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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

**AZNH REVOCABLE TRUST,
by and through
JOHN and SUSAN SULLIVAN,
TRUSTEES, REAL PARTIES IN
INTEREST**

Plaintiff

v.

**SUSAN NICOLSON,
COMMISSIONER,
ARIZONA DEPARTMENT OF
REAL ESTATE**

and

**TAMMY EIGENHEER,
INTERIM DIRECTOR,
ARIZONA OFFICE OF
ADMINISTRATIVE HEARINGS**

and

**SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,**

Defendants

No. CV2026-008484

**Plaintiff's Response to
Motion to Dismiss**

**Assigned to the
Hon. Adele Ponce**

1 NOW COMES THE PLAINTIFF to respond to the Corporation’s Motion to Dismiss.

2
3 **I. The Corporation Presents No Facts Supporting Rule 12(b)(6)**

4 The gravamen of the Original Special Action is:

- 5 (1) that the Commissioner of Arizona Department of Real Estate
6 (“Commissioner”) did not issue a default decision in favor of the Plaintiff
7 (“AZNH”) which, by statute, the Commissioner has no discretion when the
8 “named respondent” fails to submit a Response to a Petition;
9 (2) neither the Director of the Arizona Office of Administration (“Director”) or the
10 Administrative Law Judge (“ALJ”) assigned by the Director have jurisdiction to
11 conduct a hearing on the Petition; and,
12 (3) AZNH has a right to receive the benefit the statute provides – a default
13 decision and avoiding litigation.

14 A.R.S. § 32-2199.01(E).

15 The “Factual Background” presented by the Defendant (“Corporation”) is unreliable
16 and irrelevant. It is two pages of arguing the merits of a defense in the underlying
17 administrative matter -- the Corporation cites no “Factual Background” supporting their
18 12(b)(6) Motion. It should be noted there is no provision for a 12(b)(6) Motion under the
19 Rules of Procedure for Special Actions (“RPSA”). See RPSA 1(b) (“These [Special
20 Action] rules govern procedures for all special actions in the Superior Court.”).

21 The Corporation’s facts do admit, however, that the (now former) President “signed
22 the Response on behalf of the Association.” Corporation’s Motion, p.3, lines 26-27.

23 AZNH notes also, that we have been careful not to include the (now former)
24 President’s true name in court filings. Our Complaint explains that **Mr. Pen Mann is a**
25 **pseudonym**. A pseudonym was used because he is not a party in this Special Action.
26 The pseudonym shall continue in use by AZNH.

1 **II. The Corporation Claims Three Bases for 12(b)(6) Dismissal**

2
3 *a. Nothing More Than Conclusory Statements*

4 The Corporation repeatedly concludes that the Complaint contains “conclusory statements”
5 but does not point to any part of the Complaint to support their conclusion. In fact, the
6 Corporation does not contest the relevant **facts** presented in the Complaint.

7 “[M]otions to dismiss for failure to state a claim are not favored in Arizona. A court should
8 not grant such a motion unless it appears certain that the plaintiff would not be entitled to relief
9 under any state of facts susceptible of proof under the claim stated.” *Acker v. CSO Chevira*, 188
10 Ariz. 252, 255 headnote 4 (Div. 1, 1997).

11 “To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), a complaint
12 generally must satisfy only the minimal notice pleading requirements of Rule 8(a)(2). That rule
13 requires only that the complaint include ‘a short and plain statement of the claim showing that
14 the pleader is entitled to relief.’” *Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, 534, ¶
15 15 (Div. 2, 2005) citing *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). *See also Cullen v.*
16 *Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008) (rule 12(b)(6) dismissal available if
17 Complaint does not comply with rule 8). “When adjudicating a Rule 12(b)(6) motion to
18 dismiss, Arizona courts look only to the pleading itself and consider the well-pled factual
19 allegations contained therein.” *Cullen* at ¶ 7.

20 The Complaint fully and adequately states a claim for Special Action relief against the
21 Commissioner and the Director, and the Corporation has not identified any part of the
22 Complaint which is deficient. See RPSA 4 (Grounds for Special Action). The Complaint also
23 fully and adequately states a claim for injunctive relief against the Corporation. See A.R.S. 10-
24 3304.

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26 //

1 *b. No Standing*

2 A special action may be brought if a body, officer, or person:

3 (a) failed to perform a duty required by law for which they have no discretion; or,

4 (b) proceeded, or threatened to proceed, without, or in excess of, jurisdiction or

5 legal authority.

6 RPSA 4.

7 In Original Special Actions, any person aggrieved by the action or inaction of a body, officer,
8 or person for the reasons set forth in Rule 4 may file an original special action as a plaintiff.

9 RPSA 5.

10 “The writs of certiorari, mandamus, or prohibition by which parties formerly obtained relief
11 in proceedings are now called special actions.” RPSA 2.

12 The writ of certiorari may be granted by any judge of the superior court, in all cases when an
13 inferior tribunal, board or officer, exercising judicial functions, has exceeded its jurisdiction and
14 there is no plain, speedy and adequate remedy by appeal. A.R.S. 12-2001. Therefore, Special
15 Action relief is available to prevent the Director (OAH) from conducting a hearing based upon
16 lack of jurisdiction.

17 A writ of mandamus may be issued by the superior court to any person on the verified
18 complaint of the party beneficially interested, to compel, when there is not a plain, adequate and
19 speedy remedy at law, performance of an act which the law specially imposes as a duty resulting
20 from an office. A.R.S. § 12-2101. Thus, Special Action relief is available to compel the
21 Commissioner to issue a default decision in favor of AZNH.

22 In the Petition brought to the Commissioner, AZNH complains that the Corporation failed to
23 comply with a Planned Communities Statute (A.R.S. § 33-1812). The parties in that matter are
24 AZNH and the Corporation. Any action or inaction by the Commissioner or the Director (or
25 ALJ) affects the claims, rights, or defenses of either (or both) parties. Thus, either party has
26 standing to seek Special Action or appellate relief whenever grounds exist to do so. See RPSA

1 4 (*infra*), RPSA 10(c)(Appellate Review) and JRAD 4 (A party to a final administrative decision
2 may take an appeal) & A.R.S. § 12-904 (Judicial Review of Administrative Decisions).

3 The Corporation’s conclusion that AZNH has no standing to seek Special Action relief,
4 would make both the Special Action and the appellate statutes & rules meaningless. In the
5 Corporation’s view, no one who was adversely affected by the acts or inactions of the
6 Commissioner or the Director would have any remedy available. That view is contrary to the
7 existing statutory remedies referenced herein-above.

8
9 *c. Complaint Allegations are Frivolous or Fraudulent*

10 **First**, the Corporation claims that AZNH falsely claimed that, “the HOA has not submitted a
11 Response.” Corporation’s Motion, p. 6, line 26. There’s nothing false about that – it is a
12 completely correct and truthful statement. The facts supporting that statement are spelled-out in
13 detail in both the Complaint and AZNH’s recent Motion for Judgment on the Case Filings. That
14 allegation is fully supported by the Corporation’s records which accompany AZNH’s Motion.

15 **Second**, the Corporation claims the Response submitted by the President is a Response by the
16 Corporation based upon the theory of “agency” -- that the President was an authorized agent of
17 the Corporation. The Corporation says, therefore, AZNH falsely asserted that the Corporation
18 did not file a Response.

19 Both the Complaint and AZNH’s Motion articulate with precision why the President and
20 Atty. Gallacher had no authority to act on their own on behalf of the Corporation. The exercise
21 of corporate powers is held exclusively by the Corporation’s Board of directors and those
22 powers may not be delegated. As fully explained in the Complaint and AZNH’s Motion, the
23 Corporation did not take the statutorily-required action to decide to submit a Response and did
24 not take any action to direct or authorize anyone to do so on behalf of the Corporation. Thus,
25 the President was without authority from the Corporation to sign and submit a Response to the
26 Commissioner.

1 **Third**, the Corporation complains that AZNH has made a demonstrably false statement that
2 the Response was signed by Mr. Pen Mann when the Response clearly shows the name of the
3 President. The Complaint is perfectly clear that a pseudonym was used. And, we explained
4 why herein.

5 **Finally**, the Corporation complains that AZNH made frequent misrepresentations to the
6 Court that the Corporation did not “hire” or “retain” Atty. Gallacher to represent the Corporation
7 in the administrative matter.

8 The Complaint correctly states (among other things) that Atty. Gallacher should have known
9 by his duty to inquire under E.R. 1.16:

- 10 d. That the corporate directors had not authorized Mr. Mann or anyone
11 else to affix a signature to a Response to be submitted to the ADRE on behalf
12 of the HOA;
- 13 e. That the corporate directors had not conducted a meeting in compliance
14 with A.R.S. § 33-1804 or the [existing Court Order] to take any action (or vote
15 on anything) related to the Petition or the Response;
- 16 f. That the corporate directors had not authorized the engagement of
17 Maxwell & Morgan, P.C., or Atty. Chad Gallacher, or any other lawyer to
18 provide any services to the HOA in relation to the Petition or the Response;
- 19 g. That the corporate directors had not authorized the payment to Maxwell
20 & Morgan, P.C., or Atty. Chad Gallacher, or any other lawyer to provide
21 any services to the HOA in relation to the Petition or a Response;
- 22 h. That the corporate directors had not authorized Maxwell & Morgan,
23 P.C., or Atty. Chad Gallacher to act in a representative capacity with
24 respect to the Petition or the Response.

25 Complaint pp. 9-10. ¶ 35.

1 All the above allegations are proven correct by the Corporation's records which accompany
2 AZNH's Motion for Judgment on the Case Filings.

3 **III. The Corporation's 12(b)(6) Motion Should be Denied**

4 The HOA has failed to present any basis for the Court to conclude with certainty "that the
5 plaintiff would not be entitled to relief under any state of facts susceptible of proof under the
6 claim stated." *Acker* at 255 headnote 4.

7 As shown herein-above, by looking to the Complaint and considering the well-pled factual
8 allegations contained therein (*Cullen* at ¶ 7), the Complaint satisfies "the minimal notice
9 pleading requirements of Rule 8(a)(2)" (*Rowland* at ¶ 15). And, therefore, the Complaint states a
10 claim for which this Court may grant relief pursuant to RPSA 4 & 10. See *Rowland, infra*
11 (compliance with R.Civ.P. 8(a)(2) defeats a 12(b)(6) Motion).

Respectfully submitted,

Dated this 25th day of March, 2026.

/s/ John F. Sullivan

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Certificate of Service

A copy hereof shall be sent via the Court's electronic filing and delivery system this date, to:

Asst. Attorney General Deanie Reh (counsel for Az. Dept. of Real Estate) at
Deanie.Reh@azag.gov;

Asst. Attorney General Raya Gardner (counsel for Az. Dept. of Real Estate) at
Raya.Gardner@azag.gov; and,

Asst. Attorney General Kara Karlson (counsel for Tammy Eigenheer, Interim Director, Arizona Office of Administrative Hearings) at Kara.Karlson@azag.gov.

Atty. Chad Gallacher (counsel for Sunland Springs Village Homeowners Association) at cgallacher@hoalaw.biz.

Copy sent also to the Judicial Assistant of:
Hon. Adele Ponce (cvj06@jbazmc.maricopa.gov)

/s/ *John F. Sullivan*

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