Coleman*, 230 Ariz. 352, ¶ 8

⁴On cross-appeal, the Association raises the single issue of whether the trial court erred by ruling the Association had waived its right to attorney fees by not initially requesting them in its Rule 12(b)(6) motion. Because we are vacating and remanding the trial court's dismissal of the Campbells' claims, we leave the issue of attorney fees for the trial court to decide on remand.

⁵The Campbells also argue that the trial court "incorrectly imputed a requirement into A.R.S. § 33-1812 that the Campbells' claims will not be heard unless they allege [the Association] violated that section at a specific meeting." Because we find the court erred in its dismissal of the Campbells' claims on different grounds, we do not address this argument. See *Stonecreek Bldg. Co. v. Shure*, 216 Ariz. 36, n.3 (App. 2007) ("[T]his court does not give advisory opinions or decide issues it is not required to reach in order to dispose of an appeal.").

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(quoting *Fid. Sec. Life Ins. v. State, Dep't of Ins.*, 191 Ariz. 222, ¶ 4 (1998)). When adjudicating a Rule 12(b)(6) motion, courts may only look to the pleading itself. *Id.* ¶ 9.

¶14 The trial court properly dismissed the Campbells' breach of fiduciary duty claim. The Campbells fail to provide legal support for their claim that the Association owed and/or breached a fiduciary duty.⁶ In their complaint, the Campbells state that the Association "acts as a fiduciary with the fees collected from its members, in that it is obligated to expend all sums collected in a manner that is consistent with the governing documents for the Community and applicable law." They assert that the improper use of dues collected by members, "such as to avoid statutory requirements for votes on issues before the Association's board by labeling the vote a 'concurrence' and allowing the vote to exceed the time frames provided for valid votes by Arizona law," constitutes a breach of the Association's fiduciary duty. They also assert that the Association's unlawful conduct with respect to them does not satisfy the "heightened duties" it owes to its members.

¶15 "[M]ere conclusory statements are insufficient to state a claim upon which relief can be granted." *Cullen v. Auto-Owners Ins.*, 218 Ariz. 417, ¶ 7 (2008). Even were we to conclude the Association's collection of fees from its members was sufficient to create a fiduciary relationship, the Campbells do not allege how the Association's actions amount to an improper use of funds in breach of its fiduciary duty. *See id.* ("[A] complaint that states only legal conclusions, without any supporting factual allegations, does not satisfy Arizona's pleading standard.").

¶16 Although the Campbells cite to *Divizio v. Kewin Enterprises, Inc.*, 136 Ariz. 476 (App. 1983), to support their argument that the Association owes them a fiduciary duty, that case is distinguishable. In *Divizio*, members of a mobile home park sought an accounting of the dues the park collected from its members. *Id.* at 477. Pursuant to the deed

⁶The Campbells assert in their opening brief that they "did provide several lines of authorities in this jurisdiction that support the Campbells' Breach of Fiduciary Duty claim." However, they refer only to their response to the Association's combined partial motion to dismiss and motion for a more definite statement. The Campbells' response is not a pleading within the definition of Rule 7, Ariz. R. Civ. P., therefore we limit our review to the allegations in their original and amended complaints. *See Coleman*, 230 Ariz. 352, ¶ 9 (courts only look to pleading itself when adjudicating Rule 12(b)(6) motions).

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restrictions, the park collected dues from its members ostensibly for maintaining and caring for community areas in the park. *Id.* at 478-79. In *Divizio*, this court found that the members of the park were entitled to accountings because “[t]he parties have a fiduciary relationship, one of trust, and the appellees are obligated to furnish accountings.” *Id.* at 479.

¶17 Here, the Campbells’ claims are based on the Association’s actions in adopting the amended CC&Rs. These actions—collecting signed concurrences past the 30-day deadline provided for—do not involve the collection or use of funds to which any fiduciary duty recognized in *Divizio* would extend. Merely asserting that the Association owes a fiduciary duty because the members pay dues to it does not mean any alleged wrongdoing by the Association is automatically a breach of that fiduciary duty. Therefore, we cannot say the trial court erred in dismissing the Campbells’ fiduciary duty claim against the Association.

Striking of Amended Complaint and Dismissal of Complaint

¶18 The Campbells’ original complaint asserted claims for breach of contract and violations under A.R.S. § 33-1812. As detailed above, in its motion for a more definite statement, the Association asserted that it could not answer the Campbells’ complaint because they had not stated a meeting date at which the statutory violations allegedly occurred. The Campbells were ordered to amend their complaint and provide “the specific dates of the membership and/or Board meeting referenced in the complaint.” Because the Campbells’ proffered amended complaint did not provide such a date, the trial court struck the amended complaint and dismissed the action altogether. The Campbells assert that both actions by the court were in error. We agree.

¶19 Upon the filing of a complaint in a civil case, a defending party may respond to the complaint and such response must state its defenses to the claims against it and admit or deny the allegations. Ariz. R. Civ. P. 8(c)(1). If an allegation is either incomplete or vague, such that the defending party cannot fairly admit or deny the allegation, the defending party may move the trial court for an order compelling the plaintiff to make “a more definite statement.” Ariz. R. Civ. P. 12(e). Rule 12(e) states:

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before filing a responsive pleading. The motion must point

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out the defects complained of and the details desired.

If a trial court “orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.” *Id.*

¶20 The Association claimed below that it was incapable of answering the Campbells’ complaint because the Campbells had failed to specify any meeting date at which it was to have violated Arizona law. But as discussed above, in its very motion by which it asked the court to order the Campbells to provide such dates, the Association acknowledged that no such meetings in fact occurred. That is, while asserting that it could not answer the complaint without more detailed allegations from the Campbells, the Association admitted that the Campbells could provide no such detail. Because it was clear from the Association’s own motion that it was impossible for the Campbells to make a more definite statement of a meeting date that never occurred, the trial court erred in ordering a more definite statement. And, because ordering a more definite statement was an error, the court also erred in striking the amended complaint and dismissing the complaint based on a failure to comply with that order.

Attorney Fees and Costs on Appeal

¶21 The Campbells request their attorney fees and costs on appeal pursuant to A.R.S. §§ 12-341.01, 12-341, the Uniform Declaratory Judgments Act, A.R.S. §§ 12-1831 to 12-1846, and Rule 21, Ariz. R. Civ. App. P. The Association also requests their fees under § 12-341.01 and Rule 21. Section 12-341.01 provides that the court may award reasonable attorney fees to the successful party in any action arising out of a contract, and § 12-341 provides for the award of costs to the prevailing party in a civil action. Because “CC&Rs constitute a contract between the subdivision’s property owners as a whole and individual lot owners,” this is an action arising out of a contract. *Ahwatukee Custom Ests. Mgmt. Ass’n v. Turner*, 196 Ariz. 631, ¶ 5 (App. 2000). But, because neither party completely prevailed on appeal, in our discretion, we decline to award fees or costs to either party. See *Sycamore Hills Ests. Homeowners Ass’n v. Zablotny*, 250 Ariz. 479, ¶ 26 (App. 2021).

Disposition

¶22 For the foregoing reasons, we affirm the trial court’s dismissal of the Campbells’ fiduciary duty claim, but vacate its dismissal of the Campbells’ remaining claims and remand for further proceedings consistent with this decision.