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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF PIMA**

12 NT PROPERTIES, LLC, an Arizona
13 Limited Liability Company,

14 Plaintiff

15 v.

16 666ISMONEY, LLC, an Arizona Limited
17 Liability Company, and SYCAMORE
18 VISTA LAND FOR SALE, LLC, an
19 Arizona Limited Liability Company,

20 Defendants

21 SYCAMORE VISTA LAND FOR SALE,
22 LLC, an Arizona Limited Liability
23 Company,

24 Counterclaimant,

25 v.

26 NT PROPERTIES, LLC, an Arizona
27 Limited Liability Company,

28 Counter-Defendant

Case No.: C20130421

**THIRD-PARTY DEFENDANT
SYCAMORE VISTA NO. 5
HOMEOWNER'S
ASSOCIATION'S MOTION TO
DISMISS**

Assigned to the Hon. Carmine Cornelio

Calendared By KJW Date 5.2.13
Cal for SWC, RBW 3570-3
5.20.13 Response due

1 SYCAMORE VISTA LAND FOR SALE,
2 LLC, an Arizona Limited Liability
3 Company,

Third-Party Plaintiff

4 v.

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

Third-Party Defendant

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

13 ARGUMENT

14 In deciding a Rule 12(b)(6) motion to dismiss, a court must: (1) limit its
15 consideration to the well-pled factual allegations, ignoring conclusory allegations, (2)
16 assume the truth of the well-pled factual allegations set forth in the challenged pleading,
17 and consider all reasonable inferences therefrom and (3) dismiss only if the claimant is
18 not entitled to relief as a matter of law, on any interpretation of the facts as alleged in the
19 challenged pleading. See Cullen v. Auto-Owners Ins. Co., 218 Ariz. 417, 419 (Ariz.
20 2008). Further, allegations that represent merely conclusions of law or unwarranted
21 deductions are not credited. See Id.; See also Aldabbagh v. Arizona Dept. of Liquor
22 Licenses and Control, 162 Ariz. 415, 417 (Ariz. Ct. App. 1989).
23
24
25

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.

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).

20 DATED this 1st day of May, 2013

22 RUSSO, RUSSO & SLANIA, P.C.

23 By

Stephen T. Portell

Joseph D. Chimienti

Attorneys for Third-Party Defendant

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MAY 23 2013

CHEIFETZ IANNITELLI MARCOLINI, P.C.

ORIGINAL of the foregoing filed this 15th day
of MAY, 2013 with the Clerk of the Superior
Court, Pima County.

Copy of the foregoing mailed this 15th day of
MAY, 2013, to:

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By: 