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Clerk of the Superior Court

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By KRISTY KEE, Deputy
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----- CASE# CV2008-029900 -----
CIVIL NEW COMPLAINT 001 301.00

TOTAL AMOUNT 301.00
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7 ARIZONA SUPERIOR COURT
8 MARICOPA COUNTY

9 RICHARD GAYER, an individual,
10 Plaintiff,

No. CV2008-029900

11 vs.

12 WILLO NEIGHBORHOOD ASSOCIATION,
13 a corporation, BRADLEY BRAUER, President,
14 Defendants.

COMPLAINT

Violation of Statute

Injunctive Relief Requested

15
16 This is a complaint for violations of statutes that regulate changes in corporate Bylaws
17 and seeks an injunction to invalidate and set aside a recent attempt by Defendant Association to
18 do so without the participation of a sufficient number of members (quorum) at a properly called
19 "membership meeting".

20
21 Plaintiff alleges as follows:

22 1. Plaintiff RICHARD GAYER is a resident of the area served by Defendant WILLO
23 NEIGHBORHOOD ASSOCIATION in Phoenix and owns the property known as 526 West
24 Wilshire Drive. He has been a member of Defendant WILLO NEIGHBORHOOD
25 ASSOCIATION since March 2004.

26 2. Defendant WILLO NEIGHBORHOOD ASSOCIATION ("Association") is a
27 corporation incorporated under the laws of the State of Arizona which serves the area bounded
28 by Thomas Road, McDowell Road, Central Avenue, and Seventh Avenue in Phoenix, as stated

1 on page three under "Traffic/Circulation/Park" of the Willo Neighborhood Conservation Plan
2 adopted by the City of Phoenix on February 12, 1986. These same boundaries are repeated in
3 the Association's Bylaws (adopted on March 15, 2007) in effect now and before the attempted
4 amendments at issue in this case in Article I, section 5 and in Article II, section 1. The area
5 served by the Association is slightly larger than the Willo Historic District and extends beyond
6 the boundaries of that District.

7 3. Defendant BRADLEY BRAUER is President of Defendant Association and resides in
8 the area served by the Association ("Service Area").

9 4. On June 12, 2008, the Association conducted an election to vote on proposed revisions
10 to its Bylaws. The meeting for this election was announced as a "board meeting", in violation of
11 the existing Bylaws which require the calling of a "membership meeting" for this purpose. The
12 Association has not conducted the two annual membership meetings required by the Bylaws in
13 Article II, section 3.A since 2004 and, on information and belief, has never done so.

14 5. Proposed revisions included, among others, a change of the eastern boundary of the
15 Service Area from Central Avenue to First Avenue and a provision requiring persons desiring to
16 be members to "opt-in" by completing and signing a form. Under the existing Bylaws, any
17 person of "voting age" who resides in or owns property in the Service Area is automatically and
18 involuntarily a member, independent of the desires of such persons.

19 6. At the time of the election, at least 2700 persons of voting age lived within the Service
20 Area as defined in paragraph 2, above.

21 7. Ballots submitted by mail before the meeting and those collected at the meeting
22 totaled only 143 votes, far short of the number required by Arizona Revised Statutes sections
23 10-3722 and 10-11023(A). That is, at least ten percent of 2700, or 270 votes constituted the
24 minimum number required by these statutes.

25 8. All persons residing in a complex known as the Tapestry on Central were denied
26 ballots, despite the fact that they live west of the Central Avenue boundary of the Service Area.

27 9. The proposed Bylaws changes reduced the quorum for membership voting from ten
28 percent of all persons of "voting age" residing in or owning property in the Service Area to only

1 ten percent of such persons who opt-in by completing and signing membership forms. As of
2 November 13, 2008, less than 90 such persons had opted-in for membership. These
3 memberships are invalid as opt-in actions and are redundant under the existing Bylaws.

4 10. At the September 11, 2008 meeting of the Board of Directors of the Association
5 (“Board”), Plaintiff presented a Wells Fargo Money Order for \$500.00 to the Board to pay for
6 postage and some other expenses of conducting another election on the proposed Bylaw changes
7 in an effort to obtain a quorum, but the Board rejected Plaintiff’s offer after a long-term Willo
8 member said “let’s go to litigation”.

9 11. By electronic mail messages to the Board on August 7, 2008 and October 10, 2008,
10 Plaintiff offered to reimburse the Association for a reasonable attorney’s fee in exchange for an
11 opinion from the Association’s lawyer regarding the interpretation of Arizona Revised Statutes
12 including A.R.S. section 10-3722, but the Board declined Plaintiff’s offer.

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14 //

15 ***First Claim – Declaratory Relief***

16 12. Plaintiff incorporates by reference the contents of paragraphs one through eleven,
17 above.

18 13. Plaintiff contends that the total number of votes cast at the foregoing Bylaw election
19 was insufficient to satisfy Arizona law was not properly called, but Defendants contend to the
20 contrary, that the 143 votes case were sufficient and that the meeting was properly called..

21 14. Therefore, an actual dispute exists between Plaintiff and Defendants, so that Plaintiff
22 is entitled to a declaratory judgment under Uniform Declaratory Judgments Act, Arizona
23 Revised Statutes sections 12-1831 through 12-1846 and Rule 57 of the Arizona Rules of Civil
24 Procedure that the foregoing Bylaw election was invalid so that its results must be set aside.

25
26 ***Second Claim – Injunction Setting Aside Attempted Bylaw Change***

27 15. Plaintiff incorporates by reference the contents of paragraphs one through eleven,
28 above.

1 16. Defendants have rejected or ignored all of Plaintiff's offers and other attempts to
2 settle this dispute without litigation.

3 17. Pursuant to the foregoing declaratory judgment, Plaintiff is entitled to an Order of
4 this Court directing Defendants, and each of them, to set aside all results of the above Bylaw
5 election and restore the pre-existing Bylaws (adopted on March 15, 2007) in their entirety to full
6 force and effect until such time as the Association may amend these Bylaws by a lawful
7 procedure at a properly called "membership meeting".

8 18. Plaintiff has no adequate remedy at law.

9 //

10 **RELIEF REQUESTED**

11 (1) a Declaratory Judgment under the First Claim, above;

12 (2) an Injunctive Order under the Second Claim, above;

13 (3) Costs; and,

14 (4) Such other and further relief of an equitable nature that this Court may deem proper.

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16 Note: Plaintiff will delay formal service of process in anticipation of settlement and
17 dismissal without litigation.

18 //

19 I certify under penalty of perjury under the law of the State of Arizona that the foregoing
20 is true and correct.

21 //

22 Executed on November 24, 2008
23 at Phoenix, AZ


24 RICHARD GAYER, Plaintiff Pro Se.