

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-013193

09/24/2018

HONORABLE ROGER E. BRODMAN

CLERK OF THE COURT  
M. Corriveau  
Deputy

PASEO RANCH CONDOMINIUM  
ASSOCIATION

SEAN WOODS

v.

C N A SOLUTION INC, et al.

CHARLES F RICHARDS

SEAN M CARROLL  
JUDGE BRODMAN

RULING ON MOTION TO DISMISS

The Court reviewed Mr. Loucado's motion to dismiss, the response and reply. The Court also reviewed the Complaint.

The Court finds that the briefing submitted on these issues is sufficient and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. Rule 7.1(c)(2) to expedite the business of this Court. The Court issues the following ruling.

The Court has concerns about plaintiff's allegations against Mr. Loucado. The Court is unclear how an "impartial arbitrator" hired as part of a procedure to resolve disputes would be liable for civil conspiracy based on allegations that plaintiff disagrees with his appraisal. The Court fails to understand how disagreement with Ortenstone's appraisal creates a claim of conspiracy or how Mr. Loucado owes any duty to plaintiff. *See Meineke v. GAB Business Services, Inc.*, 195 Ariz. 564, 568 (App. 1999) (independent insurance adjuster selected by insurance company has no duty to the insurer; insured may not sue adjuster for negligence in

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-013193

09/24/2018

investigating claim). The Court struggles with the notion that an independent adjuster selected by the insurance company has no duty to the insured but an independent arbitrator selected by the insurance company does.

In addition, the damages in the Complaint relate directly to the insurance company's failure to pay the arbitration award. Plaintiff's complaint makes no suggestion that Mr. Loucado had anything to do with the non-payment.

In any event, the Court finds that the conspiracy claim against Mr. Loucado lacks sufficient detail to support a cause of action. There is no allegation that Mr. Loucado acted for personal gain. Indeed, the intracorporate conspiracy doctrine indicates that employees of the corporation cannot conspire as a matter of law unless serving independent personal stakes. *See Dawson v. Withycombe*, 216 Ariz. 84, 105 n. 19 (App. 2007); *Harp v. King*, 266 Conn. 747, 777 (2003). Here, the Complaint alleges that Mr. Loucado was an agent of the insurance company and acted on the insurance company's behalf. *See Meineke, supra* at ¶ 18 (actions of adjuster imputed to the insurer). *See also Steinberger v. McVey ex rel. County of Maricopa*, 234 Ariz. 125, 141-42, ¶ 74 (App. 2014) (conclusory allegations do not support a claim that parties acted in concert). The factual and legal basis for the claim is unclear.

Under Arizona law, courts are to provide a party an opportunity to amend before permanently dismissing a complaint. *Wigglesworth v. Mauldin*, 195 Ariz. 432, ¶ 26 (App. 1999). As a result, the Court will grant plaintiff an opportunity to amend.

**IT IS ORDERED** that Loucado's motion to dismiss is granted with plaintiff given leave to file an amended complaint within 10 days of the filed date of this order. If no timely amendment is filed, the motion to dismiss is deemed granted.