

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2026-008484

09/21/2026

HONORABLE ADELE PONCE

CLERK OF THE COURT
G. Duran
Deputy

JOHN SULLIVAN, et al.

JOHN F SULLIVAN

v.

SUSAN NICOLSON, et al.

RAYA GARDNER

CHAD M GALLACHER
KELLY ELAINE GILLILAN-GIBSON
JUDGE PONCE

MINUTE ENTRY

The Court heard argument on this special action. Pending before the Court are a number of pleadings and motions.

- A February 2, 2026, complaint by Plaintiff AZNH Revocable Trust, et al (“Plaintiff”) for special action seeking a stay of proceedings and temporary and permanent injunction.
- An April 21, 2026, motion by the Department of Real Estate (“the Department”) to dismiss Susan Nicolson as a Defendant. The Court has considered the motion, the response by Plaintiff AZNH Revocable Trust, et al (“Plaintiff”) and the Department’s reply.
- A March 25, 2026, motion by Defendant Sunland Springs Village Homeowners Association Motion to dismiss Special Action complaint (“HOA”). The Court has reviewed the motion, the response by Plaintiff and the HOA’s reply.
- Plaintiff’s March 22, 2026, motion for judgment on the pleadings. The Court has reviewed the motion, the responses filed and Plaintiff’s reply.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2026-008484

09/21/2026

I. Background.

Plaintiff filed a complaint with the Department of Real Estate challenging an election by the HOA in a community where he owns a unit. Pursuant to A.R.S. § 32–2199, Plaintiff’s petition must first be reviewed by the Department, which sends the petition to the HOA for a response. Once a response is filed, the Department refers the matter to the Office of Administrative Hearings (“OAH”). A.R.S. § 32–2199.01. After Plaintiff filed his petition, the HOA filed a response, and the Department of Real estate referred the matter to the OAH, which set a hearing on the complaint.

Plaintiff filed the current special action alleging that the HOA failed to follow the proper procedures under its governing rules to file the response, so the response was not authorized and “fraudulent.” This allegedly unauthorized response, Plaintiff argued, was equivalent to the HOA not having filed a response. Consequently, Plaintiff argued, Plaintiff was entitled to a default judgment and the Department should not have referred the matter to the OAH.

Plaintiff bases his argument on A.R.S. § 32–2199.01(E), which provides that “[f]ailure of the respondent to answer is deemed an admission of the allegations made in the petition, and the commissioner shall issue a default decision.” Plaintiff thus claims that the Department proceeded and was threatening to proceed without, or in excess of, jurisdiction or legal authority pursuant to RPSA 4(b) by referring the case to the OAH.

Plaintiff sought a stay of the OAH proceeding pursuant to RPSA 9. Plaintiff’s petition also sought a temporary and permanent injunction prohibiting the HOA from filing any additional pleadings in his action challenging the election; an order prohibiting OAH from conducting any proceedings or issuing any orders in his case; an order declaring the response by the HOA a nullity; an order directing the OAH to return all records back to the Department; an order directing the Department to recall the matter from OAH; and an order directing the Department to enter a default judgment against the HOA for failing to file a response. Plaintiff also sought an award of attorney’s fees and costs.

This Court declined to stay the OAH proceeding and set a schedule for anticipated motions.

Plaintiff did not appear at the hearing the OAH set, however, and Plaintiff’s complaint against the HOA was dismissed in the OAH proceeding.

II. Standard.

Pursuant to Rule 4 of the Arizona Rules of Procedure for Special Actions, a special action can only be brought if a lower court or a body, officer, or person:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2026-008484

09/21/2026

- a) Failed to exercise discretion that they have a duty to exercise; or failed to perform a duty required by law for which they have no discretion;
- b) Proceeded, or threatened to proceed, without, or in excess of jurisdiction or legal authority, or
- c) Made a decision that was arbitrary and capricious or an abuse of discretion, which can include a legal error.

RPSA 4.

The Court has discretion to decline or accept special action jurisdiction. Such jurisdiction is reserved for “extraordinary circumstances” and is not available “where there is an equally plain, speedy and adequate remedy by appeal.” *State ex re. Romley v. Fields*, 201 Ariz. 321, 323 (App. 2001). A party challenging an administrative decision must exhaust his administrative remedies before seeking relief in the Courts. *Id.* See also RPSA 3.1; *Soto v. State*, 262 Ariz. 118 (App. 2026).

III. Analysis.

A. This matter is moot because Plaintiff failed to appear at the OAH hearing and the case was dismissed.

As an initial matter, this special action is moot because Plaintiff failed to appear before the OAH, and Plaintiff’s case was dismissed. See generally *Cardos v. Soldo*, 230 Ariz. 614, 617 (App. 2012) (“we will dismiss an appeal as moot when our action as a reviewing court will have no effect on the parties”).

B. Even if the case were not moot, the Court declines to exercise jurisdiction.

The Court declines to accept special action jurisdiction. Plaintiff claims the Department proceeded without authority because it should have entered a default. Plaintiff’s argument is that alleged defects in the authorization of the HOA’s answer—not visible on its face—meant the HOA filed no answer at all. The Court does not find the matters raised by Plaintiff constitute extraordinary circumstances warranting the Court’s intervention, and declines to exercise special action jurisdiction on this basis.

Moreover, Plaintiff did not raise his concerns about the HOA’s response to either the Department or the OAH before seeking special action relief and fails to provide sufficient grounds for failing to do so. See generally *Stapert v. Arizona Bd. of Psychologist Examiners*, 210 Ariz. 177, 182 (App. 2005); *Pima Cnty. Human Rights Comm. v. Arizona Dept. of Health Services*, 232 Ariz.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2026-008484

09/21/2026

177, 182 (App. 2013). This provides a separate basis for the Court's decision to decline special action jurisdiction.

For the reasons stated above,

IT IS ORDERED denying special action jurisdiction.

IT IS FURTHER ORDERED denying any pending motions as moot.

IT IS FURTHER ORDERED dismissing Plaintiff's special action petition with prejudice.

There being no just reason for delay as to Plaintiff's claims, judgment is entered under Rule 54(c).