



ATTORNEYS AT LAW

The Wilenchik & Bartness Building
2810 North Third Street Phoenix, Arizona 85004

Telephone: 602-606-2810 Facsimile: 602-606-2811

Dennis I. Wilenchik, #005350

Jack D. Wilenchik, #029353

Ross P. Meyer, #028473

admin@wb-law.com

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

**JIE CAO and HAINING “FRAZER” XIA,
a married couple; STONE XIA, an
individual,**

Plaintiffs;

vs.

**PFP DORSEY INVESTMENTS, LLC, a
Delaware limited liability company;
DORSEY PLACE CONDOMINIUM
ASSOCIATION, an Arizona nonprofit
corporation;**

Defendants.

Case No.: CV2019-055353

SECOND AMENDED COMPLAINT

(Assigned to the Honorable Daniel Martin)

(Tier II Case)

(Jury Trial Requested)

Plaintiffs Jie Cao, Haining “Frazer” Xia, and Stone Xia (collectively “Plaintiffs”) hereby file their Second Amended Complaint against Defendants PFP Dorsey Investments, LLC and Dorsey Place Condominium Association (collectively “Defendants”).

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs Jie Cao (“J. Cao”) and Haining “Frazer” Xia (“Xia”) are a married couple residing in Maricopa County, Arizona at all relevant times.

1 10. In or around 2007, Dorsey Place was completed at a cost of approximately twenty-
2 three million dollars (\$23,000,000). At least six condominiums were sold by the developer for
3 prices in excess of four hundred thousand dollars (\$400,000).

4 11. On or around December 15, 2006, the Board of the Condo Association adopted
5 bylaws (“Bylaws”).

6 12. The Bylaws discuss the Annual Member Meeting under Section 3.3, stating, “The
7 annual meeting of the Members shall be held in the month of March each year, beginning in
8 March, 2006, with the exact date to be determined each year by the Board, provided that the Board
9 may elect to delay the annual meeting past March in any given year (but in no event later than
10 May 31) if necessary to permit preparation of financial statements or budgets, or for such other
11 reason as may be determined by the Board, in its good faith discretion. At each annual meeting
12 the Members shall elect the Board and transact such other business as may properly be brought
13 before the meeting.”

14 13. The Bylaws discuss Special Meetings of the Members under Section 3.4, stating
15 “Unless otherwise prescribed by Arizona statute or by the Articles, special meetings of the
16 Members, for any purpose or purposes, may be called by: (a) the president; (b) a majority of the
17 directors; or (c) after the Declaration is recorded, Members having at least ten percent (10%) of
18 all votes in the Association (as determined in accordance with the Declaration).”

19 14. The Bylaws also discuss the requirements of Notice of Members Meetings under
20 Section 3.5, stating “Not less than ten (10) nor more than fifty (50) days before the date of any
21 annual or special meeting of the Members, either the secretary or any other officer of the
22 Association shall cause written notice stating the place, date and time of the meeting (and, in the
23 case of a special meeting, the items on the agenda, including, but not limited to, the general nature
24 of any proposed amended to the Declaration, Articles or Bylaws, any budget changes and any
25 proposal to remove a director or officer) to be hand-delivered or sent prepaid by United States
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1 mail to the last known mailing address of each Member, as shown in the Association records, or to
2 the mailing address of such Member's Unit). If mailed, such notice shall be deemed to be delivered
3 when mailed. Business transacted at any special meeting of Members shall be limited to the items
4 stated in the notice unless determined otherwise by a unanimous vote of the Members present at
5 such meeting."

6 15. The Bylaws provide that directors are to be elected at the Annual Meeting: "The
7 business and affairs of the Association shall be managed, conducted and controlled by the Board.
8 The directors shall be appointed or elected as provided in the Declaration, and for the term(s)
9 specified therein. Except as provided in the Declaration, each director shall be elected at the annual
10 meeting of Members concurrent with the expiration of the term of the director he or she is to
11 succeed, and, except as otherwise provided in these Bylaws or in the Articles or the Declaration,
12 shall hold office until his or her successor is elected and qualified." Section 4.1, Bylaws.

13 16. On or around August 15, 2017, Dorsey Place recorded a Declaration of
14 Condominium for Dorsey Place with the Maricopa County Recorder's Office, bearing recording
15 number 2007-0921387 ("Declaration").

16 17. The Declaration was amended with a first amendment on July 31, 2009, and
17 recorded with the Maricopa County Recorder's Office, bearing recording number 2009-0825688
18 ("First Amendment to Declaration").

19 18. The Declaration and First Amendment to Declaration were amended with a second
20 amendment on August 15, 2011, and recorded with the Maricopa County Recorder's Office,
21 bearing recording number 2012-0168217 ("Second Amendment to Declaration").

22 19. The Declaration, First Amended to Declaration, and Second Amendment to
23 Declaration were amended with a third amendment on February 9, 2018, and recorded with the
24 Maricopa County Recorder's Office, bearing recording number 2018-0161234 ("Third
25 Amendment to Declaration") (the Declaration, First Amendment to Declaration, Second
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1 Amendment to Declaration, and Third Amendment to Declaration shall be referred to herein as
2 the “Declaration with Amendments”).

3 20. Under Section 6.4 of the Declaration with Amendments, each “Unit Owner shall be
4 a Member of the Association. The membership of the Association shall, at all times, consist
5 exclusively of the Unit Owners.”

6 21. Under Section 6.7 of the Declaration with Amendments provided each Unit Owner
7 with one vote for each Unit owned by the Unit Owner on “any Association matter which is put to
8 a vote of the membership in accordance with this Declaration, the Articles and/or Bylaws.”

9 22. Under Section 13.4 of the Declaration with Amendments, “the Condominium may
10 be terminated only by the agreement of Unit Owners of Units to which at least ninety percent
11 (90%) of the votes in the Association are allocated. An agreement to terminate the Condominium
12 must be evidenced by the execution or ratifications of a termination agreement, in the same
13 manner as a deed by the requisite number of Unit Owners.”

14 23. Under Section 2.4 of the Third Amendment to Declaration, there were ninety-six
15 (96) units in the Condo Association consisting of Units 101 through 121, Units 201 through 225,
16 Units 301 through 325, and Units 401 through 425.

17 24. In or around 2011, Pathfinder Partners LLC, a California limited liability company,
18 acquired Dorsey Place from the original developer for approximately eleven million three hundred
19 thousand dollars (\$11,300,000). The six additional units stayed with their current owners and were
20 not part of this transaction by Pathfinders Partners, LLC.

21 25. On information and belief, at some time Dorsey Place was transferred from
22 Pathfinder Partners LLC, to the Condo Association, PFP Dorsey, PFP LP, and/or PFP LLC.

23 26. In or around March 2019, a 2019 Annual Meeting Notice was noticed, to be held on
24 April 4, 2019 (“Notice”). The letter notifying the members of the meeting listed seven items on
25 the agenda, as follows:
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1. Call to Order and Verification of Quorum
2. Introduction of Board Members and Management Company Representatives
3. Presentation of the Affidavit of Mailing
4. Financial Review
5. Status of the Community
6. Discussion on proposed termination of condominium
 - a. Motion to adopt appraisal and terminate the condominium
 - i. Vote to adopt the independent appraisal* procured to determine the fair market value of the Condominium;
 - ii. Vote to ratify a termination agreement* whereby the condominium will be terminated and sold in accordance with the Arizona Condominium Act (A.R.S. § 33-1228 *et seq.*)
7. Adjournment

*For your convenience and in preparation of the Annual Meeting as scheduled herein, the following documents are enclosed: 1) Official Ballot for matters to be voted upon; 2) Appraisal of Property; and 3) Proposed Condominium Termination Agreement.

27. This Notice did not include a notice to elect directors, consistent with the requirement of Annual Meetings under Section 4.1 of the Bylaws.

28. Therefore, this Notice was for a Special Meeting, rather than an Annual Meeting of the Members.

29. Along with the Notice, a draft Condominium Termination Agreement was sent to the members (“Draft Condominium Termination Agreement”); five appraisal reports prepared by K & T Appraisals dated February 5, 2019; and an incomplete and misleading copy of A.R.S. § 33-1228.

30. The Draft Condominium Termination Agreement stated that the Condo Association was agreeing to sell all ninety units to PFP Dorsey for twenty-two million six hundred forty-six thousand dollars (\$22,646,000).

31. The Draft Condominium Termination Agreement stated that at least ninety (90%) percent of the Unit Owners voted to approve the Draft Condominium Termination Agreement.

32. Further, the Draft Condominium Termination Agreement provided that the distribution of the sale shall be allocated to unit owners of five different types of property: Owners

1 of a Type A Unit will receive \$234,000 and their proportional interest in the Common Elements;
2 Owners of a Type B Unit will receive \$236,000 and their proportional interests in the Common
3 Elements; Owners of a Type C Unit will receive \$224,000 and their proportional interests in the
4 Common Elements; Owners of a Type D Unit will receive \$244,000 and their proportional
5 interests in the Common Elements; and Owners of a Type E Unit will receive \$244,000 and their
6 proportional interests in the Common Elements.

7 33. The Xia Condo was determined to be a Type A Unit.

8 34. Plaintiffs were present at the April 4, 2019 Special Meeting (“Special Meeting”).

9 35. At the Special Meeting, the members were provided with a modified Condominium
10 Termination Agreement (“Modified Condominium Termination Agreement”). The Modified
11 Condominium Termination Agreement provided that the Condo Association were agreeing to sell
12 all interests of Dorsey Place that were not already owned by PFP Dorsey.

13 36. Under Section 3.5 of the Condo Association’s bylaws, “business transacted at any
14 special meeting of Members shall be limited to the items stated in the notice unless determined
15 otherwise by a unanimous vote of the Members present at such meeting.”

16 37. The members of the Condo Association did not take a vote at the Special Meeting
17 to introduce the Modified Condominium Termination Agreement.

18 38. Had a vote of the Members been taken at the Special Meeting, the Plaintiffs would
19 have objected to introducing the Modified Condominium Termination Agreement, thereby
20 preventing the business to be transacted as indicated in Section 3.5 of the Bylaws.

21 39. Plaintiffs informed the Defendants that they were only obligated to sell the Xia
22 Condo if following the termination of the condominium, the entire project would be sold, similar
23 to a drag-along clause by the super majority.

24 40. On or around January 2, 2020, Plaintiffs learned that the Defendants changed the
25 locks on the Xia Condo; and destroyed and/or disposed of personal property in the Xia Condo.

1 52. At the Special Meeting, the members did not unanimously vote to amend the special
2 meeting notice.

3 53. The Condo Association did not notice a separate board meeting or special meeting
4 to vote on the Condominium Termination Agreement.

5 54. On November 15, 2019, the Condo Association recorded a Warranty Deed with the
6 Maricopa County Recorder’s Office, bearing recording number 2019-0923560, granting the Xia
7 Condo to PFP Dorsey.

8 55. Plaintiffs contend that this conduct violated the bylaws, rendering the proceedings
9 of the Condo Association board, and the subsequent purported transfer of title, invalid.

10 56. Under A.R.S. § 33-1228(D), “If any real estate in the condominium is to be sold
11 following termination, title to that real estate on termination vests in the association as trustee for
12 the holders of all interest in the units.”

13 57. Under A.R.S. § 33-1228(E), “If the real estate constituting the condominium is not
14 to be sold following termination, title to all the real estate in the condominium vests in the unit
15 owners on termination as tenants in common in proportion to their respective interests...”

16 58. A.R.S. § 33-1228 provides only for the sale of “all the common elements and units
17 of the condominium,” together; and as trustee, the condo association’s fiduciary duties require
18 that the entire real estate be sold for the highest possible price.

19 59. Plaintiffs contend that the Defendant Condo Association violated A.R.S. § 33-1228,
20 and breached its fiduciary duties to Plaintiffs, by forcibly selling the Plaintiffs’ unit to PFP Dorsey,
21 at a price determined by the Condo Association; rather than offering the entire “real estate
22 constituting the condominium” for sale, and selling for the highest price.

23 60. To the extent that A.R.S. § 33-1228 could be construed as giving Defendants the
24 power to compel Plaintiffs to transfer their real property to PFP Dorsey, it is tantamount to an
25 unconstitutional taking that lacks a public purpose and the statute is therefore
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1 invalid/unenforceable. Because Plaintiffs do not allege a facial challenge to the statute, but rather
2 an “as-applied” challenge, A.R.S. § 12-1841 does not apply.

3 **COUNT II**

4 **Quiet Title**

5 61. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

6 62. The Plaintiffs are credibly informed and believe Defendants have made claims
7 adverse to the Plaintiffs’ interests in the Xia Condo.

8 63. The Plaintiffs requests that the Court order that Plaintiffs are the lawful owners of
9 the Xia Condo (and/or, of an undivided interest in the real estate formerly constituting the
10 condominium).

11 64. The Plaintiffs request that the Defendant be barred and forever estopped from
12 having or claiming any right or title to the Xia Condo adverse to Plaintiffs.

13 65. The Plaintiffs request an award of their attorneys’ fees and costs pursuant to A.R.S.
14 § 12-1103.

15 **COUNT III**

16 **Civil Trespass, Conversion**

17 66. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

18 67. On January 30, 2018, Plaintiffs acquired title to the Xia Condo.

19 68. On April 9, 2019, the Defendants recorded the Condominium Termination
20 Agreement with the Maricopa County Recorder’s Office, bearing recording number 2019-
21 0248170.

22 69. The Condominium Termination Agreement was not adopted by the Condo
23 Association consistent with the Declaration with Amendments or the Bylaws and Arizona statute,
24 and therefore invalid.

25 70. As of April 9, 2019, the Plaintiffs still held title to the Xia Condo.
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1 71. On or before January 2, 2020, Defendants caused the locks on the Xia Condo to be
2 changed.

3 72. On or before January 2, 2020, Defendants destroyed personal property and
4 belongings, which were in the Xia Condo and belonged to Plaintiffs.

5 73. According to a representative of PFP Dorsey, the personal property and belongings
6 were either thrown away or donated.

7 74. The Defendants took these actions, because they knew that the Plaintiffs were
8 disputing the Condominium Termination Agreement, and because a Complaint had been filed in
9 this action in November 2019.

10 75. The Defendants took these actions with malice, fraud, oppression, and with a
11 conscious and wanton disregard for the rights and interests of Plaintiffs because they disputed the
12 Condominium Termination Agreement and because the Complaint had been filed in this Action.
13 Therefore, Plaintiffs are entitled to an award of punitive and exemplary damages.

14 **Count IV**

15 **Breach of Fiduciary Duty**

16 76. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

17 77. Plaintiffs were minority members of the Condo Association, a nonprofit
18 corporation.

19 78. As a majority member of the Condo Association, PFP Dorsey owed fiduciary duties
20 to the Plaintiffs.

21 79. If the condominium were validly terminated, and any real estate in the condominium
22 were to be legally sold following termination, then the Condo Association became a “trustee for
23 the holders of all interest in the units,” including Plaintiffs, by which it owed them a fiduciary
24 duty.

1 80. Defendants breached their fiduciary duties by forcing Plaintiffs to involuntarily sell
2 their condo to PFP Dorsey, at a price that it determined, and without publicly offering the entire
3 real estate constituting the condominium for sale, in order to obtain the best price.

4 81. Defendants breached their fiduciary duties by deliberately conducting invalid condo
5 association meeting(s) over Plaintiffs' objection.

6 82. Defendants breached their fiduciary duties by destroying and/or otherwise disposing
7 of the Plaintiffs' personal property.

8 83. Plaintiffs are therefore entitled to a constructive trust over the Xia Condo (and/or
9 the real estate formerly constituting the condominium), and damages in an amount to be
10 determined at trial.

11 84. The Defendants took these actions with malice, fraud, oppression, and with a
12 conscious and wanton disregard for the rights and interests of Plaintiffs because they disputed the
13 Condominium Termination Agreement and because the Complaint had been filed in this Action.
14 Therefore, Plaintiffs are entitled to an award of punitive and exemplary damages.

15 **COUNT V**

16 **Unjust Enrichment**

17 85. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

18 86. Defendant PFP Dorsey, by its actions, has been unjustly enriched.

19 **COUNT VI**

20 **Ejectment, Constructive Trust**

21 87. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

22 88. Plaintiffs have a valid subsisting interest in the Xia Condo and a right to immediate
23 possession thereof. They are therefore entitled to recover possession from Defendants.

1 89. Defendants have obtained, or sought to obtain title to the Xia Condo through actual
2 fraud, misrepresentation, concealment, undue influence, duress and other means which render it
3 unconscionable for Defendants to continue to retain and enjoy its beneficial interest.

4 90. Plaintiffs therefore seek an order of ejectment and the imposition of a constructive
5 trust over the Xia Condo.

6 **COUNT VII**

7 **Wrongful Recording**

8 91. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

9 92. PFP Dorsey purports to claim an interest in, or a lien or encumbrance against, the
10 Xia Condo (and/or real estate formerly constituting the condominium), and caused a document
11 asserting that claim to be recorded in the office of the county recorder, knowing or having reason
12 to know that the document is forged, groundless, or contains a material misstatement or false
13 claim.

14 93. Plaintiffs provided notice to PFP Dorsey on May 6, 2020 pursuant to A.R.S. § 33-
15 420, with regard to the wrongful recording.

16 94. PFP Dorsey has not corrected the recording which is forged, groundless, or contains
17 a material misstatement or false claim.

18 95. PFP Dorsey is therefore liable to Plaintiffs, as the owner or beneficial title holder of
19 the real property, for the sum of not less than five thousand dollars, or for treble the actual damages
20 caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

21 **GENERAL PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs respectfully seek a judgment against Defendants that:

23 A. Quiets title to the Xia Condo in their favor (and/or their undivided interest of the
24 real estate formerly constituting the condominium); declares that the termination of
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the condominium was invalid; and/or imposes a constructive trust over the Xia Condo (or real estate formerly constituting the same);

- B. Declares that, to the extent A.R.S. § 33-1228 could be construed as giving Defendants the power to compel Plaintiffs to transfer their real property to PFP Dorsey, it is tantamount to an unconstitutional taking that lacks a public purpose and the statute is therefore invalid/unenforceable;
- C. Provides that Plaintiffs are entitled to recover possession of the Xia Condo, and/or imposes a constructive trust over the Xia Condo;
- D. For damages in an amount to be determined at trial, including punitive damages;
- E. For attorneys’ fees and costs under any applicable authority, including A.R.S. §§ 12-1103, 12-341, 33-420, and 12-341.01;
- F. For such other relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED July 6, 2020.

WILENCHIK & BARTNESS, P.C.

/s/ John D. Wilenchik _____
Dennis I. Wilenchik, Esq.
John “Jack” D. Wilenchik, Esq.
Ross P. Meyer, Esq.
The Wilenchik & Bartness Building
2810 North Third Street
Phoenix, Arizona 85004
admin@wb-law.com
Attorneys for Plaintiffs

1 **ELECTRONICALLY** filed July 6,
2020, via AZTurboCourt.com.

2 **COPY** electronically transmitted by the Clerk of
3 the Court via AZTurboCourt.com
4 to the Honorable Daniel Martin

5 **COURTESY COPY** emailed on
July 6, 2020, to:

6 Nicholas C. Nogam, Esq.
7 Edith Rudder, Esq.
8 **CARPENTER, HAZLEWOOD,**
9 **DELGADO & BOLEN, LLP**
10 1400 East Southern Ave., #400
11 Tempe, Arizona 85282
12 nicholas@carpenterhazlewood.com
13 edith.rudder@carpenterhazlewood.com
14 *Attorneys for Defendant Dorsey Place Condominium Association*

11 Shawna Murphy Woner, Esq.
12 **GARREY, WONER, HOFFMASTER &**
13 **PESHEK**
14 6611 North Scottsdale Road
15 Scottsdale, Arizona 85250
16 swoner@gwhplaw.com
17 *Attorneys for Defendant PFP Dorsey*
18 *Investments, LLC*

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By /s/ Christine M. Ferreira