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7 *Attorneys for Defendant Dorsey Place Condominium*  
8 *Association*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

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

14 **Plaintiffs,**

15 **v.**

16 **PFP DORSEY INVESTMENTS, LLC,**  
17 **a Delaware limited liability company;**  
18 **DORSEY PLACE CONDOMINIUM**  
19 **ASSOCIATION, an Arizona nonprofit**  
20 **corporation**

21 **Defendants.**

**Case No. CV2019-055353**

**DEFENDANT DORSEY PLACE**  
**CONDOMINIUM ASSOCIATION’S**  
**REPLY IN SUPPORT OF ITS MOTION**  
**TO DISMISS**

**OR IN THE ALTERNATIVE**

**MOTION FOR**  
**MORE DEFINITE STATEMENT**

(Assigned to the Honorable  
Daniel Martin)

**ORAL ARGUMENT REQUESTED**

22  
23 Defendant Dorsey Place Condominium Association (the “Association”), hereby  
24 submits its Reply in Support Motion to Dismiss or in the alternative, its Motion for More  
25 Definite Statement in this matter; as follows.

26 ...  
27

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. There Is Nothing in The Statute Requiring The Sale Of All Aspects Of**  
3 **Condominium Upon Termination; However, if There Were, The**  
4 **Complaint And Response Concede The Association Complied With**  
5 **That Requirement**

6 The majority of Plaintiffs’ Response (the “Response”) focuses on the notion that  
7 A.R.S. §33-1228 requires that all or none of the real estate in the condominium be sold to  
8 a third party upon termination. Basically, Plaintiffs argue the Association must either hold  
9 all or none of the property constituting the condominium following the termination and an  
10 alleged sale of less than all of the property constitutes a failure to comply with A.R.S. §33-  
11 1228 (2018 version), thereby voiding the termination. While not expressly stated in the  
12 statute, it is interesting that nowhere in the Response or Complaint do Plaintiffs allege the  
13 Association failed to sell all of the condominium property.

14 In fact, the opposite is true – as conceded in the Complaint and demonstrated in the  
15 Termination Agreement, as part of the termination process, all of the property within the  
16 condominium was ultimately possessed by an entity other than the Association.  
17 Specifically, the Association did not retain any of the property and instead PFP Dorsey  
18 took title to the entire property following the termination. See Complaint at ¶ 35. This  
19 transfer satisfies Plaintiffs’ concerns in this regard and supports the Association’s position  
20 that the Complaint does not present a claim upon which relief can be granted since they  
21 have to concede the Association complied with the requirements of A.R.S. §33-1228.  
22 That is, unless Plaintiffs are arguing that the Association was required to sell all the  
23 property to an entity other than PFP Dorsey, which already held 90 out of the 96 Units. If  
24 this is Plaintiffs’ argument, it is illogical and inefficient. Instead, Plaintiffs’ concerns on  
25 this aspect should be placated by knowing that the Association did its job and ensured the  
26 entire property (all the Units and Common Elements) were owned by one entity as part of  
27 the termination process.

1 In the Complaint, Plaintiffs allege that all the real estate, including that already  
2 owned by PFP Dorsey, needed to be put up for sale as part of the termination. See  
3 Complaint at ¶ 59. Of course, nothing in the statute requires this, nor do Plaintiffs cite to  
4 any authority suggesting such an illogical conclusion nor should it be read as such by the  
5 Court. “We construe related statutes in the context of the statutory scheme and strive to  
6 achieve consistency among them. We also strive to avoid an absurd result, which is  
7 defined as one ‘so irrational, unnatural, or inconvenient that it cannot be supposed to have  
8 been within the intention of persons with ordinary intelligence and discretion.’” *Ariz.*  
9 *Dep’t of Revenue v. S. Point Energy Ctr., LLC*, 228 Ariz. 436, 439, ¶ 12, 268 P.3d 387,  
10 390 (App. 2011) (citation omitted) (quoting *Perini Land & Dev. Co. v. Pima County*, 170  
11 Ariz. 380, 383, 825 P.2d 1, 4 (1992)). Absent statutory definitions, courts apply common  
12 meanings to words and phrases used in a statute. *S. Point Energy*, 228 Ariz. at 440, ¶ 15,  
13 268 P.3d at 391. *Siete Solar, LLC v. Arizona Dep’t of Revenue*, 246 Ariz. 146, 150, 435  
14 P.3d 1052, 1056 (Ct. App. 2019), *review denied* (Aug. 27, 2019) (internal citations  
15 omitted).

16 Plaintiffs’ proposed interpretation would make no sense in application. If the  
17 majority holder of the Units, say 90% wanted to terminate and did so, their interpretation  
18 would be that unless the majority holder sold its 90% interest upon termination, that the  
19 termination would not be valid. Obviously, this is the case in this matter – here, PFP  
20 Dorsey owned 90/96 of the Units and opted to terminate the condominium.

21 Even though hyperbole is not really necessary in this matter, it helps. If there were  
22 a 10,000 Unit condominium and one entity owned 9,999 of the Units, Plaintiffs’  
23 proposition is that the intent of the statute would be that the one remaining Unit could not  
24 simply be sold to the majority owner upon termination, but rather that the 9,999 Units  
25 must be part of a sale to a third party. Clearly, the intent of the statute is not for this  
26 ridiculous situation, which is actually only slightly more ridiculous than Plaintiffs’  
27 proposal in this matter, i.e. that PFP Dorsey must make its 90 Units part of any sale or this

1 entire termination, admittedly done by the Association in compliance with the 2018  
2 version of A.R.S. §33-1228, is void.

3 What is lacking in the Response is any explanation as to WHY this would be a  
4 logical reading of the statute, i.e. why the statute is best read as requiring all or nothing.  
5 The statute contains no such requirement and there is no support for this strange reading.  
6 Here, to the extent Plaintiffs are arguing that the termination statute should be read in a  
7 manner that does not allow the Association to sell the remaining six Units to PFP Dorsey  
8 as part of the termination process, that is an absurd result that simply cannot be supported.  
9 Accordingly, Plaintiffs do not allege a claim upon which relief can be granted, since they  
10 acknowledge the Association complied with the statute in all regards. On this basis, the  
11 Association's Motion to Dismiss should be granted.

12 **B. Tenancy in Common is a Non-Issue**

13 Plaintiffs' discussion in the Response regarding tenants in common would only  
14 come into effect if there is no sale agreement as part of the termination. See A.R.S. §33-  
15 1228(E) ("If the real estate constituting the condominium is not to be sold following  
16 termination, title to all the real estate in the condominium vests in the unit owners as  
17 tenants in common..."). Here, following termination, title to the real estate constituting  
18 the condominium was held by one entity (PFP Dorsey) pursuant to the Termination  
19 Agreement, as stated in the Complaint and Termination Agreement. Accordingly, the  
20 portion of the Response regarding tenancy in common and the Association being a trustee  
21 is another red herring and the Court should disregard these arguments.

22 **C. The Association Did Not Sell Property to Itself – It Agreed To A Sale**  
23 **To The Majority Owner (PFP Dorsey)**

24 Plaintiffs also argue that the Association breached its duty as a trustee by selling  
25 the remaining property to "itself" thereby violating its fiduciary duty to the holder of all  
26 interests in the units." Response at 8. This argument is baseless. The Association was  
27 never tasked with acting as a trustee for the Property, since the Property was sold pursuant

1 to the Termination Agreement, as stated in the Complaint. Anything to contrary is simply  
2 a red herring.

3         However, it is worth addressing the allegation that the Association sold the property  
4 to itself. Based on the information in the Complaint, the terms of the sale of the remaining  
5 property of the Condominium was that the property would be sold to PFP Dorsey at the  
6 termination. Complaint at ¶35. By the plain language of the Termination Agreement and  
7 the Complaint, the Property was not sold to the Association, it was all sold to third party;  
8 i.e. PFP Dorsey. Therefore, to the extent to Plaintiffs allege otherwise in their Response,  
9 the Complaint and Termination Agreement make it clear that the Association did not sell  
10 the property to itself – the Property was sold to a separate entity, PFP Dorsey, pursuant to  
11 the terms of a duly-executed termination agreement and the terms of sale.

12         The statute has built-in protections for this scenario in its requirement that a fair  
13 price be paid for any Units to be sold as part of the termination process. This ensures that  
14 any Owner who feels aggrieved by the price has a remedy and it also ensures that any sale  
15 of the property, such as this one, is done to a bona fide purchaser. Those are the  
16 requirements in the statute. Plaintiffs' arguments that the majority holder of Units cannot  
17 be the entity/individual to whom the remaining Units are sold has no basis in either the  
18 statute or any other legal authority. Accordingly, the Plaintiffs remain unable to  
19 demonstrate how the Complaint alleges a claim upon which relief can be granted. On  
20 this ground, the Association's Motion to Dismiss must be granted.

21                   **D. The Plaintiffs Provide No Basis for Why a Defective Meeting Notice**  
22                   **Voids the Termination Agreement**

23         The Response includes a significant portion addressing the alleged noncompliance  
24 with the Association's Bylaws with regards to providing notice of an annual meeting. This  
25 argument is yet another red herring. The applicable version of A.R.S. §33-1228 (2018)  
26 does not require a meeting of the membership at any point, properly called or not.  
27 Plaintiffs' arguments regarding the Association's alleged failure to comply with its bylaws

1 have no bearing on this case in the face of the Association's compliance with the  
2 applicable statute.

3 The Plaintiffs' citations in this regard are unavailing. *Nelson v. Phoenix Resort*  
4 *Corp.* 181 Ariz. 188, (App. 1994), is a case where the issue of bylaw compliance  
5 concerned whether an employment contract was valid based on compliance with a  
6 requirement in the corporation's bylaws regarding shareholder approval of a decision  
7 affecting the subject employment contract. *Id.* at 193-194. This is clearly not the situation  
8 here, as the Association's Bylaws do not address the termination process; instead, only the  
9 Association's CC&Rs contain such requirements, all of which were complied with, as  
10 conceded in the Complaint. Complaint at ¶ 22. Accordingly, the discussion regarding  
11 compliance with the Bylaws is yet another red herring.

12 **E. A.R.S. §33-1228 Serves a Purpose and is Constitutional.**

13 While it is not necessarily the Association's obligation to justify the  
14 constitutionality of A.R.S. §33-1228, the issue here must be properly framed. The  
15 Association's termination process stems from a provision in its CC&Rs, which constitute  
16 a contract between the Association and its members. See *Powell v. Washburn*, 125 P.3d  
17 373, 374 (Ariz. 2006).

18 Article 12, Section 13.4 of the CC&Rs allows the Association to terminate the  
19 condominium upon the vote of 90% of its members. This provision allows the  
20 membership a way out of the condominium and guarantees them an opportunity to receive  
21 compensation in the event an entity or individual wishes to purchase the property. There  
22 is a reason for this contractual provision and all Owners have legal knowledge of and are  
23 bound by the same when they take title to their Unit within the Association. That would  
24 be the extent of the authority for a termination and would certainly suffice for the same.

25 However, the Arizona legislature adopted A.R.S. §33-1228 to ensure that this  
26 process would be fair and equitable for all condominium owners by ensuring a high  
27 enough percentage of owners agrees to the same (80% under the statute) and that sufficient

1 appraisals are guaranteed to ensure a fair price is paid per Unit. Accordingly, Plaintiffs’  
2 argument that this statute is unconstitutional because it “grants” the ability to terminate  
3 this condominium is misleading and yet another red herring. Simply put, the ability to  
4 terminate the condominium exists independent of this statute –the statute merely  
5 establishes safeguards to make the process more equitable. Accordingly, there are no  
6 grounds to deem the statute unconstitutional.

7 **F. The Association’s Motion for More Definite Statement is Uncontested**  
8 **and Should be Granted as Submitted**

9 Concurrent with, and in the alternative to, its Motion to Dismiss, the Association  
10 submitted a Motion for More Definite Statement, requesting that Plaintiffs be required to  
11 provide more specificity for their Complaint, specifically in the form of specific  
12 delineation of which count is directed towards which Defendant, as the current form of  
13 the Complaint makes it unreasonable for Defendants to respond to the same. Plaintiffs  
14 failed to provide a response or otherwise contest this motion, so the Court should grant it  
15 at this time, pursuant to Rule 7.1(b)(2), Ariz.R.Civ.P.

16 **CONCLUSION**

17 The Plaintiffs’ Response provides no reasonable arguments to refute those in the  
18 Association’s Motion to Dismiss. Plaintiffs simply do not allege a claim upon which relief  
19 can be granted because they concede the Association strictly complied with A.R.S. §33-  
20 1228 when it terminated the condominium pursuant to its governing documents.  
21 Accordingly, the Plaintiffs’ Complaint must be dismissed at this time and the Association  
22 awarded its attorney’s fees and costs incurred in this matter pursuant to the CC&Rs at  
23 Article 13, Section 13.15, A.R.S. §§12-341, 12-341.01 and 12-349.

24 In the alternative, the Plaintiffs must be ordered to provide a more definite  
25 statement delineating which counts in their Second Amended Complaint apply to which  
26 defendant in this matter.

27 ...

1 RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of October, 2020.

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3  
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9 ORIGINAL E-filed w/the Superior Court  
10 This 5<sup>th</sup> day of October 2020 at:

11 [www.AZTurboCourt.gov](http://www.AZTurboCourt.gov)

12 COPY of the foregoing mailed and emailed  
13 This 5<sup>th</sup> day of October 2020 to:

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