Lisa Marx
13610 N. 111th Ave.
Sun City, AZ 85351
602-748-7781
aimtodogood@gmail.com
Representing self

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Lisa Marx Plaintiff, vs. Tara Condominiums Association, Inc.,	Case No. CV 2025-012980 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT (CLAIMS 31 AND 75; 35 AND 79; 36 AND 80; 37 AND 81; 38 AND 82; 45 AND 90)** Honorable Adele Ponce

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Lisa Marx moves, under Ariz. R. Civ. P. 56, for partial summary judgment on Claims 31 and 75, 35 and 79, 36 and 80, 37 and 81, 38 and 82, and 45 and 90 of the Second Amended Complaint. Each turns on a single, undisputed question of law: whether the Board of Management could commit the Association to action on behalf of the owners — spending its funds, retaining and paying counsel, and performing work on the common area — without the majority vote at a properly noticed open meeting that Declaration § 9.E and A.R.S. § 33-1248 require. The Association's own records show it did not obtain that vote, and its Answer identifies none. This Motion is supported by the following Memorandum, Plaintiff's Separate Statement of Facts ("SSOF"), the Declaration of Lisa Marx, and the exhibits of record.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case is, at bottom, about a contract. The Declaration of Restrictions, By-Laws, and Articles of Incorporation are the contract among the Association and its owners, and § 9.E of the Declaration states the rule that governs every one of these claims: "A majority vote of the Managers shall entitle said Board to carry out action on behalf of the owners of the units." The Condominium Act reinforces that rule and adds a second requirement — that the Association conduct its business, and take its formal action, at meetings open to the members. A.R.S. § 33-1248.

The six claim groups in this Motion each present the same wrong: the Board committed the Association to action on behalf of the owners without the § 9.E majority vote and without the § 33-1248 open meeting. It excavated a trench for a common-area pressurized sprinkler water main line (Claims 31/75); it retained a law firm (35/79); it paid that firm's $255.50 and $438.00 invoices (36/80, 37/81); it purported to approve months of already-performed work and to pre-authorize a half year of future spending by two directors (38/82); and it paid $500 out of Association funds (45/90). None of these acts was authorized by a majority vote at an open meeting. The Association's own notices, agendas, minutes, and financial records — the documents it produced in this case — establish the absence of any such vote, and its Answer asserts none. On these undisputed facts, each act was beyond the Board's authority and is void, and Plaintiff is entitled to judgment as a matter of law.

II. STATEMENT OF FACTS

The material facts are set out in Plaintiff's Separate Statement of Facts and are established by the Association's own records. The Association is an Arizona nonprofit corporation governed by its Declaration, By-Laws, and Articles. SSOF ¶¶ 2–3. Declaration § 9.E provides that "[a] majority vote of the Managers shall entitle said Board to carry out action on behalf of the owners of the units." SSOF ¶ 4. Plaintiff owns Unit 5 and is a member subject to those governing documents. SSOF ¶ 1.

Sprinkler (Claims 31/75). On January 30, 2024, Mark Gottmann and Dennis Anderson excavated an 80-foot trench over the pressurized water main serving the common-area sprinkler system in front of Aster Court. SSOF ¶¶ 5–6. Neither the January 20 nor the February 17, 2024 Board meeting — the open meetings bracketing that work — noticed or authorized any trench excavation. SSOF ¶¶ 7–10. The Association's own Spring 2024 Newsletter confirms that "[a] very old 80 ft section of sprinkler system pipe that is under pressure was replaced in front of Aster Court." SSOF ¶ 12. Plaintiff asked the Board on February 1, 2024 when that decision had been made in an open meeting. SSOF ¶ 11.

Retained counsel (Claims 35/79). The Association's General Counsel Agreement with The Travis Law Firm was signed by Gottmann, acting as Chairperson, on June 29, 2024. SSOF ¶¶ 13–14. No open Board meeting in 2024 before that date noticed or authorized the retention of counsel. SSOF ¶¶ 15–16, 18. The firm's July 2024 invoice reflects a "New File Fee." SSOF ¶ 17.

Legal invoices (Claims 36/80, 37/81). The Association paid a $255.50 Travis invoice (dated September 24, 2024) and a $438.00 Travis invoice (dated October 30, 2024) out of Association funds. SSOF ¶¶ 20–21, 26, 28–29, 33. At its September 21, 2024 meeting the Board voted, 4–0, to pay two different invoices — the July ($1,417.00) and August ($1,095.00) invoices — but no meeting noticed or voted the $255.50 or the $438.00. SSOF ¶¶ 22–25, 27, 30–32. The October 27, 2024 meeting was the last Board meeting of 2024, and it preceded the October 30 invoice. SSOF ¶¶ 27, 32.

July 27 approvals (Claims 38/82). At its July 27, 2024 meeting the Board passed two motions approving "miscellaneous maintenance" and "landscaping work performed previously and through the end of 2024 by" Anderson, Gottmann, "and volunteers not exceeding $250 per project." SSOF ¶¶ 34–35, 37–38. No prior open meeting had identified or authorized the previously performed work, and the minutes identify no specific project, cost, date, location, or contractor. SSOF ¶¶ 36, 40. Plaintiff addressed the Board on both the retroactive and the prospective items. SSOF ¶ 39.

$500 payment (Claims 45/90). After Plaintiff's December 27, 2024 demand, the Association recorded a $500.00 debit to Account 504 on January 31, 2025 ("Lisa Marx, Invoice #: 1/28/25, Reimbursement"). SSOF ¶¶ 41–42. No Board meeting or Annual Meeting in 2024–2025 noticed, voted, or disclosed that payment. SSOF ¶¶ 43–47.

III. LEGAL STANDARD

Summary judgment is proper where there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a);

Orme Sch. v. Reeves, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The interpretation of a recorded declaration and of a statute presents a question of law. *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, ¶ 9, 506 P.3d 18 (2022). The Arizona Condominium Act governs the Association regardless of when the community was created. A.R.S. § 33-1201. Plaintiff also seeks declaratory relief under A.R.S. § 12-1831 et seq. The facts that matter here — what the Board did, and whether its records show an authorizing vote — are established by the Association's own documents and are not in genuine dispute; what remains is the legal question of the Board's authority.

IV. ARGUMENT

A. The Board Has No Inherent Authority and May Act on Behalf of the Owners Only by a Majority Vote at an Open Meeting.

The Board of Management has no inherent authority. It exists only because the Declaration created it and the Condominium Act recognizes it, and it holds only the powers those instruments give it, on the conditions they impose. Take away the governing documents and the statutes, and the Board has no authority at all.

Every act the Board takes on behalf of the owners must therefore clear two gates, and failure at either makes the act void. The first is an authority gate. Declaration § 9.E permits the Board to "carry out action on behalf of the owners of the units" only by "a majority vote of the Managers." The Condominium Act is to the same effect, subjecting the Board's powers to the declaration, A.R.S. §§ 33-1242(A), 33-1243(A), and A.R.S. § 10-3801(B) requires that "all corporate powers shall be exercised by or under the authority of" the board — no single officer may act alone. The second is a process gate. A.R.S. §

33-1248 requires that the Association's business be conducted at meetings open to the members, on notice and an agenda (§ 33-1248(D)); that members be permitted to speak before the Board takes formal action; and that any closure be limited to enumerated purposes and taken only after the Board identifies the governing paragraph (§ 33-1248(C)). All provisions are "construed in favor of open meetings." § 33-1248(F). The Court of Appeals has recently confirmed that a board "must take all votes and formal actions at open meetings" and "may not vote in closed session," and that agendas must apprise members of what will be decided. *AZNH Revocable Trust v. Sunland Springs Village Homeowners Ass'n*, No. 1 CA-CV 25-0424, ¶¶ 10–14, 20–24 (Ariz. App. Apr. 28, 2026). *AZNH* construes A.R.S. § 33-1804, the planned-community open-meeting statute; because § 33-1804(A) and (F) are materially identical to § 33-1248(A) and (F) — companion provisions last amended together by 2025 Senate Bill 1039 — its construction governs the condominium statute in pari materia.

The distinction that decides these claims is between ministerial execution and new discretionary action. Carrying out a decision the Board has already made by an open-meeting vote — paying an invoice under a contract the Board previously approved, or performing work the Board already directed — is ministerial and needs no new vote. But committing Association funds not previously approved, engaging or paying a vendor outside an approved contract, performing or directing work on the common area, and deciding who may do that work are each a new "action on behalf of the owners" that § 9.E and § 33-1248 require to be authorized by a majority vote at an open meeting. As shown below, every act challenged here falls on the new-action side, and the Association's records show no prior authorizing vote for any of them.

B. Plaintiff's Claims Are Direct, Not Derivative, and She Has Standing.

The Association has moved to dismiss these claims as derivative. That characterization is wrong under the governing test, and this Court has already rejected it. A claim is derivative only if its gravamen is "injury to the corporation, or to the whole body of its stock or property," or if it "seeks to recover assets for the corporation or to prevent the dissipation of its assets." *Iqtunheimr, LLC v. Val Vista Lakes Cmty. Ass'n*, 586 P.3d 1081, ¶ 6 (Ariz. Ct. App. 2026) (quoting *Albers v. Edelson Tech. Partners L.P.*, 201 Ariz. 47, 52 ¶ 17, 31 P.3d 821, 826 (App. 2001), and *Funk v. Spalding*, 74 Ariz. 219, 223, 246 P.2d 184, 186 (1952)). A member sues directly where "she individually sustained the injury rather than the corporation." *Albers*, 201 Ariz. at 52 ¶ 18; *Iqtunheimr*, ¶ 9. The test looks past the label to "the gravamen of the complaint and the nature of the injury." *Iqtunheimr*, ¶¶ 9–10.

Measured by that test, these claims are direct. The gravamen is not the Association's loss of money or damage to a common area; it is the denial of Plaintiff's individual right — held by every owner under A.R.S. § 33-1248 and Declaration § 9.E — to have the Association commit to action only by a majority vote taken at a meeting open to the members, where members may observe and speak before the Board acts. That injury is Plaintiff's own — she individually sustained it, not the corporation. *Albers*, 201 Ariz. at 52 ¶ 18. The subject of a given decision — a repair, a retainer, an invoice, a reimbursement — does not change that gravamen. It is the same direct, owner-facing open-meeting enforcement the Court of Appeals reached on the merits, after *Iqtunheimr*, in *AZNH*, ¶¶ 10–14, 20–24, where a single owner enforced the identical open-meeting text through summary judgment and appeal with no derivative apparatus.

Iqtunheimr does not compel a contrary result. There the homeowner alleged only that the association had failed to maintain common areas, and the harm — deterioration of the common property — belonged to the community as a whole. *Iqtunheimr*, ¶¶ 1, 10. Plaintiff's claims are the opposite: not a failure to maintain, but the Board's taking of unauthorized action, and not a community-wide property loss, but the denial of her personal participation right. As to the expenditure claims in particular, the Association's premise that "recovery would restore Association assets" does not fit — Plaintiff seeks no recovery of the money for the Association and, in the case of the $500, seeks no return of a sum she received and was owed. Her relief is declaratory and prospective; nothing she asks would restore a corporate asset.

Standing is independently secured. A.R.S. § 10-3304(B)(2) authorizes any member of a condominium association to bring a proceeding to enjoin an unauthorized (ultra vires) act, with no membership-percentage threshold. And on June 24, 2025, this Court (Warner, J.) already denied the Association's motion to dismiss these claims as derivative, holding that Plaintiff's claims are brought to assert her rights as a member against the Association under the governing documents. That ruling is law of the case; law of the case yields only where a later decision changed the rule the prior court applied, *Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz. 275, 279, 860 P.2d 1328 (App. 1993), and *Iqtunheimr* changed nothing as to § 33-1248, § 10-3304(B)(2), or Restatement § 6.13 — the member-enforcement grounds on which the June 24 ruling rests.

C. Each Challenged Act Was a New Discretionary Action Requiring a Vote.

None of the challenged acts merely executed a prior open-meeting vote. The Board's having its own members perform the sprinkler-main work rather than the Association's vendor, retaining a law firm, paying its invoices, committing to a half year of future spending by two directors, and paying $500 out of Association funds are each a first-instance commitment of the owners' money or property — a new action on their behalf. The Association's produced records contain no prior vote authorizing any of them, so each required, and lacked, a § 9.E majority vote at a § 33-1248 open meeting.

D. The Business-Judgment Presumptions Supply No Authority the Board Never Obtained.

The Association asserts the business-judgment rule. Arizona, however, declines business-judgment deference for a community association and instead applies a reasonableness standard, placing the burden on the association. *Tierra Ranchos*, 216 Ariz. at 201 ¶ 25, 165 P.3d at 179; Restatement (Third) of Property: Servitudes § 6.13. The statutory good-faith presumptions for directors and officers, A.R.S. §§ 10-3830(D) and 10-3842(D), are rebuttable only by clear and convincing evidence and, more fundamentally, are inapposite here: they protect discretionary judgments made within the Board's authority; they cannot supply authority the Board never obtained by a § 9.E vote. An act taken without the required vote is not a protected exercise of judgment — it is an act taken without power.

E. Applying the Two Gates to Each Claim.

1. The Sprinkler Work (Claims 31/75).

On January 30, 2024, two directors excavated an 80-foot trench over the common-area pressurized water main serving the sprinkler system, and the Association's newsletter admits the pressurized pipe was replaced. SSOF ¶¶ 5–6, 12. When the Association's contracted landscaper repairs a leak, it does so under an existing engagement and needs no board vote — that is its job. What happened here was different: two directors, neither qualified or licensed for the work, undertook to excavate a trench to a pressurized common-area water main themselves. The Board's decision to have its own members perform work belonging to the Association's vendor is a new action on behalf of the owners, and one no board member had authority to take alone. Neither the January 20 nor the February 17, 2024 open meeting bracketing the work noticed or authorized any trench excavation, and the record contains no other authorizing vote. SSOF ¶¶ 7–10. Both gates failed. The action was beyond the Board's authority and is void.

2. Retention of Legal Counsel (Claims 35/79).

The Association engaged The Travis Law Firm by a General Counsel Agreement signed on June 29, 2024. SSOF ¶ 14. Engaging counsel obligates the owners' funds and is action on their behalf. No open Board meeting in 2024 before June 29 noticed or authorized the retention. SSOF ¶¶ 15–16, 18. The retention cleared neither gate and is void; the later payment of the firm's invoices confirms the engagement but does not supply the missing authorization to retain. SSOF ¶ 19.

3. The $255.50 Invoice (Claims 36/80).

The Association paid a $255.50 Travis invoice out of its funds. SSOF ¶¶ 20–21, 26. This was not ministerial execution of a prior vote. At the September 21, 2024 meeting the Board voted, 4–0, to pay only the July and August invoices ($1,417.00 and $1,095.00); it did not notice or vote the $255.50, and the $255.50 invoice postdates that meeting. SSOF ¶¶ 22, 24–25. The October 27, 2024 meeting — the last of 2024 — likewise did not authorize it. SSOF ¶ 27. Paid without any authorizing vote, the payment is void.

4. The $438.00 Invoice (Claims 37/81).

The Association paid a $438.00 Travis invoice dated October 30, 2024. SSOF ¶¶ 28–29, 33. The last Board meeting of 2024 was held on October 27 — before the invoice existed — and neither it nor any later 2024 meeting noticed or voted the payment. SSOF ¶¶ 30–32. There was no meeting at which the payment could have been, or was, authorized; it too is void.

5. The July 27, 2024 Approvals (Claims 38/82).

At its July 27, 2024 meeting the Board passed two motions purporting to approve "miscellaneous maintenance" and "landscaping work performed previously and through the end of 2024 by" two named directors "and volunteers not exceeding $250 per project." SSOF ¶¶ 34–35, 37–38. These approvals are void for two independent reasons. First, to the extent they purported to ratify work already "performed previously," they could not: the prior work was performed without any open-meeting vote (SSOF ¶ 36), and a void act took no legal effect and cannot be ratified after the fact. *Prieve v. Flying Diamond Airpark, LLC*, 252 Ariz. 195, ¶ 6, 500 P.3d 1045 (App. 2021) (an ineffective vote "did not authorize anything"). Second, to the extent they purported to pre-authorize a half year of future spending by two directors, they exceeded § 9.E. Section 9.E vests authority in the Board as a body, exercised "by a majority vote of the Managers" on each action on behalf of the owners; it does not permit the Board to hand two individuals a standing license to select projects and spend up to $250 each through year-end without a further vote. A blanket delegation of that kind is not a § 9.E authorization of any identified action, and it nullifies the members' § 33-1248 right to notice and participation for each expenditure. The minutes, moreover, identify no specific project, cost, date, location, or contractor — the Board cannot validly authorize under § 9.E what it never identified. SSOF ¶ 40. The approvals are void.

6. The $500 Payment (Claims 45/90).

The Association paid $500 out of its funds on January 31, 2025. SSOF ¶¶ 41–42. No Board meeting or Annual Meeting in 2024 or 2025 noticed, voted, or disclosed that payment. SSOF ¶¶ 43–47. The Association's only answer, in its pleading, is that "the Association complied with the ALJ's directive." That does not make the payment ministerial. The directive ran against the Association, which acts on behalf of the owners only by a § 9.E vote; complying with it still required the Board to authorize the expenditure at an open meeting, and the Association concedes no such vote occurred. Nor did the Board treat the payment as an automatic obligation: it did not pay until months after the award issued, and only after Plaintiff's December 27, 2024 written demand, while holding meetings in the interim at which it voted nothing on the matter. That is discretion, not ministerial duty. And § 33-1248 required the decision to commit Association funds to be made at an open meeting on notice; the Board made it outside any meeting and never disclosed it to the members. SSOF ¶ 47. The payment cleared neither gate and is void.

F. The Acts Are Void, Not Merely Voidable.

Whether an act is ultra vires so as to render it void is a question of law. *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 113–14 (1966). An act the Board took without the authority § 9.E and § 33-1248 require is void — a nullity that took no legal effect, needs no unwinding, and cannot be ratified. *Prieve*, 252 Ariz. 195, ¶ 6 (ineffective vote "did not authorize anything"); *Sycamore Hills Estates HOA v. Zablotny*, 250 Ariz. 479, ¶ 6, 481 P.3d 700 (App. 2021); A.R.S. § 10-3801(B); Declaration § 9.E. Declaring these acts void is therefore not overbroad; it recognizes that acts taken without the required vote never took effect.

G. Injunctive Relief Is Necessary Because the Practice Is Ongoing.

The record shows not an isolated oversight but a repeated practice of committing the owners' funds and directing common-area work without the required vote — across the sprinkler work, the retention and payment of counsel, the July 27 blanket approvals, and the $500 payment. Prospective relief requiring the Association to act only as the Declaration and the Condominium Act permit is therefore warranted. Plaintiff does not seek, in this Motion, an adjudication of intent for purposes of damages or sanctions; she reserves those matters.

V. CONCLUSION AND RELIEF

On the undisputed records of the Association, each challenged act was taken without the majority vote at an open meeting that Declaration § 9.E and A.R.S. § 33-1248 require, and each is void. Plaintiff is entitled to partial summary judgment.

Plaintiff moves for partial summary judgment on liability only. She seeks two remedies, and neither requires proof of a monetary loss: a declaration that the challenged acts were taken without authority and are void, and an injunction requiring the Association to act as its own governing documents and the Condominium Act require. Plaintiff does not waive, and expressly reserves, her claims for compensatory and consequential damages; those claims are not at issue on this Motion and remain for trial.

The relief Plaintiff requests is directed to the Board's authority, not to the rights of any absent person. Plaintiff asks the Court to declare what the Board had no power to do and to require that the Association act in the future only as the Declaration and the Condominium Act permit. She does not ask the Court to adjudicate the rights, status, or obligations of any vendor, attorney, director, or member who is not a party, does not ask the Court to disturb or recover the $500 she received, and no relief requested here depends on the participation of any such person.

Plaintiff respectfully requests that the Court: (1) grant partial summary judgment on Claims 31 and 75, 35 and 79, 36 and 80, 37 and 81, 38 and 82, and 45 and 90; (2) declare that each challenged action taken by the Board of Management — performing the sprinkler-main work, retaining legal counsel, paying the $255.50 and $438.00 invoices, approving the July 27, 2024 maintenance and landscaping items, and paying the $500 — was beyond the Board's authority under Declaration § 9.E and A.R.S. § 33-1248 and is void; (3) declare that the Association may commit to action on behalf of the owners only by a majority vote of the Board of Management taken at a meeting properly noticed and open to the members, at which members are permitted to speak before the Board takes formal action; (4) enjoin the Association from taking any action on behalf of the owners of the units except by such a vote at such a meeting; (5) reserve for trial Plaintiff's claims for compensatory and consequential damages under Count I; and (6) award Plaintiff her taxable costs under A.R.S. § 12-341. If the Court does not grant summary judgment in full, Plaintiff requests, in the alternative, an order under Ariz. R. Civ. P. 56(g) specifying the material facts established without substantial controversy, including the absence of any open-meeting vote authorizing each challenged act.

RESPECTFULLY SUBMITTED this 19th day of July, 2026.

/s/ Lisa Marx

Lisa Marx

Plaintiff Pro Se

CERTIFICATE OF SERVICE

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

Chuck Oldham — Chuck.Oldham@chdblaw.com

Ari Bowhay — Ari.Bowhay@chdblaw.com