Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005545 02/18/2026

HONORABLE DAVID MCDOWELL

CLERK OF THE COURT
K. Johanson
Deputy

SHEILA JANISCH FRANK M FOX

v.

SCOTTSDALE MOUNTAIN COMMUNITY ASSOCIATION CHARLES H OLDHAM

JUDGE MCDOWELL

**RULING ON MOTION TO REMOVE DIRECTORS**

Pending before the Court is Plaintiff's December 24, 2025 *Motion to Remove Directors Muto, McVay, Ellis, and Dube for Cause, Disqualify Counsel, and Request for Preliminary Injunction,* Defendant's January 27, 2025 *Scottsdale Mountain Community Association's Response in Opposition to Plaintiff's Motion to Remove Directors Muto, McVay, Ellis, and Dube for Cause, Disqualify Counsel, and Request for Preliminary Injunction,* and

In this over-length far-reaching *Motion* Plaintiff seeks to remove several members of the Community Board of Directors, permanently preclude those individuals from ever serving on the Board, to disqualify counsel Thomas McVay who has not appeared in this action, to disqualify the CHDB law firm, for a default judgment as a sanction for discovery abuses, and obtain a preliminary injunction.

While Arizona statutes do permit a Court, upon an action filed by homeowners, to remove board members, such relief cannot be granted on the basis of a motion alone. The Court must find that the circumstances justifying removal have been met and that requires the Court to receive evidence. Submission of 600± pages of documents without proper foundation or authentication and without a reference to the specific pages which demonstrate the point to be made, is not the

introduction of admissible evidence. It is not the Court's role to assume the duties of an advocate and sort through voluminous material to find evidence to support a party's position. See *Adams v Valley National Bank of Az*., 139 Ariz. 106 (App. 2005). If Plaintiff believes she has sufficient evidence to support a claim for removal of members of the Board of Directors, Plaintiff can file a motion to set and certificate of readiness, but any hearing on this issue will be a final hearing because removal of members of the Board of Directors is not an issue that can be addressed as a preliminary injunction.

Plaintiff requests disqualification of Thomas McVay who is apparently a Board Member and an attorney. Plaintiff spends one-half page of the 21-page motion addressing the reasons to disqualify Mr. McVay as counsel, but fails to address the fact that Mr. McVay has not appeared in this action or why his providing advice to the Board runs afoul of the ethical rules since he is not acting as an advocate during a hearing or trial. In the portion of Plaintiff's Motion addressing disqualification Plaintiff cites the case of *State v. Egelhoff*, 172 Ariz 1 (1992). A case by that name does not appear at that citation. The case of *State v. Baca* appears at 172 Ariz 1 (1992) and that case does not address disqualification of counsel. The Court found no Arizona cases with the name State v. Egelhoff or any cases containing the name Egelhoff. The Court did find a Montana case entitled *State v. Egelhoff*, but it did not address disqualification of counsel.

Plaintiff requests the disqualification of the law firm CHDB but fails to address what conduct of CHDB requires disqualification, other than a mention of alleged discovery abuses. The Reply provides more information, but beyond allegations, there is insufficient credible evidence with which the Court can evaluate Plaintiff's request to disqualify CHDB.

Plaintiff requests that Defendant's answer be stricken for "willful misconduct or bad faith in discovery". Striking an answer is an extraordinary remedy reserved for the most egregious of circumstance. Plaintiff's *Motion* does not demonstrate egregious circumstances.

The Court cannot and will not enter a preliminary injunction without an evidentiary hearing. See Ariz.R.Civ.Proc. 65. To demonstrate entitlement to a preliminary injunction, Plaintiff must demonstrate four elements: (1) whether plaintiff has a strong likelihood of success on the merits; (2) the possibility of irreparable harm to the plaintiff if relief is not granted; (3) the balance of hardships; and (4) advancement of the public interest. *Shoen v. Shoen*, 167 Ariz. 58 (App. 1990). This *Motion* does not demonstrate these four elements. While Plaintiff has alleged behavior, that if proven to be true, is highly suspect, Plaintiff failed to address how these individuals remaining on the Board would result in irreparable harm to her, the balance of the hardships, and how the public interest would be advanced.

**IT IS ORDERED** denying the *Motion to Remove Directors Muto, McVay, Ellis, and Dube for Cause, Disqualify Counsel, and Request for Preliminary Injunction* without prejudice. If Plaintiff

desires a final hearing on the issue of the removal of Board members, she can proceed as directed above. If Plaintiff desires a preliminary injunction hearing, she can file a motion which demonstrates the elements necessary. If Plaintiff believes grounds exist to disqualify Mr. McVay as counsel or CHDB, she can file a proper motion supported by credible evidence.

**After February 17, 2026,** the Court **will not** accept any motions which combine multiple legal issues and multiple different claims for relief into a single motion. Here the request for removal of directors, the request to disqualify counsel, to strike the answer, and for a preliminary injunction should have been addressed in four separate motions, each comprised of less than seventeen pages.

Pursuant to Rule 7.1, replies are limited to eleven pages. Plaintiff's was twelve and a half. **Future violations of the rule governing the length of filings will result in the Court not reading beyond the number of pages permitted in the Rules.**