

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2023-096192

02/24/2025

HONORABLE RODRICK COFFEY

CLERK OF THE COURT  
S. Motzer  
Deputy

A Z N H REVOCABLE TRUST

JOHN SULLIVAN

v.

SUNLAND SPRINGS VILLAGE  
HOMEOWNERS ASSOCIATION

MEGAN E RITENOUR

JUDGE COFFEY

UNDER ADVISEMENT RULING

The Court has considered Plaintiff's Motion for Summary Judgment; Defendant's Response to that Motion; Plaintiff's Reply in support of its Motion; the parties' respective statements of facts; and the oral arguments that were presented to the Court on February 10, 2025.

Motions for summary judgment "should be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). When considering a motion for summary judgment, all evidence of the non-moving party is to be believed, and all justifiable inferences are to be drawn in the non-movant's favor. *Id.* at 309-10, 802 P.2d at 1008-9. Summary judgment should not be used as a substitute for a trial simply because the Court may believe the moving party will probably prevail or that the moving party should prevail at trial. *Id.*

The party moving for summary judgment must produce evidence that it believes demonstrates the absence of a genuine issue of material fact and must explain why summary judgment is warranted. *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 115 (App. 2008). If the non-moving party has the burden of proof of the claim or defense at trial, the moving party need

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not disprove the nonmoving party's claim or defense, but need only point out the lack of evidence on an essential element of the claim or defense. *Id.* at 117. If the moving party meets its burden, the burden shifts to the nonmoving party to present sufficient evidence demonstrating the existence of a disputed fact. *Id.* at 119. The nonmoving party cannot then rest on its pleadings, but must call to the Court's attention evidence to explain why the motion should be denied. *Id.* The opponents of a motion for summary judgment do not raise a genuine issue of fact by merely stating in the record that such an issue exists. Rather, they must show that competent evidence is available which will justify a trial on the issue. *Flowers v. K-Mart Corp.*, 126 Ariz. 495, 499 (App. 1980). "If the party with the burden of proof on the claim or defense cannot respond to the motion by showing that there is evidence creating a genuine issue of fact on the element in question, then the motion for summary judgment should be granted." *Orme School* at 310, 802 P.2d at 1009.

Plaintiff owns real property that is subject to the governance of Defendant, which is a homeowners association ("HOA"). Plaintiff and Defendant disagree about whether Defendant's construction and application of A.R.S. § 33-1804 is erroneous and deprives Plaintiff of certain statutory rights. A.R.S. § 33-1804(A) provides in relevant part:

Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

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5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

Additionally, A.R.S. § 33-1804(F) states:

It is the policy of this state as reflected in this section that all meetings of a planned community, whether meetings of the members' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided in advance for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors or members is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions, including members of the board of directors and any community manager, shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

Plaintiff contends that Defendant's Board should be precluded from voting or taking any formal action on any matter in a closed meeting because the word "consideration" as used in A.R.S. § 33-1804(A) does not include taking formal actions. The Court is not aware of any Arizona legal authorities directly on point. Given the language of A.R.S. § 33-1804(F), the Court must construe the statute in favor of open meetings. The statute expressly authorizes HOAs to close portions of meetings for the "consideration" of the limited subjects set forth in the statute. Consideration of issues is different from voting on issues. Consideration encompasses, thought and discussion about matters. It does not encompass voting, which is the formal expression of a final decision that occurs after a matter has been considered. Thus, the Court agrees with Plaintiff's interpretation of the statute with regard to the necessity that all votes by the HOA must occur in open meetings.

Plaintiff also contends that Defendant must meet in an open session and explain what subsection of A.R.S. § 33-1804(A) permits the Board to consider a matter in closed session before it commences a closed session. Defendant contends that it can identify what subsection of the statute applies during an open session or that it can identify the applicable statutory exemption in the meeting notice that is provided to its members before meetings occur. A.R.S. § 33-1804(C) states, "Before entering into any closed portion of a meeting of the board of directors, or on notice of a meeting under subsection D of this section that will be closed, the board shall identify the paragraph under subsection A of this section that authorizes the board to close the meeting." On this issue, the Court agrees with Defendant. As long as a meeting notice identifies the subsection

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of A.R.S. § 33-1804(A) that authorizes it to meet in a closed session, Defendant has satisfied its obligations under A.R.S. § 33-1804(C).

Plaintiff also contends that Defendant's meeting notices are inadequate because they do not provide sufficient detail about meeting topics. The Court has reviewed the sample meeting notices Plaintiff provided and determined that those meeting notices satisfy the requirements of A.R.S. § 33-1804(F). Whether portions of Defendant's closed meetings have exceeded the scope of what is permissible for it to do or consider in a closed meeting would have to be determined on a meeting by meeting basis and that is not something that can be resolved through a dispositive motion. Arizona law limits the topics that can be considered during closed meetings. Any matters that do not fall directly under one of the express provisions of A.R.S. § 33-1804(A) must be considered in open meetings. But, to the extent that issues fall within the scope of one of the limited topics set forth in that statute, the descriptions given in Defendant's meeting notices are sufficient under A.R.S. § 33-1804(F).

Based upon the foregoing,

**IT IS ORDERED** granting in part Plaintiff's Motion for Summary Judgment and declaring that all votes by the HOA must occur in open meetings.

**IT IS FURTHER ORDERED** denying in part Plaintiff's Motion for Summary Judgment with regard to the other issues that were raised therein.

**IT IS FURTHER ORDERED** that the parties shall confer about this ruling to determine whether a final judgment resolving all of the claims in this case should be entered. If so, Plaintiff shall submit a proposed form of judgment by no later than March 10, 2025. If this ruling does not resolve all of the issues in the case, the parties shall confer regarding what remaining steps must be taken to conclude the pre-trial phase of the case and to decide whether any unresolved issues should be resolved with a bench trial or whether there are issues in the case that can and should be resolved by a jury. The Court does not intend to set the case for a trial until the parties have participated in a mediation with a private mediator or in settlement conference with a judge *pro tempore*.