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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9
10 Lisa Marx
11 Plaintiff,

Case No. CV 2025-012980

12 vs.

13 Tara Condominiums Association, Inc.,

14 **PLAINTIFF'S MOTION FOR**
15 **PARTIAL SUMMARY JUDGMENT**
16 **AND MEMORANDUM IN**
17 **SUPPORT (CLAIMS 32 AND 76; 39**
18 **AND 84; 83; 44 AND 89)**

19 Honorable Adele Ponce

20 Plaintiff Lisa Marx moves, pursuant to Ariz. R. Civ. P. 56, for partial summary
21 judgment on Claims 32 and 76, 39 and 84, 83, and 44 and 89 of the Second Amended
22 Complaint. Each claim challenges an action the Association took on behalf of the
23 owners of the units without the majority vote of the Board at an open meeting that
24 Declaration § 9.E and A.R.S. § 33-1248 require. The material facts are established by the
Association's own records and admissions and are set out in the concurrently filed
Separate Statement of Facts ("SSOF"). This Motion is supported by the following

1 Memorandum, the SSOF, the Index of Exhibits, and the Declaration of Lisa Marx.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Tara Condominiums is a condominium governed by the Arizona Condominium Act,
5 A.R.S. § 33-1201 et seq., and by a Declaration of Restrictions recorded in 1970. Two
6 requirements govern every act the Board takes on behalf of the owners. First, authority:
7 under Declaration § 9.E, only “a majority vote of the Managers shall entitle said Board
8 to carry out action on behalf of the owners of the units,” and no individual officer may
9 exercise the corporation’s powers alone. A.R.S. § 10-3801(B). Second, process: under
10 A.R.S. § 33-1248, meetings of the association and the board are open to the members,
11 who may attend and must be allowed to speak before the board takes formal action,
12 and “all provisions” of that section “shall be construed in favor of open meetings.” §
13 33-1248(A), (F).

14 Each action challenged here failed both requirements. In 2024 and 2025 the Association
15 performed landscaping and repair work on the common elements through hand-
16 selected participants (Claims 32 and 76), spent Association funds on a Home Depot
17 purchase (Claims 39 and 84), opened a second bank account and transferred \$11,513.77
18 into it (Claim 83), and had tree work performed on the common elements outside its
19 approved landscaping contract (Claims 44 and 89) — in every instance without a
20 majority vote of the Board taken at a properly noticed open meeting. The Association’s
21 own notices, minutes, and financial records prove that no such vote occurred. A formal
22 action taken outside an open meeting, or by an officer with no board vote, is not merely
23 irregular; it is void. The Court may so declare as a matter of law and enjoin the
24 Association from continuing to act without the vote its governing documents require.

II. STATEMENT OF MATERIAL FACTS

Plaintiff owns Unit 5 of Tara Condominiums and is a member of the Association subject to its governing documents. (SSOF ¶¶ 1-3.) The Association is an Arizona nonprofit corporation governed by its Declaration of Restrictions, By-Laws, and Articles of Incorporation. (SSOF ¶¶ 1-2.) Mark Gottmann acted as Chairperson of the Board at all times relevant to this action. (SSOF ¶ 4.) The Association produced its 2024 and 2025 Board meeting notices, agendas, and minutes and its financial records in discovery, and Plaintiff has reviewed all of them; none reflects any open-meeting vote, motion, discussion, agenda item, or notice authorizing the actions challenged here. (SSOF ¶¶ 5-50.) The facts specific to each claim are set out in the SSOF and cited in the argument below.

III. LEGAL STANDARD

Summary judgment “shall” be granted where “there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a). The opposing party may not rest on the allegations of its pleadings and must set forth specific admissible facts showing a genuine issue for trial. Ariz. R. Civ. P. 56(e). Summary judgment is proper where the evidence offered against the motion has “so little probative value ... that reasonable people could not agree with the conclusion advanced by the proponent.” *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). Where, as here, the material facts are established by the opposing party’s own records and admissions and the only dispute is their legal effect, the matter is one for the Court: the interpretation of a recorded declaration and of a statute are questions of law. *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, ¶ 9, 506 P.3d 18 (2022). The Condominium Act applies to Tara without regard to its 1970 creation date. A.R.S. § 33-

1 1201. Plaintiff seeks declaratory relief under the Uniform Declaratory Judgments Act,
2 A.R.S. § 12-1831 et seq.

3 IV. ARGUMENT

4 **A. The Governing Documents and the Condominium Act Permitted the Board To** 5 **Act Only by a Majority Vote of the Managers Taken at an Open Meeting.**

6 The Board of Management has no inherent authority. It exists only because the
7 Declaration created it and the Condominium Act recognizes it, and it holds only the
8 powers those instruments give it, on the conditions they impose. Take away the
9 governing documents and the statutes, and the Board has no authority at all.
10 Authority runs through the Declaration. Declaration § 9.E provides that only “a
11 majority vote of the Managers shall entitle said Board to carry out action on behalf of
12 the owners of the units.” (SSOF ¶ 5.) The Act reinforces, rather than displaces, that gate:
13 the association exercises its powers only “subject to the provisions of the declaration”
14 (A.R.S. § 33-1242(A)), and the board’s powers are defined “except as provided in the
15 declaration or the bylaws” (A.R.S. § 33-1243(A)). At the corporate level, “all corporate
16 powers shall be exercised by or under the authority of” the board of directors (A.R.S. §
17 10-3801(B)); no single officer, including the Chairperson, may exercise them alone.
18 Process is supplied by the open-meeting statute. Meetings of the association and the
19 board “are open to all members,” who may attend and must be allowed to speak once
20 after the board discusses an agenda item but before it “takes formal action” on it. A.R.S.
21 § 33-1248(A). Notice and an agenda must be given at least forty-eight hours in advance.
22 § 33-1248(D). A meeting may be closed only for the narrow purposes the statute
23 enumerates, and only after the board first identifies the paragraph authorizing the
24 closure. § 33-1248(C). Every provision “shall be construed in favor of open meetings.” §

1 33-1248(F). All voting and formal action must occur in open session, and the agenda
2 must reasonably apprise members of the matter to be acted upon. *AZNH Revocable*
3 *Trust v. Sunland Springs Village Homeowners Ass’n*, No. 1 CA-CV 25-0424 (Ariz. App.
4 Apr. 28, 2026) (construing the materially identical open-meeting provision of the
5 Planned Communities Act, A.R.S. § 33-1804, which applies with equal force to § 33-
6 1248).

7 By-Law § 1.03 does not supply the missing authority. It provides that the Chairperson
8 “shall appoint needed committees, the committee chairperson and shall serve as an
9 advisor to such committees.” (SSOF ¶ 22.) That is the whole of the Chairperson’s role as
10 to committees: he may appoint a committee and advise it. Appointing a committee is a
11 narrow, ministerial function — not a grant of power to act on the Association’s behalf.
12 A committee is advisory only, and the Chairperson serves it as an advisor, not a
13 decision-maker. Nothing in § 1.03 authorizes the Chairperson, or a committee, to
14 decide who may perform work on the common elements or to take any other action for
15 the owners. Those remain actions of the Board, which the Declaration permits only by a
16 § 9.E majority vote taken at an open meeting. The By-Laws reinforce that the Board acts
17 as a body, not through individual officers: they place on “the Board of Management”
18 the duty to “impartially administer the regulations governing the use and occupancy of
19 the units.” By-Law § 1.08. Deciding, alone, who may work on the common elements is
20 not that collective administration; it is Board action the Declaration reserves to a § 9.E
21 vote. The Chairperson’s limited appointment power is therefore no substitute for that
22 vote: the Board still had to vote to authorize the participation and work decisions
23 challenged here, and its own records show it never did.

24 The vote requirement distinguishes ministerial execution from new discretionary

1 action. Once the Board has authorized a decision by a § 9.E vote at an open meeting,
2 carrying it out is ministerial and requires no further vote — the manager may pay an
3 already-approved invoice, and work the Board has already directed may be performed.
4 Committing the Association to something new is not ministerial. Spending funds not
5 already approved, opening a bank account and moving money into it, engaging or
6 paying a vendor for work outside an approved contract, and deciding which members
7 may perform work on the common elements are each “action on behalf of the owners
8 of the units” that Declaration § 9.E and A.R.S. § 33-1248 require the Board to take by a
9 vote at an open meeting. Every act challenged in this Motion falls on the new-action
10 side of that line: none merely executed a decision the Board had already made in an
11 open vote, and the Association’s own records show no such prior authorization.

12 **B. Claims 32 and 76 — The 2024 Landscaping and Participation Decisions Were**
13 **Made Without Any Open-Meeting Vote and Are Void.**

14 The Association’s own Spring 2024 Newsletter records that Gottmann, Anderson, and
15 named individuals performed landscaping and repair work on the common elements.
16 (SSOF ¶¶ 11-15, 17.) Former director Renee Snow’s sworn affidavit confirms that
17 Gottmann and Anderson “performed work on the common areas of the Association
18 without a vote of the Board and without an open meeting.” (SSOF ¶ 16.) The
19 Association produced its complete 2024 Board meeting notices and minutes, and none
20 contains any agenda item, motion, discussion, or vote authorizing that work or
21 establishing any process for who would perform it. (SSOF ¶¶ 18-20.) When Plaintiff
22 asked the Board in writing when it had voted to approve the 2024 projects and
23 submitted a statutory records request, the Association produced no notice, minutes,
24 motion, or vote authorizing any of the work. (SSOF ¶¶ 23-27.) The decisions were

1 therefore action taken on behalf of the owners with no § 9.E vote — void from the
2 outset.

3 The July 27, 2024 retroactive-approval motions do not cure the defect. A void act took
4 no legal effect and cannot be ratified. In any event, those motions purported to
5 approve, in a single lump, both work already performed and work to be performed
6 “through the end of 2024,” without the item-by-item vote § 9.E requires; members
7 objected on the record, and the Board held the vote as written over that objection.
8 (SSOF ¶¶ 33–35.) An after-the-fact blanket approval is not the open-meeting
9 authorization the governing documents demand.

10 **C. Claims 39 and 84 — The \$50.79 Expenditure Was Made Without a Vote and Is**
11 **Void.**

12 On July 2, 2024, a voucher was submitted for a \$50.79 Home Depot purchase, and the
13 July 2024 financial statement shows the \$50.79 charged to Account 544. (SSOF ¶¶ 36–
14 37.) The June 15, 2024 and July 27, 2024 notices and minutes contain no agenda item,
15 motion, or vote authorizing the expenditure. (SSOF ¶¶ 38–41.) Spending Association
16 funds is “action on behalf of the owners of the units” under § 9.E; taken without a vote,
17 the expenditure is void.

18 **D. Claim 83 — The Second Bank Account and the \$11,513.77 Transfer Were Made**
19 **Without a Vote and Are Void.**

20 On June 10, 2024, the Association opened a second bank account and transferred
21 \$11,513.77 into it from the Association’s existing account, as its June 2024 bank
22 statements show. (SSOF ¶ 42.) The June 15, 2024 notice and minutes contain no agenda
23 item, discussion, motion, or vote concerning the account or the transfer, and no
24 emergency was declared. (SSOF ¶¶ 43–45.) Opening a bank account and moving

1 Association funds is action on behalf of the owners; taken without a § 9.E vote, it is
2 void.

3 **E. Claims 44 and 89 – The Lopez Tree Work Was Authorized Without a Vote and**
4 **Is Void.**

5 In March 2025, Lopez Landscaping performed work on the common elements,
6 including a dead-branch removal in Del Mar Court at the direction of Chairperson
7 Gottmann. (SSOF ¶¶ 46–47.) The February 22, 2025 notice and minutes contain no
8 agenda item, discussion, motion, or vote authorizing the hire or the work. (SSOF ¶¶
9 48–50.) Having tree work performed on the common elements is action on behalf of the
10 owners; taken without a § 9.E vote, it is void.

11 The Association cannot avoid this result by characterizing Lopez as its standing
12 landscaper. Its own Gardener Service Agreement with Lopez provides that “Any trees
13 serviced must have prior approval from the Board of Directors in writing along with an
14 estimate of additional costs.” (SSOF ¶ 51.) Because that approval must come from the
15 Board of Directors, and under Declaration § 9.E the Board can act only by a majority
16 vote at an open meeting, the required approval could be given only by such a vote. The
17 Chairperson's direction of the work, standing alone, was not Board approval. The
18 March 2025 work was tree service – trimming and gleaning ornamental orange trees
19 and removing a tree branch – and so required separate written Board approval
20 regardless of any routine landscaping arrangement; none was given, and no open-
21 meeting vote authorized it. The written agreement, moreover, was the 2024 contract,
22 which commenced January 1, 2024; when Plaintiff requested the 2025 Lopez contract,
23 the Association stated during the records review that the 2025 contract is verbal. (EX
24 147, 148, and 149; TARA000156; TARA000157; Marx Decl. ¶¶ 8–9.) Whether the

1 engagement was written or oral, tree work on the common elements required Board
2 approval by a § 9.E vote taken at an open meeting, and the Association's records show
3 none.

4 **F. These Acts Are Void, Not Merely Voidable.**

5 Each challenged act is void, not merely voidable. An act is void — not voidable —
6 when the actor had no authority to take it at all. Whether a corporate act is ultra vires,
7 and therefore void, is a question of law. *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100
8 Ariz. 107, 113–14 (1966); see A.R.S. § 10-3801(B); *Sycamore Hills Estates HOA v. Zablotny*,
9 250 Ariz. 479, ¶ 6, 481 P.3d 700 (App. 2021). An action taken without the vote the
10 governing documents require “did not authorize anything.” *Prieve v. Flying Diamond*
11 *Airpark, LLC*, 252 Ariz. 195, ¶ 6, 500 P.3d 1045 (App. 2021). A void act is a nullity — it
12 took no legal effect, needs no unwinding, and cannot be ratified. Declaring these
13 actions void is therefore not the overbroad invalidation of otherwise-valid Board
14 decisions; it is the recognition that acts taken without the § 9.E vote never took effect.

15 **G. No Defense Saves These Acts.**

16 The business-judgment rule does not apply. Arizona declines business-judgment
17 deference for a homeowners' association and instead applies a reasonableness
18 standard. *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 201 ¶ 25, 165 P.3d
19 173, 179 (App. 2007); Restatement (Third) of Property: Servitudes § 6.13. The good-faith
20 presumptions for directors and officers, A.R.S. §§ 10-3830(D) and 10-3842(D), are
21 rebuttable only by clear and convincing evidence and are inapposite in any event: those
22 presumptions protect discretionary judgments made within a director's or officer's
23 authority; they cannot supply authority the Board never obtained by a § 9.E vote.
24

1 **H. The Association’s Practice of Acting Without a Vote Is Ongoing and Deliberate,**
2 **and an Injunction Is Warranted.**

3 The violations proved above are not isolated historical missteps; the Association
4 continues the same practice, and does so knowingly. At the Board’s February 8, 2026
5 meeting, when director Dennis Anderson stated that for any committee project
6 “everybody will be notified, and anybody that wants to help on it, are more than
7 welcome to join us,” Chairperson Gottmann immediately overruled him on the record
8 – “No, Mickey, No” – and the acting chair agreed. (EX 18 TRANSCRIPT 17:17–17:29.)
9 When Plaintiff asked at the same meeting how members are notified of volunteer
10 opportunities, observing that “there’s never anything put out,” acting chair Buschart
11 answered, “That is something we are working on.” (EX 18 TRANSCRIPT 10:35–10:43.)
12 These are the Association’s own statements, Ariz. R. Evid. 801(d)(2), and they establish
13 two things. First, more than two years after the conduct challenged here, the
14 Association still has established no open, noticed process for member participation and
15 still controls participation from the top. Second, the Association’s course of conduct is
16 deliberate, not a good-faith oversight – which independently forecloses any reliance
17 on the good-faith presumptions of A.R.S. §§ 10-3830(D) and 10-3842(D).
18 The Association’s control of participation is longstanding and deliberate. Plaintiff, who
19 had led the Landscaping Committee, was removed and the committee dissolved in a
20 closed executive session rather than by an open-meeting vote. (SSOF ¶¶ 6–10, 21.) In
21 2025 the Association’s counsel sent cease-and-desist letters demanding that Plaintiff
22 and another owner stop maintaining the common elements (SSOF ¶¶ 28–31), while the
23 Board credited its own members for the same work and Plaintiff paid for common-area
24 materials from her own funds (SSOF ¶ 32). The By-Laws require the Board to

1 “impartially administer the regulations governing the use and occupancy of the units”
2 (By-Law § 1.08); acting instead through a closed, hand-picked group while excluding
3 Plaintiff is the opposite of impartial administration and confirms that the failure to vote
4 is a deliberate practice, not an oversight.

5 Because the Association’s practice of acting on behalf of the owners without the § 9.E
6 vote and the § 33-1248 open meeting is ongoing and likely to recur, a declaration alone
7 will not protect Plaintiff or the members. An injunction requiring the Association to act
8 only by a majority vote of the Board taken at a properly noticed open meeting is
9 necessary to prevent the continuing and threatened violation.

10 **I. The Claims Are Direct, Not Derivative, and Plaintiff Has Standing.**

11 Plaintiff’s claims are direct, not derivative. The distinction turns on the nature of the
12 injury and the right vindicated, not on the breadth of any remedy’s benefit; Plaintiff
13 pleads a direct, individualized harm distinct from that of other members. (SAC ¶ 2.)
14 This Court has already ruled that Plaintiff’s claims are not derivative. (Minute Entry,
15 June 24, 2025.) And A.R.S. § 10-3304(B)(2) authorizes any member of a condominium
16 association to bring a proceeding to enjoin an unauthorized act, with no membership-
17 percentage threshold. Plaintiff owns Unit 5, is a member subject to the governing
18 documents, and is individually subject to and injured by the Association’s practice of
19 acting without the vote its governing documents require.

20 **V. CONCLUSION**

21 The relief Plaintiff requests is directed to the Board’s authority, not to the rights of any
22 absent person. Plaintiff asks the Court to declare what the Board had no power to do
23 and to require that the Association act in the future only as the Declaration and the
24 Condominium Act permit. She does not ask the Court to adjudicate the rights, status,

1 or obligations of any vendor, insurer, director, or member who is not a party, and no
2 relief requested here depends on the participation of any such person.

3 The Association acted on behalf of the owners of the units without the majority vote of
4 the Board at an open meeting that Declaration § 9.E and A.R.S. § 33-1248 require, and
5 its own records prove it. Plaintiff respectfully requests that the Court grant partial
6 summary judgment on Claims 32 and 76, 39 and 84, 83, and 44 and 89; declare each
7 challenged action void; enjoin the Association from taking any action on behalf of the
8 owners of the units except by a majority vote of the Board of Management taken at a
9 meeting properly noticed and open to the members, at which members are permitted
10 to speak before the Board takes formal action; and award Plaintiff her taxable costs
11 under A.R.S. § 12-341. Plaintiff does not seek damages in this Motion and expressly
12 reserves her claim for damages under Count I. To the extent the Court does not grant
13 summary judgment in full, Plaintiff requests an order under Ariz. R. Civ. P. 56(g)
14 specifying the material facts established without substantial controversy.

15
16 RESPECTFULLY SUBMITTED this 19th day of July, 2026.

17 /s/ Lisa Marx

18 Lisa Marx

19 Representing self
20

21 **CERTIFICATE OF SERVICE**

22 I certify that on July 19, 2026, a true copy of the foregoing was served via e-file to the
23 Court and Defendant's Counsel and by email on counsel for Defendant:

24 Chuck Oldham — Chuck.Oldham@chdblaw.com

1 Ari Bowhay – Ari.Bowhay@chdblawn.com

2 /s/ Lisa Marx

3 Lisa Marx, Representing self

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