

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2023-018151

11/04/2024

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT  
P. McKinley  
Deputy

UNION L L C, et al.

JOHN N THORPE

v.

ARIZONA DEPARTMENT OF  
AGRIGULTURE, et al.

ARIZONA DEPARTMENT OF  
AGRIGULTURE  
1110 W WASHINGTON ST # 450  
PHOENIX AZ 85003

LUCI D DAVIS  
DEANIE J REH  
TIMOTHY SANDEFUR  
JOSHUA M. ROBBINS  
JONATHAN RICHES  
ADITYA DYNAR  
HAYLEIGH S CRAWFORD  
JOSHUA MICHAEL WHITAKER  
DENA R BENJAMIN  
JUDGE BLANEY

**UNDER ADVISEMENT RULING**

The Court has reviewed and considered the following:

1. Defendants' *Motion to Dismiss the First Amended Complaint*;
2. Plaintiffs' *Response to Motion to Dismiss*;
3. State Defendants' *Reply in Support of Motion to Dismiss the First Amended Complaint*;
4. Plaintiffs' *Motion for Summary Judgment* and associated *Statement of Facts*;
5. State Defendants' *Response to Plaintiffs' Motion for Summary Judgment* and associated *Opposing Statement of Facts*;
6. Plaintiffs' *Reply in Support of Motion for Summary Judgment*;

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2023-018151

11/04/2024

7. The arguments received at the August 16, 2024 oral argument; and
8. Relevant portions of the record in this case.

This special action arises from a rule promulgated by the Arizona Department of Agriculture (“AZDA”) that requires, with limited exceptions, that all egg-laying hens in Arizona must be housed in a cage-free manner and further, that all eggs sold in the state must come from hens housed the same way. Plaintiffs, who are restaurant owners and commercial consumers of large amounts of eggs, argue that they are injured by the new rule because of expected cost increases and the rule’s prohibition on Plaintiffs’ purchase of non-cage-free eggs. Plaintiffs further argue that AZDA exceeded the authority granted to it by the legislature and that the legislature unconstitutionally delegated legislative authority to AZDA. Plaintiffs seek declaratory and injunctive relief.

Defendants move to dismiss Plaintiffs’ lawsuit, arguing that Plaintiffs do not have standing to bring the present action and that AZDA acted within its authority. As a general policy matter, “motions to dismiss for failure to state a claim are not favored under Arizona law.” *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). When considering a motion to dismiss under Rule 12(b)(6), the Court will look only to the pleading itself and consider the well-pleaded factual allegations contained therein. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). The Court must assume the truth of the well-pleaded factual allegations and indulge all reasonable inferences therefrom, “but mere conclusory statements are insufficient.” *Coleman v. City of Mesa*, 230 Ariz. 352, 356 (2012) (quoting *Fid. Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224 (1998)). “Dismissal is appropriate under Rule 12(b)(6) only if ‘as a matter of law []plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.’” *Id.*

**THE COURT FINDS** that Plaintiffs’ *First Amended Complaint* contains sufficient factual allegations, when taken as true for purposes of Defendants’ *Motion*, to establish that Plaintiffs have standing to bring the present action.

Plaintiffs allege, *inter alia*, that their businesses rely upon bulk purchases of eggs, that their commercial consumption of eggs far exceeds that of an individual consumer, that the rule in question will have a material impact on the price of the eggs that Plaintiffs purchase, and that Plaintiffs and their customers will suffer quantifiable economic harm as a direct result of the rule. See FAC at ¶¶ 51-71. Plaintiffs are therefore “affected by” the rule in question and have statutory standing to bring the present action. A.R.S. § 41-1034(A) (“Any person who is or may be affected by a rule may obtain a judicial declaration of the validity of the rule by filing an action for declaratory relief in the superior court[.]”). Having found that Plaintiffs have sufficiently alleged statutory standing, the Court declines to address the parties’ additional arguments regarding standing.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2023-018151

11/04/2024

**THE COURT FURTHER FINDS** that Defendants’ arguments in the *Motion to Dismiss* regarding the history of the passage of the rule in question, as well as whether the rule is “within the statutory directives to the Department,” relies on facts outside the pleadings, some of which are in dispute. The Court will not “resolve factual disputes between the parties on an undeveloped record.” *Coleman*, 230 Ariz. at 363.

Good cause shown, and in the Court’s discretion:

**IT IS ORDERED** denying Defendants’ *Motion to Dismiss*.

Plaintiffs also filed a *Motion for Summary Judgment* on March 28, 2024.

Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Rule 56(a), *Arizona Rules of Civil Procedure*; *Orme School v. Reeves*, 166 Ariz. 301, 305 (1990); *Hourani v. Benson Hosp.*, 211 Ariz. 427, 432 (App. 2005). All facts must be viewed in the light most favorable to the nonmoving party. *See Grain Dealers Mutual Insurance Co. v. James*, 118 Ariz. 116 (1978); *Farmers Ins. Co. v. Vagnozzi*, 138 Ariz. 443, 448 (1983). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts” are not proper on summary judgment. *Orme School*, 166 Ariz. at 309-10 (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986)). But the Court will not deny a motion for summary judgment on the speculation “that some slight doubt . . . , some scintilla of evidence, or some dispute over irrelevant or immaterial facts might blossom into a real controversy in the midst of trial.” *Orme School*, 166 Ariz. at 311.

When a plaintiff moves for summary judgment, the question before the Court is not whether the opposing party has succeeded in presenting genuine disputes of material fact. Rather, the question is whether the plaintiff/counterclaimant has “presented sufficient undisputed admissible evidence to establish its entitlement to judgment.” *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 213 (App. 2012).

**THE COURT FINDS** that genuine issues of material fact are present, and Plaintiffs have not presented sufficient undisputed, admissible evidence to establish their entitlement to judgment. Plaintiffs must demonstrate to the finder of fact, *inter alia*, the “negative economic impact” on which they rely to establish standing.

Good cause shown, and in the Court’s discretion:

**IT IS ORDERED** denying Plaintiffs’ *Motion for Summary Judgment*.