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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The Federal Deposit Insurance Corporation solely as Receiver for Wheatland Bank,

Plaintiff,

vs.

Douglas Gannett and Kathryn Gannett, husband and wife,

Defendants.

No. CV10-02726-PHX-JAT

ORDER

Currently pending before the Court is Defendant Kathryn Gannett’s Motion to Dismiss (Doc. 9). The Court now rules on the Motion.

BACKGROUND

This case arises from an alleged breach of contract by Defendant Douglas Gannett. For a Rule 12(b)(6) Motion, all the well-pleaded allegations of the Complaint are deemed true. *Movsesian v. Victoria Versicherung AG*, 629 F.3d 901, 905 (9th Cir. 2010). On or about October 1, 2008, Wheatland Bank made a loan of \$130,000 to 2nd Ave. Holdings, LLC. Defendant Douglas Gannett, manager of 2nd Ave. Holdings, made a personal guaranty of the loan. At that time, both Douglas Gannett and his wife, Defendant Kathryn Gannett, were domiciled in Illinois, although they are now residents of Arizona.

2nd Ave. Holdings defaulted on the loan, and Douglas Gannett failed to pay as guarantor. Plaintiff Federal Deposit Insurance Corporation (“FDIC-R”), solely as Receiver

1 for Wheatland Bank, has filed this action seeking judgment for \$125,000 plus continuing
2 interest, attorneys' fees, costs, and such other relief as the Court deems just. FDIC-R seeks
3 to collect against the separate and community property of Douglas Gannett.

4 FDIC-R asserts that Kathryn Gannett is joined solely to ensure compliance with
5 A.R.S. § 25-215(D) to the extent that recovery under the guaranty may be from the Gannetts'
6 community property. No judgment is sought against the separate property of Kathryn
7 Gannett.

8 **LEGAL STANDARD**

9 Kathryn Gannett has moved pursuant to Federal Rule of Civil Procedure 12(b)(6) to
10 dismiss all claims against her. The Court may dismiss a complaint for failure to state a claim
11 under 12(b)(6) for two reasons: 1) lack of a cognizable legal theory and 2) insufficient facts
12 alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
13 699 (9th Cir. 1990).

14 To survive a 12(b)(6) motion for failure to state a claim, a complaint must meet the
15 requirements of Federal Rule of Civil Procedure 8(a)(2). Rule 8(a)(2) requires a "short and
16 plain statement of the claim showing that the pleader is entitled to relief," so that the
17 defendant has "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell*
18 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S.
19 41, 47 (1957)).

20 Although a complaint attacked for failure to state a claim does not need detailed
21 factual allegations, the pleader's obligation to provide the grounds for relief requires "more
22 than labels and conclusions, and a formulaic recitation of the elements of a cause of action
23 will not do." *Id.* (internal citations omitted). The factual allegations of the complaint must
24 be sufficient to raise a right to relief above a speculative level. *Id.* Rule 8(a)(2) "requires a
25 'showing,' rather than a blanket assertion, of entitlement to relief. Without some factual
26 allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of
27 providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the
28 claim rests." *Id.* at 556 n.3 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure

1 §1202, pp. 94, 95(3d ed. 2004)).

2 Rule 8’s pleading standard demands more than “an unadorned, the-defendant-
3 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)(citing
4 *Twombly*, 550 U.S. at 555). A complaint that offers nothing more than naked assertions will
5 not suffice. *Id.* To survive a motion to dismiss, a complaint must contain sufficient factual
6 matter, which, if accepted as true, states a claim to relief that is “plausible on its face.” *Id.*
7 Facial plausibility exists if the pleader pleads factual content that allows the court to draw
8 the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*
9 Plausibility does not equal “probability,” but plausibility requires more than a sheer
10 possibility that a defendant has acted unlawfully. *Id.* “Where a complaint pleads facts that
11 are ‘merely consistent’ with a defendant’s liability, it ‘stops short of the line between
12 possibility and plausibility of entitlement to relief.’” *Id.* (citing *Twombly*, 550 U.S. at 557).

13 In deciding a motion to dismiss under Rule 12(b)(6), the Court must construe the facts
14 alleged in the complaint in the light most favorable to the drafter of the complaint, and the
15 Court must accept all well-pleaded factual allegations as true. *See Shwarz v. United States*,
16 234 F.3d 428, 435 (9th Cir. 2000). Nonetheless, the Court does not have to accept as true
17 a legal conclusion couched as a factual allegation. *Papasan v. Allain*, 478 U.S. 265, 286
18 (1986).

19 ANALYSIS

20 Kathryn Gannett argues that FDIC-R has failed to state a claim against her as a matter
21 of law. In support of its claim, FDIC-R cites A.R.S. § 25-215(D), which reads, “Except as
22 prohibited in § 25-214, either spouse may contract debts and otherwise act for the benefit of
23 the community. In an action on such a debt or obligation the spouses shall be sued jointly.
24 . . .” Ariz. Rev. Stat. Ann. § 25-215(D) (2007). FDIC-R offers no other grounds in its
25 Complaint for relief against Kathryn Gannett.¹ “In determining the propriety of a Rule
26

27 ¹Although not raised in the Complaint, FDIC-R now asserts that Illinois law should
28 control the Court’s analysis. While the Response makes first mention of this argument, it

1 12(b)(6) dismissal, a court *may not* look beyond the complaint to a plaintiff’s moving papers,
2 such as a memorandum in opposition to a defendant’s motion to dismiss.” *Schneider v.*
3 *California Dep’t of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998).

4 The exception to § 25-215(D) is § 25-214, which reads, in relevant part, “Either
5 spouse separately may acquire, manage, control or dispose of community property or bind
6 the community, except that joinder of both spouses is required in . . . [a]ny transaction of
7 guaranty, indemnity or suretyship.” Ariz. Rev. Stat. Ann. § 25-214(C) (2007). “Joinder” in
8 this section refers not to joinder of parties under Federal Rules of Civil Procedure 19 or 20,
9 but to the execution of the guaranty. *See Rackmaster Sys., Inc. v. Maderia*, 193 P.3d 314,
10 317 (Ariz. Ct. App. 2008). The plain meaning of § 25-214(C) is that both spouses must sign
11 a guaranty in order to bind the community under Arizona law. *See id.*; *Citibank (Arizona)*
12 *v. Van Velzer*, 982 P.2d 833, 837 (Ariz. Ct. App. 1998), *cited with approval in Butler v. IMA*
13 *Regiomontana S.A. de C.V.*, No. 98-16735, 2000 WL 127125, at *7 n.6 (9th Cir. Feb. 3,
14 2000).

15 The Complaint does not allege that Kathryn Gannett was a party to the guaranty. The
16 guaranty does not bear her signature (Doc. 1-1). Kathryn Gannett was joined solely to
17 comply with the requirements of § 25-215(D) regarding recovery against community
18 property, but § 25-214(C) makes clear that such recovery is impossible without her signature
19 on the guaranty. A.R.S. § 25-215(D) therefore cannot be the basis for this claim against
20 Kathryn Gannett, and the Court will grant Kathryn Gannett’s Motion to Dismiss.

21 Accordingly,

22 **IT IS ORDERED** GRANTING Defendant Kathryn Gannett’s Motion to Dismiss

23 _____
24 does not cite to any Illinois law. Furthermore, the Illinois statute referenced in oral
25 argument—750 Ill. Comp. Stat. 65/12 (2011)—does not appear to apply to this case. While
26 it does speak to one spouse binding the other in contracts and encumbrances, it is expressly
27 limited to situations where a court has granted special powers to one spouse following the
28 imprisonment of or abandonment by the other spouse. *See id.*; 750 Ill. Comp. Stat. 65/11
(2011). Because FDIC-R has not cited to any relevant Illinois law in support of its claim, the
Court will not consider FDIC-R’s Illinois law argument.

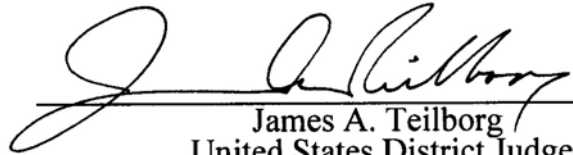
1 (Doc. 9). Mrs. Gannett shall be dismissed as a party.

2 DATED this 13th day of July, 2011.

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James A. Teilborg
United States District Judge

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