

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-012608

09/16/2010

HONORABLE L. GRANT

CLERK OF THE COURT  
T. Soto  
Deputy

RESORT FUNDING L L C

C BRADLEY VYNALEK

v.

CANYONVIEW DEVELOPMENT L P

J GRANT WALKER

VERONICA MANOLIO

MINUTE ENTRY

Plaintiff, Resort Funding LLC, has filed a Motion to Dismiss Amended Counterclaims; the Court has received and reviewed that pleading.

The Defendant, Canyonview Development LP, has filed a Response to Plaintiff's Motion to Dismiss the Amended Counterclaims; the Court has received and reviewed that pleading.

Plaintiff has filed a Reply in support of its Motion to Dismiss the Amended Counterclaims; the Court has received and reviewed that pleading.

The matter was scheduled for Oral Argument before this Court on July 23, 2010 after considering the oral arguments of the parties; the matter was taken under advisement.

This Court is aware of the procedural history of this case as a result of the litigation concerning the termination of the receivership in this matter.

Plaintiff essentially argues that there is no basis for the Counterclaims as several of the Counterclaims are barred by the statute of frauds. The remaining claims are disguised as objections to the receivership litigation and those objections are untimely.

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Defendants argue that Count I, the contract claim, is clearly establish by taking together several writings as evidence of the contract between the parties. That being the case this contract is not in violation of the statute of frauds according to Defendant's argument.

Next, Defendant argues that Plaintiff fraudulently concealed the appraisal and that it is a special circumstance that created a duty flowing from the Plaintiff to the Defendant and that the Plaintiff violated the duty.

After that, concerning Count II of the Amended Counterclaim, Defendant argues that there was a breach of duty to negotiate in good faith by arguing that the February 29, 2008 letter that Plaintiff forced Defendant to sign is a contract of adhesion. Next, Defendant argues the pre-negotiation letter is void as there was no consideration given for it. Defendant goes on to argue that the Plaintiff has breached the covenant of good faith and fair dealing in their contract and is liable for damages.

Count III of the Amended Counterclaim deals with issues concerning the petition for declaratory judgment and objections to the trustee sale according to Defendant's argument.

Next, Defendants argument addresses Count IV of the Amended Counterclaim by arguing that the trustee sale is void as the sale did not comply with require means of Arizona law.

According to Count V of the Amended Counterclaim entitles them to the declaratory relief, a determination that they are entitled to a Fair Market Value Hearing concerning the rights and obligations of the parties in connection with the proceeds from the trustee sale.

After that, Defendants argue that in connection Count IV of the Amended Counterclaim that they are entitled to an accounting concerning the sale of that time-share installment contract portfolio.

Lastly, Defendant argues that Count VII of the Amended Counterclaim creates a fiduciary relationship between and among the parties that was violated by Plaintiff and the Receiver as the Receiver failed to maintain an appropriate level of services for clients who had time-share installment contracts with Canyonview.

In the Reply, Plaintiff argues that the Defendant has failed to adequately address the arguments raised in the Motion to Dismiss and has ignored several claims altogether.

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It is well settled in Arizona that if Amended Counterclaims fail to state claims for relief under any state of facts susceptible of proof under the claims as stated, then a Motion to Dismiss is appropriate as a matter of law. Rowland v. Kellogg Brown and Root, Inc., 210 Ariz. 530, 115 P.3d 124 (App. 2005).

After considering the pleadings as filed by the parties and the arguments therein and the arguments of the parties at all argument, the Court finds that Plaintiff's Motion relief under Rule 12 (b) (6), Ariz. R. of Civ. P., as argued by Plaintiff is appropriate.

The Court finds as a matter of law that the claims in the Defendant's Amended Counterclaims failed to state a claim upon which relief may be granted for the reasons stated in the pleadings and arguments by Plaintiff.

**IT IS ORDERED** that Defendant's Counterclaims are dismissed with prejudice pursuant to Rule 12 (b) (6), Ariz. R. of Civ. P.,