Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-012980 10/06/2026

HONORABLE ADELE PONCE

CLERK OF THE COURT
G. Duran
Deputy

LISA MARX

LISA MARX
13610 N 111TH AVE
SUN CITY AZ 85351

v.

TARA CONDOMINIUMS ASSOCIATION, et al.

CHARLES H OLDHAM

JUDGE PONCE

MINUTE ENTRY

Before the Court is the motion for judgment on pleadings filed by Tara Condominiums Association, Inc. ("Defendant" or "HOA"). The Court has considered the motion, the response by Plaintiff Lisa Marx ("Plaintiff") and Defendant's reply. Plaintiff also filed a motion to have the Court consider a sur-reply, and the Court read all the briefing associated with that motion. The Court denies the motion to file a sur-reply. The Court notes, however, that even if it had considered the sur-reply, nothing in that filing would alter the Court's ruling.

I. Background.

Plaintiff is an owner in a community where Defendant serves as the homeowners' association. On June 24, 2025, the Court denied the HOA's partial motion to dismiss certain of Plaintiff's then pleaded claims as derivative. The Court held that the claims were brought to assert her rights as member against the HOA under the CC&Rs and limited Plaintiff's recovery to "damages she herself has suffered and can prove," and that she could not recover damages for harm to others or to the community in general.

Plaintiff filed an amended complaint on September 15, 2025, asserting a number of claims against Defendant arising out of various actions the HOA took throughout 2024. Plaintiff also

filed a separate complaint in matter CV2025-062973, which the Court consolidated with this matter. That complaint asserts similar claims against Defendant arising out of actions the HOA took in the fall of 2025 related primarily to a change in the insurance the HOA provided.

Plaintiff initially asserted claims against individual board members but those claims were dismissed.

Plaintiff is self-represented, and both complaints allege claims in ways that are duplicative and not always easy to discern. The Court, however, broadly summarizes the claims as follows:

Count I—Breach of Contract for Breach of the Declarations: Plaintiff includes an extensive list of allegations. Most of these allege a failure to conduct an open meeting or board vote as allegedly required in the declarations.

Count II—Violations of A.R.S. § 33–1258 (record request): Plaintiff lists various instances in which the HOA failed to provide Plaintiff with various records she requested.

Count III—Violation of A.R.S. § 33–1248 (open meeting): In this count, Plaintiff essentially duplicates most of the allegations in Count I but presents these as violations of the open meeting statute rather than a violation of the declarations.

Count IV—Violation of A.R.S. § 33–1212 (unit boundaries): this count asserts the HOA committed violations when it took the following action:

1) Engaged in a roof repair, which was a common element and billed half the repair to the individual owner and half to the association;

2) Used a master insurance policy to cover damage to a unit which should have been the owner's responsibility;

3) Filed a claim on the master policy regarding water damage to a unit from leaks rather than requiring the homeowner to cover it;

4) Shifted the burden to other homeowners;

5) Attributed the rise in costs to a national trend rather than to the allegedly improper claims.

Count V—Violation of A.R.S. §33–1247 (Upkeep): This claim alleges the HOA acted improperly in maintaining common elements including

1) Assessing an individual (not Plaintiff) for roof repair to a common element
2) Failing to properly respond to an email about common areas
3) Making a claim under the master policy for damage caused by plumbing within a unit
4) Approving claims for coverage under the master policy that should have been covered by individual owners
5) Plaintiff generally alleges this resulted in improperly shifting the burden to homeowners

Count VI—violation of A.R.S. § 33–1253 (**insurance)**: this claim repeats the claims in Count IV but presents them as statutory violations.

Count VII—violation of A.R.S. § 10-11601 (corporate records): Plaintiff alleges the HOA failed to maintain proper records with verbal contracts, refusing corrections and lacking minutes.

Count VIII—violation of A.R.S. § 33-1250 (voting): Plaintiff alleges violations of this statute by refusing printed ballots, omitting return times and denying in person voting

Plaintiff's **Count XIII** then states she seeks a declaratory judgment in connection with the alleged violations above, with each in turn identified as separate counts.

DJ Count I (breach of declarations): seeks a declaratory judgment that the HOA breached the contract for all the allegations in the amended complaint's Count I for violating the open meeting laws and declare the acts void and enforceable.

DJ Count II A.R.S. § 33–1258 (inspection of records): seeks a declaratory judgment that the HOA breached the statute based on all the allegations in Count II of the amended complaint and seeks a right to immediate access to all non-exempt records and seeks statutory remedies including costs and fees.

DJ Count III A.R.S. § 33–1248 (open meetings): seeks a declaratory judgment that Defendant violated the open meeting statutes for all the incidents outlined in Count III (and essentially Count I) of the amended complaint and that all the actions taken are therefore void.

DJ Count IV A.R.S. §33–1212 (unit boundaries): seeks a declaratory judgment that all allegations in Count IV of the amended complaint violated unit boundaries, the assessment is invalid and that the common element cost must be borne by the association alone.

DJ Count V A.R.S. § 33–1247 (upkeep): seeks declaratory judgment that the HOA violated the statute, that it must promptly repair common elements and that Plaintiff is excused from related costs.

DJ Count VI A.R.S. § 33–1254 (insurance): seeks a declaratory judgment that the HOA violated the statute by filing master policy claims for unit-specific damages and alleges that premium increases cannot be assessed to Plaintiff.

DJ Count VII A.R.S. § 10–11601 (corporate records): seeks a declaratory judgment that any unrecorded acts are invalid.

DJ Count VIII A.R.S. § 33–331250 (voting): seeks a declaratory judgment that all elections referenced to have been improper in Count VIII of the amended complaint are invalid.

Plaintiff's second complaint, which was consolidated with this matter, asserts various claims arising from the HOA's actions related to altering the HOA's obligation to provide insurance.

VI. Breach of Fiduciary Duty for failing to conduct open meetings, conducting invalid votes and shifting responsibilities to homeowners.

VII. Breach of Contract: claiming breach of contract for altering the insurance requirements without proper process and violating he right to association-maintained insurance and common elements

VIII A.R.S. §33–1258 and A.R.S. § 33–1250(C): claiming violation of the statutes regrading record access.

II. Standard.

For the purpose of passing upon a motion for judgment on the pleadings the court may consider as true such allegations of the complaint as are admitted by the answer." *Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 376 (1958). "If these allegations set forth a claim for relief and the answer fails to assert a legally sufficient defense plaintiff is entitled to judgment." *Id*. The Court may also consider some documents beyond the actual pleadings themselves. *See Strategic Dev. & Const., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 63 ¶ 10, 64 ¶ 14

(App. 2010) (Documents that are "central to the complaint," are subject to judicial notice and are not considered extraneous for purposes of Rule 12). "The interpretation of the contract is a question of law for the court," and "[w]here the language of the contract is clear and unambiguous, it must be given effect as it is written." *Hadley v. Sw. Properties, Inc.*, 116 Ariz. 503, 506 (1977) (citations omitted).

Defendant's motion argues that a number of Plaintiff's claims are derivative and should be dismissed. A derivative claim is an action brought by a shareholder to enforce the corporation's claims against its officers and directors or third parties. As noted above, the Court previously ruled on a motion making a similar claim. The Arizona Court of Appeals, however, issued a decision after the Court's ruling clarifying the law concerning derivative claims. The Court held that regardless of the specific claims alleged, "[a]n action is derivative if the gravamen of the complaint is injury to the corporation or to the whole body of its stock or property without any severance or distribution among individual holders, or if it seeks to recover assets for the corporation or to prevent the dissipation of its assets." *Iqtunheimr, LLC v. Val Vista lakes Community Association, et al.*, 586 P.3d 1081, 1083 (Ariz. App. 2026) (citations omitted).

To bring a derivative lawsuit a member must: 1) have standing and 2) make a written demand on the corporation to take action. If the corporation has multiple members, "any member having twenty five percent or more of the voting power" or "fifty members" has standing. *Id*. (citing A.R.S. § 10–3631). Individual members can still file a direct claim against the corporation when 1) the relationship between the shareholders and a wrongdoer is separate from the shareholders' status as shareholders or their ownership interest in the corporation; and 2) the wrongdoer owes a duty to the shareholders for some reason other than their status as shareholders, or; 3) the injuries or damages were sustained by individual shareholders rather than by the corporation." *Id*. (citations and quotations omitted).

Defendant's motion is based the recent ruling by the Court of Appeals in *Iqtunheimr*. In *Iqtunheimr*, the Plaintiff sued a homeowner's association for failing to maintain common areas like the community pool, the clubhouse and the shared parks. The association moved to dismiss, arguing the homeowner failed to state a claim because the plaintiff was asserting only derivative claims. The Court found that the homeowner's claims were derivative because the homeowner was alleging harms to the common areas, and that these were claims that belonged to the community as whole rather than the homeowner as an individual. The Court further held that whether a homeowner was suing on behalf of the corporation is a question of law. *Id*.

III. Analysis.

Defendant moves to dismiss a number of Plaintiff's claims as improper derivative claims. Each is addressed below.

A. Count IV of the amended complaint and the declaratory relief sought in connection with this claim is derivative.

Defendant seeks dismissal of the claims in Count IV of Plaintiff's amended complaint along with the declaratory judgment requested in Count IV. Count IV alleges that the HOA approved a roof repair and assessed half the cost to a common element to a single owner, who is not Plaintiff. The count also alleges the HOA filed a claim for plumbing damage inside a unit that was the responsibility of the individual owner and should not have been paid by the association. The accompanying complaint for declaratory judgment seeks a declaration that these were violations of statutes regarding the boundaries of units.

The claims in Count IV are derivative claims or claims Plaintiff lacks standing to bring. Plaintiff is not the homeowner who was allegedly improperly assessed for repair to a common area, so she lacks standing to assert this claim. And her claim that the HOA improperly filed a claim under the master policy for damage that should have been submitted to a homeowner's individual policy is a derivative claim for harm to the association. Plaintiff does not allege she was individually damaged. Therefore, the claims in Counts IV of the amended complaint and DJ Count IV should be dismissed based on the pleadings.

B. Count V of the amended complaint regarding upkeep and the declaratory relief sought in connection with this claim is derivative.

Defendant seeks dismissal of the claims in Count VI. In this count, Plaintiff repeats the allegation regarding an improper assessment imposed on an individual homeowner who is not Plaintiff. Plaintiff also repeats the allegations that the HOA filed a claim under the master policy for plumbing failures that should have been filed under the individual policy of the homeowner with the damage. The claim also alleges that the HOA misled homeowners about the reason premiums were increasing. The claim also referenced unanswered emails about deterioration to common elements. Plaintiff does not allege any particularized harm in connection with these claims. The claims in Count V are derivative claims that are properly dismissed at this stage.

C. Count VI of the amended complaint and the related Count VI for declaratory relief regarding insurance is derivative.

Defendant further argues that Plaintiff's claims in Count VI and the related DJ Count VI are derivative. Plaintiff's claim in Count VI and DJ VI repeats allegations that the HOA improperly filed claims on the master policy for damage that should have fallen under individual homeowner policies. Plaintiff states in DJ Count VI that premium increases from violations cannot be assessed to her, but she does not state she was assessed for premium increases. The Court agrees with

Defendant that this claim—that the HOA improperly filed claims on the master policy resulting in increased insurance premiums is a derivative claim.

D. Plaintiff's claims in Count I and III, and the corresponding Counts I and III of her Declaratory Judgment claim asserting violations of open meeting requirements in the declarations are not derivative claims.

Defendant also seeks dismissal of a number of Plaintiff's claims in Counts I and III on the ground that these claims are derivative. The claims Defendant seeks to dismiss in Counts I and III allege violations of the CC&R and statutory requirements for open meetings regarding decisions about common element maintenance and repair, master policy insurance handling, unauthorized expenditure and transfer of association funds, and lien release wrongfully shifting an obligation to all owners. As noted above, Counts I and III list a number of different allegations, with most claims asserting violations of open meeting requirements in the declarations. Defendant argues that the gravamen of the above claims are derivative in nature.

In her response, Plaintiff clarifies that she does not seek to recover policy proceeds paid for other units, to recover or restore association funds or to obtain relief belonging to the membership as a whole. She does, however, seek to assert violations of her participation rights. She seeks prospective compliance and to invalidate those actions improperly taken, and to recover any premium or assessment cost she can prove she personally bore. In its reply Defendant accepts that Plaintiff may have individual rights protected under the open meeting laws that can rightfully be addressed by the Court, but Defendant denies this Court can invalidate actions taken by the HOA that impacted all the homeowners in the same way. The Court disagrees.

The Court declines to dismiss the claims in Counts I and III, which allege open meeting violations and her related claims for declaratory relief. Defendant argues that the gravamen of these claims is derivative because all the homeowners were similarly affected by any decisions that allegedly violated open meeting laws. The Court does not find the holding in *Iqtunheimr* goes so far as to extinguish individual claims by homeowners alleging procedural violations just because the decisions made affected all the homeowners. *See generally Ewer v. Lake Arrowhead Association, Inc.*, 342 Wis.2d 194 (Wis. App. 2012) (citing *Baldwin Cnty. Elec. Membership Corp. v. Catrett*, 942 So.2d 337, 346 (Ala. 2006)); *but see Steele v. Diamond Farm Homes Corp.*, 464 Md. 364 (App Md. 2019); *Germantown Manor Homeowners Association, Inc. v. GGAT Development Corp.*, 2017 WL 3668926 (Tenn. App. Aug. 24, 2017).

To the extent Plaintiff seeks to invalidate actions by the HOA that were taken in alleged violation of any open meeting requirements, the Court notes it will also need to consider whether this was a technical violation. *See generally Karol v. Bd of Ed. Trustees, Florence Unified Sch. Dist. No. One of Pinal Cty.*, 122 Ariz. 95, 98 (1979) (noting that "a technical violation having no

demonstrated prejudicial effect on the complaining party does not nullify all the business in a . . . meeting when to conclude otherwise would be inequitable"). And the Court is not deciding at this time whether later action by the board complying with any open meeting requirements ratifying the prior actions challenged by Plaintiff would moot her claims. But the Court declines to dismiss these claims based on the pleadings at this time.

E. Plaintiff's claims in the consolidated complaint alleging a failure to follow procedures regarding the decision to cancel the master policy are not derivative.

Defendant also argues that the claims alleged by Plaintiff in the separate action that was consolidated with her first lawsuit are derivative. In her consolidated complaint, Plaintiff challenges the HOA's amendment of the by-laws to extinguish the obligation to provide insurance coverage for any part of owner units under the master policy. Plaintiff alleges that this change required the consent of all the homeowners pursuant to *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 535 (2022). She also alleges that, as a result, she is now having to pay for insurance for her unit she did not have to pay for before.

The Court does not find Plaintiff's claim in the second action to be derivative claims barred by *Iqtunheimr*. Plaintiff's claims are not about a failure to maintain common areas or a misuse of HOA funds. The allegedly improper decision by the HOA to cease providing insurance coverage for portions of individual units resulted in a loss of insurance that required each unit owner to obtain coverage for those areas previously covered under the master policy. Although not an assessment the cost of insurance previously provided by the HOA was "distribut[ed] among individual holders." *Iqtunheimr*, 261 Ariz. 580 *see also Ewe*, 342 Wis.2d 194. The Court, therefore, does not find it appropriate to dismiss Plaintiff's claims in the consolidated action at this time.

F. Defendant is entitled to judgment on the pleadings on Plaintiff's breach of fiduciary duty claim.

Defendant also seeks dismissal of the breach of fiduciary duty claim in Plaintiff's consolidated action. The Court agrees that this is not a valid claim. *See generally Rohde v. Beztak of Arizona, Inc.*, 164 Ariz. 383 (App. 1990)

Defendant also asked this Court to consider statements by Plaintiff in an *amicus* brief she filed in *Iqtunheimr* where she made statements about the community-wide character of her claims. In issuing this ruling, the Court based its ruling on an assessment of Plaintiff's claims as a whole when considering whether they were derivative pursuant to *Iqtunheimr*. The Court did not put any weight on Plaintiff's characterizations of her claims in a separate filing in *Iqtunheimr* at this stage.

The Court's ruling above reflects the interplay between the holding in *Iqtunheimr* and Plaintiff's individual statutory and contractual right to open meetings and procedures when the HOA makes decisions—something which has not been clarified by our appellate courts. If the HOA took action without complying with procedures in statutes and the CC&Rs that gave Plaintiff certain participatory rights or if it amended the by-laws without Plaintiff's consent as she alleges was required, this Court is not convinced that *Iqtunheimr* deprives her of individual claims as a matter of law at this stage.

For the reasons stated above,

IT IS ORDERED granting in part the motion for judgment on the pleadings and dismissing Plaintiff's claims in Count IV as well as Declaratory Judgment Count IV, Count V and Declaratory Judgment Count V in her second amended compliant.

IT IS FURTHER ORDERED dismissing Plaintiff's breach of fiduciary duty claim in the complaint filed in CV2025-062973.