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10
11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
12
13 IN AND FOR THE COUNTY OF PIMA

14 NT PROPERTIES, LLC, an Arizona
15 Limited Liability Company,

16 Case No.: C20130421

17 Plaintiff

18 v.
19
20 THIRD-PARTY DEFENDANT
21 SYCAMORE VISTA NO. 5
22 HOMEOWNER'S
23 ASSOCIATION'S MOTION TO
24 DISMISS

25 666ISMONEY, LLC, an Arizona Limited
26 Liability Company, and SYCAMORE
27 VISTA LAND FOR SALE, LLC, an
28 Arizona Limited Liability Company,

Defendants
Assigned to the Hon. Carmine Cornelio

29 SYCAMORE VISTA LAND FOR SALE,
30 LLC, an Arizona Limited Liability
31 Company,

32 Counterclaimant,
33 v.
34

35 NT PROPERTIES, LLC, an Arizona
36 Limited Liability Company,

37 Counter-Defendant

Calendared By KJW Date 5-2-13
Cal for SWC, RBW 3570-3
5-20-13 Response Due

**SYCAMORE VISTA LAND FOR SALE,
LLC, an Arizona Limited Liability
Company,**

Third-Party Plaintiff

v.

**SYCAMORE VISTA NO. 5
HOMEOWNER'S ASSOCIATION, an
Arizona Non-Profit Corporation**

Third-Party Defendant

Third-Party Plaintiff has filed a lawsuit against Defendant Sycamore Vista No. 5 Homeowner's Association, Inc. ("Sycamore Vista HOA") based solely upon conclusory allegations. Pursuant to Arizona Rule of Civil Procedure 12(b)(6), Defendant Sycamore Vista HOA moves to dismiss the Third Party Complaint.

ARGUMENT

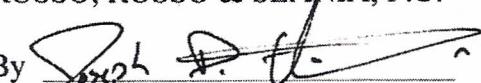
In deciding a Rule 12(b)(6) motion to dismiss, a court must: (1) limit its consideration to the well-pled factual allegations, ignoring conclusory allegations, (2) assume the truth of the well-pled factual allegations set forth in the challenged pleading, and consider all reasonable inferences therefrom and (3) dismiss only if the claimant is not entitled to relief as a matter of law, on any interpretation of the facts as alleged in the challenged pleading. *See Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (Ariz. 2008). Further, allegations that represent merely conclusions of law or unwarranted deductions are not credited. *See Id.*; *See also Aldabbagh v. Arizona Dept. of Liquor Licenses and Control*, 162 Ariz. 415, 417 (Ariz. Ct. App. 1989).

1 Third-Party Plaintiff's complaint is comprised almost exclusively of legal
2 conclusions that have no factual references to Sycamore Vista HOA. Instead of pleading
3 facts in its complaint, Third Party Plaintiff provides its interpretation of the Division One
4 opinion in Dream Land Villa Community Club, Inc., v. Raimey, 224 Ariz. 42 (Ariz. Ct.
5 App. 2010), and then, without any specific factual allegations pertaining to Sycamore
6 Vista HOA, concludes that the case at bar is similar to Dreamland.
7

8 Arizona courts have held that, even under liberal notice pleading rules, a plaintiff's
9 obligation to provide the grounds for entitlement to relief requires more than labels and
10 conclusions, and formulaic recitation of the elements of a cause of action is not sufficient.
11 See Dube v. Likins, 216 Ariz. 406, 424 (Ariz. Ct. App. 2007). Further, a wholly
12 conclusory statement of a claim cannot survive a motion to dismiss simply because the
13 pleadings leave open the possibility that the plaintiff might later establish some set of
14 undisclosed facts to support a recovery. See Cullen, 218 Ariz. at 419. The Third-Party
15 Plaintiff has merely alleged a summary of law it intends to rely upon and conclusory
16 statements and allegations pertaining to that summary. Therefore, Third-Party Plaintiff's
17 complaint should be dismissed pursuant to Rule 12(b)(6).
18

19 DATED this 1st day of May, 2013

20 RUSSO, RUSSO & SLANIA, P.C.

21 By 
22 Stephen T. Portell

23 Joseph D. Chimienti

24 Attorneys for Third-Party Defendant

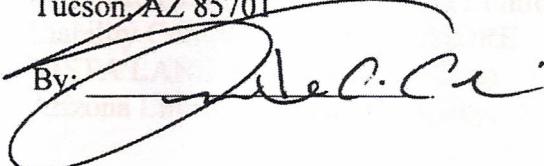
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MAY 14 2013
CHEIFETZ IANNITELLI MARCOLINI, P.C.

1 ORIGINAL of the foregoing filed this 15th day
2 of May, 2013 with the Clerk of the Superior
3 Court, Pima County.

4 Copy of the foregoing mailed this 14th day of
5 May, 2013, to:

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14 By: 
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