

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

OCT 31 2007

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FRANK CARRASCO, husband, and on  
behalf of Stephanie Carrasco, a minor;  
JANINE CARRASCO, wife, and on behalf  
of Stephanie Carrasco, a minor,

Plaintiffs - Appellants,

v.

SAAED ALI SAAED ALI SALEM  
AHMAD AL-MAZRODEI; JANE DOE  
MAZROOEI; UNITED ARAB  
EMIRATES, a foreign country,

Defendants - Appellees.

No. 05-16656

D.C. No. CV-04-01362-EHC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Earl H. Carroll, District Judge, Presiding

Argued and Submitted October 17, 2007  
San Francisco, California

Before: WALLACE, KLEINFELD, and RAWLINSON, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

Frank and Janine Carrasco appeal from the district court's order granting the United Arab Emirates' (UAE) motion to dismiss for lack of jurisdiction under the Foreign Sovereign Immunities Act (FSIA).

1. The district court's consideration of evidence outside of the complaint did not convert the motion to dismiss into a motion for summary judgment. *See Corrie v. Caterpillar, Inc.*, — F.3d — , 2007 WL 2694701, at \*3 (9th Cir. Sept. 17, 2007). *Grimmett v. Brown*, 75 F.3d 506 (9th Cir. 1996), cited by Appellants' counsel during oral arguments, is distinguishable. *Grimmett* addressed a statute of limitations issue, and did not speak to the evidence that a court should consider on a motion to dismiss for lack of jurisdiction. *Id.* at 510.

2. The district court did not abuse its discretion by granting the UAE's motion to dismiss. Appellants failed to establish that the tortious activity exception to the FSIA, 28 U.S.C. § 1605(a)(5), applied, and therefore the district court correctly concluded it lacked subject matter jurisdiction over the case. *See Gupta v. Thai Airways Int'l, Ltd.*, 487 F.3d 759, 763, n.5 (9th Cir. 2007).

**AFFIRMED.**