

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-000615

11/25/2013

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
J. Polanco
Deputy

OWNER-OPERATOR INDEPENDENT
DRIVERS ASSOCIATION, et al.

BRIAN J CAMPBELL

v.

PACIFIC FINANCIAL ASSOCIATION INC, et
al.

LONNIE J WILLIAMS JR.

UNDER ADVISEMENT RULING

The Court has had under advisement Defendants' Motion to Dismiss. Having read and considered the briefing and having heard oral argument, the Court issues the following ruling.

In ruling on a Rule 12(b)(6) motion to dismiss, the Court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008); *see Strategic Dev. & Constr., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 63-64 (App. 2010) (extraneous matters that are central to the complaint and public records regarding matters referenced in the complaint are not "outside the pleadings" under Rule 12(b)(6)). The Court will grant the motion only if the plaintiff is not entitled to relief "under any facts susceptible of proof in the statement of the claim." *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289 (App. 2010), *quoting Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). The Court will not "speculate about hypothetical facts that might entitle the plaintiff to relief." *Cullen, id.* at 420. Nor will the Court "accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts." *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389 (App.

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2005).

Defendants argue that the U.S. Department of Transportation Form BMC-85 Property Broker's Trust Fund Agreement ("Form BMC-85" or "Agreement") between Defendant Pacific Financial Association, Inc. ("Pacific") and transportation broker Alliance Transportation ("Alliance") is not a "trust" under the Arizona Trust Code. The Court agrees. Even if Form BMC-85 is an "express trust," it is not a "trust" under A.R.S. § 14-1201(58).¹ The Agreement creates a contractual obligation to pay certain debts, under certain terms and conditions.² It is a "trust for the primary purpose of paying debts"—specifically, Alliance's debts to shippers and motor carriers.³ The Court cannot read the first sentence of § 14-1201(58) in such a way as to render the "trust excludes" language superfluous. *E.g., Welch-Doden v. Roberts*, 202 Ariz. 201, 206 (App. 2002).

Plaintiffs deny that they have alleged any contract-based claims or tortious breach of contract claims based on a "special relationship." They deny that they have alleged a breach of good faith and fair dealing with respect to a contract. Rather, they contend that their claims are all predicated on "the Trust." (Opp. to Mot. to Dismiss at 9-10.) Such is also the case with regard to their claim for declaratory judgment. (*Id.* at 12-13.) Because Form BMC-85 is not a "trust" under Arizona law,

IT IS ORDERED granting Defendants' Motion to Dismiss.

¹ A.R.S. § 14-1201(58) provides:

"Trust" includes an express trust, private or charitable, with any additions, wherever and however created. Trust also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts and excludes resulting trusts, conservatorship, personal representatives, trust accounts, custodial arrangements pursuant to chapter 7, article 7 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, trusts created by a city or town for the payment of medical insurance, health care benefits or expenses, long-term or short-term disability, self insurance reserves and similar programs administered by a city or town, legal defense trusts and any arrangement under which a person is nominee or escrowee for another.

(Emphasis added.)

² The Agreement provides that: "Trustee agrees that payments made pursuant to the security provided herein to shippers and motor carriers pursuant to this Agreement will be made exclusively and directly to shippers or motor carriers that are parties to contracts, agreements or arrangements with Trustor." Agreement at § 1; *see also id.* at § 6.

³ The Complaint alleged that the Agreement "explicitly required the Defendants to protect the security and assets of the Trust for the exclusive purpose of making direct payments to Plaintiffs and the putative class members for the shipping services they provided in the event that Alliance Transportation failed to pay them." Compl. at ¶ 1; *see generally* Compl. at ¶¶ 3, 5, 48, 49, 53, 55, 90, 99, 102(b), 107, 108, 119, 120, 125, 127, 131(b).

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ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.