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

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

9 LISA MARX, an individual,

10 Plaintiff,

11 vs.

12 TARA CONDOMINIUM ASSOCIATION,
13 an Arizona non-profit corporation; MARK
14 GOTTMANN, an individual; DENNIS
15 ANDERSON, an individual

16 Defendant.

Case No. CV2025-012980

**MOTION TO DISMISS DEFENDANTS
MARK GOTTMANN AND DENNIS
ANDERSON**

16 **I. INTRODUCTION**

17 Pursuant to Rule 12(b)(6) of the Arizona Rules of Civil Procedure, Defendants Mark
18 Gottmann and Dennis Anderson respectfully move to dismiss all claims against them in Plaintiff
19 Lisa Marx's Complaint. The Complaint, styled as a personal action against individual board
20 members of the Tara Condominium Association, contains allegations that are (1) derivative in
21 nature and may only be brought by or on behalf of the Association, (2) legally impermissible
22 under Arizona's nonprofit corporation statutes, and (3) unsupported by any statute or case law
23 that would authorize the imposition of personal monetary sanctions against individual directors.
24 As such, the Complaint fails to state a claim upon which relief can be granted against these
25 individual defendants.
26

1 **II. STANDARD FOR MOTION TO DISMISS**

2 A motion to dismiss under Rule 12(b)(6) of the Arizona Rules of Civil Procedure tests
3 the legal sufficiency of the claims set forth in a complaint. When evaluating a motion to dismiss,
4 a court must assume the truth of all well-pleaded factual allegations but need not accept
5 conclusory statements or legal conclusions masquerading as factual allegations. *See Cullen v.*
6 *Auto-Owners Ins. Co.*, 218 Ariz. 417, 189 P.3d 344 (2008). Even assuming the truth of Plaintiff's
7 factual allegations, the claims asserted fail to support the relief sought, namely, the imposition
8 of personal liability upon individual nonprofit directors. Accordingly, dismissal is proper under
9 Rule 12(b)(6).
10

11 **III. CLAIM-BY-CLAIM ARGUMENTS**

12 Each of the twelve counts in Plaintiff's Complaint, to the extent they assert claims against
13 and seek relief from Mark Gottmann and/or Dennis Anderson, should be dismissed as to those
14 two Directors, for one or more of the following reasons: (1) the claim is derivative in nature and
15 therefore may only be brought on behalf of the Association; (2) the claim fails to allege any
16 conduct that would support personal liability against nonprofit corporate directors under A.R.S.
17 § 10-3830; and/or (3) the claim improperly seeks monetary sanctions or damages against
18 individual directors without any legal basis. Each claim is addressed individually below.

19 **Claim 1 – Violation of the Open Meeting Laws**

20 This claim alleges board action occurred outside of duly noticed meetings. Compl. Claim
21 ¶¶ 1-4, 6-8, 10-14, 16-27, 29-33. Even if true, such claims concern the internal governance of
22 the Association and are derivative in nature. Claims against the individual directors must be
23 brought on behalf of the Association, not by an individual homeowner. Furthermore, Marx
24 identifies no statute authorizing personal liability of board members for open meeting violations.
25 Absent allegations of fraud or willful misconduct, A.R.S. § 10-3830 precludes liability. *See*
26

1 *McNally v. Sun Lakes Homeowners Association #1, Inc.*, 241 Ariz. 1, 3, ¶ 13, 382 P.3d 1216,
2 1218 (2016) (establishing that all corporate powers of a nonprofit corporation, such as a
3 homeowners' association, are exercised by or under the authority of its board of directors, and
4 the business and affairs of the corporation are managed under the board's direction underscoring
5 the fact that the board member act collectively to operate a board rather than as individual
6 members); *see also* A.R.S. 10-801(B).

7
8 **Claim 2 – Failure to Turn Over Records Timely**

9 This claim accuses the Board and Gottmann of failing to timely produce records. **Compl.**
10 **Claim 2 ¶¶ 3-4, 8-16, 18, 21, 23.** As with Claim 1, this is a procedural compliance matter
11 affecting the Association's transparency obligations. It is a grievance by a member against the
12 Association's operations and therefore derivative. There are no allegations of willful
13 concealment rising to the level of knowing violation or misconduct sufficient to pierce A.R.S. §
14 10-3830. And again, the complaint identifies a board act, not an act by individual directors.

15 **Claim 3 – Changing the Insurance Deductible Without Amending the Bylaws**

16 Marx asserts that the board improperly changed the insurance deductible without a
17 member vote. **Compl. Claim 3 ¶¶ 1-5.** However, her remedy lies against the Association as a
18 whole, not individual directors. Allegations that Gottmann "led" the board in this decision are
19 insufficient to establish personal liability. This is a quintessential derivative claim barred by
20 A.R.S. § 10-3830 absent well-pled allegations of knowing violation of the law. And again,
21 A.R.S. § 10-801(B) mandates that all powers are exercised by the Board, not by individual
22 members.

23
24 **Claim 4 – Denial of Right to Vote in Person on Budget Vote**

25 The Complaint alleges that members were denied the right to vote in person. **Compl.**
26 **Claim 4.** This procedural violation, if it occurred, concerns the Association's implementation

1 of budget ratification and affects all members. It is a derivative claim. No Arizona law allows
2 homeowners to sue directors individually for irregular voting processes absent fraud or
3 intentional misconduct. Moreover, any decision regarding voting rights are made by the Board
4 as a whole, not individual Board members. *See* A.R.S. § 10-801(B).

5 **Claim 5 – Inequitable and Illegal Distribution of Common Expenses**

6 Marx challenges two board decisions: (1) charging a homeowner for a roof repair, and
7 (2) releasing a lien. **Compl. Claim 5 ¶¶ 1-2.** Both are acts of corporate governance. She seeks
8 reimbursement from Gottmann personally, but the decisions were made, if at all, by the Board
9 as a whole. Personal liability does not attach to directors absent allegations of bad faith or self-
10 dealing.

11 **Claim 6 – Showing Partiality / Preferential Treatment**

12 This claim is centered on allegations of unfair treatment and favoritism. **Compl. Claim 6**
13 **¶¶ 2-10, 12-15.** These allegations do not articulate a legal cause of action against directors. They
14 are grievances about perceived incivility and tone, not violations of law authorizing personal
15 damages.

16 **Claim 7 – Failure to Enforce Violations**

17 Marx contends that the Board selectively enforces rules. **Compl. Claim 7 ¶¶ 2-7, 9, 15.**
18 This claim attacks the Association’s enforcement discretion. The proper defendant is the
19 Association, not individual directors. Moreover, enforcement discretion is protected by the
20 business judgment rule unless clearly abused. The business judgment rule presumes that
21 directors act on an informed basis, in good faith, and with the honest belief that their actions are
22 in the best interests of the corporation. Courts generally respect business decisions made under
23 these conditions, absent an abuse of discretion. *See United Dairymen of Arizona v. Schugg*, 212
24 Ariz. 133, 140-141, ¶ 31-32, 128 P.3d 756, 763-764 (2006). Directors and officers are authorized
25
26

1 to handle the ordinary business affairs of the corporation according to their best judgment, and
2 they are not liable for errors of judgment made in good faith within the scope of the corporation's
3 ordinary business. *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 121, 412 P.2d 47,
4 57 (1966).

5 **Claim 8 – Insurance Claims on 13601 Newcastle**

6 Plaintiff seeks relief arising out of her allegations concerning improper claims under the
7 Association’s insurance policy. **Compl. Claim 8 ¶¶ 1-6.** Those claims, however, are entirely
8 derivative. There is no authority allowing unit owners to seek personal liability against directors
9 for association-level insurance coverage issues. Moreover, Plaintiff lacks standing to assert
10 claims related to the maintenance issues associated with Unit 13601 as those claims belong to
11 the unit owner.

12 **Claim 9 – Insurance Type of Coverage**

13 This is another policy dispute about board decisions concerning HO6 or HO3 insurance.
14 **Compl. Claim 9 ¶¶ 1-3.** It fails to state a personal claim against directors. Moreover, as the Court
15 recognized at the Evidentiary Hearing on June 23, the Association has made no decision
16 regarding a change from HO6 to HO3 but is only investigating the possibility.

17 **Claim 10 – False Corporate Records**

18 Marx alleges that meeting minutes and records were false or inaccurate. **Compl. Claim**
19 **10 ¶ 1-3, 5.** These are derivative claims. There is no basis for asserting individual liability without
20 specific intent to defraud or falsify records — neither of which is pled.
21

22 **Claim 11 – Abuse of Position, Power and Authority of Chairperson**

23 Plaintiff claims that Mark Gottmann engaged in abuses of power as a Chairperson.
24 **Compl. Claim 11 ¶¶ 1-4.** This claim simply reiterates earlier grievances under a more
25 inflammatory heading. Disputes over board procedures, member participation, and agenda
26

1 control do not give rise to personal liability absent statutory authority or proof of intentional
2 wrongdoing.

3 **Claim 12 – Neglecting Common Area Landscaping**

4 Allegations that the Board failed to maintain landscaping or took unauthorized action are
5 quintessential derivative claims **Compl. Claim 12 ¶¶ 1-8**. Disagreements over landscaping
6 priorities and volunteer participation do not constitute personal liability.

7 **IV. THE COMPLAINT ASSERTS DERIVATIVE CLAIMS THAT MUST BE**
8 **BROUGHT BY OR ON BEHALF OF THE ASSOCIATION**

9 Arizona courts impose rigorous standing requirements, obligating plaintiffs to
10 demonstrate a personal, palpable injury distinct from harm suffered by the community at large.
11 In *Arcadia Osborn Neighborhood v. Clear Channel Outdoor, LLC*, the Court of Appeals held
12 that individual plaintiffs lacked standing to bring claims because they failed to allege
13 particularized harm or injury peculiar to themselves, instead relying on generalized grievances
14 affecting the neighborhood as a whole (*Arcadia Osborn Neighborhood v. Clear Channel*
15 *Outdoor, LLC*, 256 Ariz. 88, 93, ¶ 13, 535 P.3d 932, 937 (2023)). Many of the claims in Marx's
16 Complaint, including those regarding unauthorized expenditures of association funds (**Compl.**
17 **Claim 1 ¶ 8, 19, 21-22, 30, 33; Claim 2 ¶ 13; Claim 8 ¶¶ 1-7; Claim 9 ¶¶ 2-3; Claim 11 ¶¶ 6-**
18 **7), failure to follow open meeting laws (Compl. Claim 1 ¶¶ 1-4, 6-8, 10-14, 16-27, 29-33; Claim**
19 **2 ¶ 13; Claim 3 ¶ 5; Claim 5 ¶ 1; Claim 6 ¶¶ 1-7, 12; Claim 7 ¶¶ 1-7, 12, 14; Claim 8 ¶ 1;**
20 **Claim 9 ¶ 3; Claim 10 ¶ 5; Claim 11 ¶ 1; Claim 12 ¶ 2), alleged mismanagement of record**
21 **(Compl. Claim 10 ¶¶ 1-3, 5; Claim 12 ¶ 2) and hiring of legal counsel, (Compl. Claim 2 ¶ 13;**
22 **Claim 9 ¶ 3; Claim 11 ¶¶ 1-3) are properly viewed as harms to the Association, not to her**
23 **individually and she lacks standing to seek redress of those claims.**

1 Specifically, the following claims assert derivative harms to the Association and must
2 therefore be brought as derivative claims:

- 3 • Claim 1 – Violation of the Open Meeting Laws
- 4 • Claim 2 – Failure to Turn Over Records Timely
- 5 • Claim 3 – Changing the Insurance Deductible Without Amending the Bylaws
- 6 • Claim 4 – Denial of Right to Vote in Person on Budget Vote
- 7 • Claim 5 – Inequitable and Illegal Distribution of Common Expenses
- 8 • Claim 7 – Failure to Enforce Violations
- 9 • Claim 8 – Insurance Claims on 13601 Newcastle
- 10 • Claim 9 – Insurance Type of Coverage
- 11 • Claim 10 – False Corporate Records
- 12 • Claim 12 – Neglecting Common Area Landscaping

13 Because these claims seek redress for alleged injury to the corporate entity (the
14 Association), they must be brought as derivative claims on behalf of the Association and must
15 comply with the procedural requirements for derivative actions under A.R.S. § 10-3631. Marx
16 has made no attempt to satisfy those requirements, including the necessity of making a written
17 demand upon the Association. Accordingly, these claims must be dismissed.

18
19 **V. THE COMPLAINT VIOLATES THE NONPROFIT CORPORATION ACT'S**
20 **LIMITATIONS ON DIRECTOR LIABILITY**

21 A.R.S. § 10-3830 limits director liability in nonprofit corporations. A director is not liable
22 for any action taken or not taken as a director unless it involves (1) willful misconduct, (2)
23 intentional torts, or (3) a knowing violation of law. *See* A.R.S. § 10-3843 (providing immunity
24 for directors acting within the scope of their duties).
25
26

1 The Complaint fails to allege facts that would support the finding of personal liability
2 under these narrow exceptions. Rather, Marx's claims are based on disagreements with board
3 decisions, procedural disputes, and policy disagreements. None of Marx's allegations rise to the
4 level of "willful misconduct" or a knowing violation of the law.

5 The following claims are illustrative of this defect and fail to plead any facts rising to the
6 required threshold:

- 7 • Claim 1 – Violation of the Open Meeting Laws
- 8 • Claim 2 – Failure to Turn Over Records Timely
- 9 • Claim 3 – Changing the Insurance Deductible
- 10 • Claim 4 – Denial of Right to Vote in Person
- 11 • Claim 5 – Distribution of Common Expenses
- 12 • Claim 6 – Preferential Treatment
- 13 • Claim 7 – Failure to Enforce Violations
- 14 • Claim 9 – Insurance Coverage Type
- 15 • Claim 10 – False Corporate Records
- 16 • Claim 11 – Abuse of Chairperson Power
- 17 • Claim 12 – Landscaping Neglect

18 To the extent Marx alleges violations of the Arizona Condominium Act (e.g., A.R.S. §
19 33-1248), these allegations do not support personal liability under A.R.S. § 10-3830 unless
20 accompanied by well-pled allegations of intentional wrongdoing. The Complaint includes no
21 such allegations.
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1 **VI. NO LEGAL BASIS EXISTS FOR IMPOSING PERSONAL MONETARY**
2 **SANCTIONS ON INDIVIDUAL DIRECTORS**

3 Throughout the Complaint, Marx seeks reimbursement from Gottmann and Anderson for
4 attorneys' fees, repairs, and other Association expenditures *See e.g.*, (Compl. “Injuries” ¶ 1-8,
5 12, 14); (Compl. “Demand for Relief” ¶¶ 1-16); (Compl. Claim 1 ¶¶ 2, 5-7, 9-10, 13-15, 17-
6 18, 22-24, 26, 30, 32; Claim 2 ¶¶ 7, 10; Claim 3 ¶¶ 1-5; Claim 4 Complaint; Claim 5 ¶ 1;
7 Claim 6 ¶ 1, 2, 6, 7, 10, 15; Claim 8 ¶ 1-7; Claim 9 ¶ 1-3; Claim 10 Complaint; Claim 11 ¶¶
8 1-4; Claim 12 ¶¶ 1-5). However, Arizona law does not authorize such relief against individual
9 directors absent a separate cause of action and a basis for personal liability. *See McNally v. Sun*
10 *Lakes Homeowners Association #1, Inc.*, 241 Ariz. 1 (2016).

11
12 Claims that improperly seek financial relief from Gottmann and Anderson personally
13 include:

- 14 • Claim 3 – Change in Insurance Deductible
- 15 • Claim 5 – Distribution of Common Expenses
- 16 • Claim 8 – Insurance Claim Mismanagement
- 17 • Claim 10 – Allegedly False Records
- 18 • Claim 12 – Landscaping Decisions

19 To the extent the Complaint requests monetary sanctions against Gottmann and Anderson
20 as individuals, it must be dismissed. The Association, not Marx, is the proper party to seek
21 indemnification or contribution if it believes a director has acted outside his duties. Marx has no
22 standing to seek personal financial sanctions against individual directors on behalf of the
23 Association.
24

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26 . . .

1 **VII. REQUEST FOR ATTORNEYS' FEES UNDER A.R.S. § 12-341.01**

2 Pursuant to A.R.S. § 12-341.01, Defendants Gottmann and Anderson request an award of
3 reasonable attorneys' fees incurred in defending against Plaintiff's claims. This statute authorizes
4 the recovery of attorneys' fees in contested actions arising out of contract. Because all of
5 Plaintiff's claims stem from her rights and obligations under the Association's governing
6 documents, including the CC&Rs and Bylaws, the action arises out of contract and falls squarely
7 within the scope of A.R.S. § 12-341.01. Defendants are therefore entitled to recover their
8 attorneys' fees should they prevail.
9

10 **VIII. CONCLUSION**

11 For the foregoing reasons, Defendants Mark Gottmann and Dennis Anderson respectfully
12 request that the Court dismiss all claims against them with prejudice. The Complaint fails to state
13 any claim for which relief may be granted against these individual directors. The allegations are
14 either derivative in nature, barred by the statutory protections of A.R.S. § 10-3830, or seek forms
15 of relief not permitted under Arizona law.

16 Defendants further request an award of their reasonable attorneys' fees and costs pursuant
17 to A.R.S. § 12-341.01, and for such other and further relief as the Court deems just and proper.
18

19 RESPECTFULLY SUBMITTED this 15th day of July, 2025.

20 **CHDB LAW LLP**

21
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1 **ORIGINAL** of the foregoing e-filed
this 15th day of July, 2025.

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