

1 Lisa Marx
2 13610 N. 111th Ave.
3 Sun City, AZ 85351
4 602-748-7781
5 aimtodogood@gmail.com
6 Representing self

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 Mark Gottmann and Dennis Anderson
15 Defendant.

**MOTION FOR PARTIAL
RECONSIDERATION OF JULY 31,
2025 RULING DISMISSING ALL
CLAIMS AGAINST INDIVIDUAL
DIRECTORS MARK GOTTMANN
AND DENNIS ANDERSON**

Civil Procedure 7.1(e)

Honorable Randall H. Warner

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17
18
19
20 **I. INTRODUCTION**

21 Pursuant to Arizona Rule of Civil Procedure 7.1(e), Plaintiff Lisa Marx respectfully
22 moves this Court to reconsider and vacate portions of its July 31, 2025 Minute Entry
23 dismissing all claims against individual Defendants Mark Gottmann and Dennis
24

1 Anderson. The ruling erroneously classified all Plaintiff's claims as derivative,
2 requiring 25% of association members to join under A.R.S. § 10-3631, and dismissed
3 them without leave to amend. This constitutes an error of law, as some of the claims
4 assert direct, individualized harms caused by the directors' violations of Arizona
5 statutes, the Association's governing documents, and especially fiduciary duties owed
6 personally to shareholder Plaintiff and not to the corporation as a whole.

7
8 Partial reconsideration is warranted to correct this error and prevent injustice. The
9 ruling overlooks controlling Arizona authority establishing that claims for violations of
10 individual rights – such as denial of access to records, retaliatory exclusion from
11 participation, preferential treatment, and other breaches of fiduciary duty causing
12 personal harm – are direct, not derivative. See *Albers v. Edelson Tech. Partners L.P.*, 201
13 Ariz. 47, 52 ¶ 16 (App. 2001) (holding a claim is direct when the harm affects the
14 plaintiff personally, distinct from the corporation or all shareholders); In each of the
15 allegations directly against Gottmann or Anderson by Plaintiff, only the shareholder –
16 the Plaintiff – suffered legal injury, not the corporation. See, e.g., *Funk v. Spalding*, 74
17 Ariz. 219, 224, 246 P.2d 184 (1952) (finding that the corporation did not suffer an
18 injury) (“The court established that if the injury is personal to the shareholder – such as
19 a breach of contract or fraud affecting the shareholder directly – it constitutes an
20 individual claim.”); *Albers v. Edelson Tech. Partners L.P.*, **201 Ariz. 47, 52, ¶ 18, 31 P.3d**
21 **821** (App. 2001) (citations omitted) (finding an exception exists where “the injuries or
22 damages were sustained by individual shareholders [*11] rather than by the
23 corporation.”) *Mirchandani v. BMO Harris Bank, N.A.*, No. 1 CA-CV 15-0368, 2016 Ariz.
24 App. Unpub. LEXIS 1589, at *10-11 (Ct. App. Dec. 20, 2016).

1 Under Arizona law, condominium associations like the Tara Condominium
2 Association are typically organized as nonprofit corporations governed by Title 10
3 (Chapters 24-40) of the Arizona Revised Statutes (A.R.S.), which applies to nonprofit
4 corporations, and supplemented by Title 33, Chapter 9, which specifically addresses
5 condominiums. Directors of such associations owe fiduciary duties not only to the
6 corporation (the association) but also to individual members (unit owners or
7 "shareholders" in the corporate sense). This direct duty to individuals is supported by
8 A.R.S. § 10-3830(A) , which mandates that the board and its members "exercise their
9 powers and duties in good faith and with a view to the interests of the condominium,"
10 interpreted by courts as extending protections to individual unit owners against
11 breaches that harm their rights or interests (see *Johnson v. Pointe Cmty. Ass'n, Inc.*, 205
12 Ariz. 485, 489, ¶ 13, 73 P.3d 616, 620 (App. 2003), emphasizing that HOA boards must
13 act reasonably and in good faith toward members, with breaches actionable by
14 individuals). These duties arise from the directors' positions of trust and require them
15 to act in good faith, with loyalty, and without arbitrary or capricious conduct toward
16 members, as reinforced by A.R.S. § 10-3830(A), requiring nonprofit directors to
17 discharge duties "in good faith," "with the care an ordinarily prudent person... would
18 exercise," and "in a manner the director reasonably believes to be in the best interests of
19 the corporation."

20
21 Breaches can include violations of the association's governing documents (e.g.,
22 declaration, bylaws) or statutes, particularly when they target or disproportionately
23 affect a specific member, constituting a violation of the duty of loyalty (avoiding self-
24 dealing or favoritism) or duty of care (failing to act reasonably and diligently).

1 Directors breach fiduciary duties when they act arbitrarily, capriciously, or in bad faith
2 toward individual members – shareholders, such as by denying equal treatment or
3 access to rights under the governing documents.

4
5 In this case, Defendants Mark Gottmann (Chairperson and director) and Dennis
6 Anderson (director) violated their fiduciary duties specifically to Plaintiff, a unit owner
7 and member, through actions that arbitrarily targeted her, showed favoritism against
8 her, denied her statutory and documentary rights, and failed to act in good faith
9 toward her interests. These breaches are not general harms to the association but direct
10 injuries to Plaintiff, such as exclusion from participation, denial of information, and
11 unequal treatment, which undermine her rights as a member.

12 **II. LEGAL ARGUMENT**

13 **A. Definition of a Derivative lawsuit.**

14
15 Plaintiff is not attempting to enforce an entity's cause of action against the Defendant
16 Board Members. Instead, Plaintiff is enforcing her own cause of action against these
17 Board Members who specifically selected her for selective harm.

18
19 “A derivative claim is one brought by a shareholder or partner to enforce an entity's
20 cause of action against its officers and directors or third parties. *Kamen v. Kemper Fin.*
21 *Servs., Inc.*, 500 U.S. 90, 95-96, 111 S. Ct. 1711, 114 L. Ed. 2d 152 (1991) (citations
22 omitted).” *Judson C. Ball Revocable Tr. v. Phx. Orchard Grp. I, L.P.*, 245 Ariz. 519, 521 n.3,
23 431 P.3d 589, 591 (Ct. App. 2018).

1 **B. When a Lawsuit against a Third Party is a Derivative.**

2
3 The claims against the Defendant Board Members are causes of action alleged by the
4 Plaintiff personally and do not have any injury to the corporation as a whole. So, a
5 derivative action should not be necessary. “[A]n action is derivative rather than direct
6 if the gravamen of the complaint is injurious to the corporation, or to the whole body of
7 its stock or property without any severance or distribution among individual holders.”
8 *Albers v. Edelson Tech. Partners, Ltd. P'ship*, 201 Ariz. 47, 49, 31 P.3d 821, 823 (Ct. App.
9 2001).

10 **C. The Court's Ruling Erroneously Classified Plaintiff's Claims as Derivative**

11 The July 31, 2025 ruling dismissed all claims against Gottmann and Anderson,
12 reasoning “Plaintiff may assert claims asserting violations of the CC&R’s and her rights
13 as a member. But these claims are against the Association, not individual board
14 members. As officers or directors in the Association, Gottmann and Anderson do not
15 have personal liability for breaches of the CC&R’s or other obligations that the
16 Association owes to its member.”

17
18 This classification misapplies Arizona law. A claim is derivative only if the alleged
19 injury is to the corporation (here, the Association) as a whole, with any harm to
20 members being incidental and uniform. **Albers v. Edelson Tech. Partners L.P., 201**
21 **Ariz. 47, 52 ¶ 16 (App. 2001)**. In contrast, a claim is direct when it arises from breaches
22 of statutory, contractual, or fiduciary duties owed personally to an individual member
23 and causes unique, individualized harm. *Id.*; see also *Rowland v. Union Hills Country*
24

1 *Club*, 157 Ariz. 301, 304 (App. 1988) (direct action proper where director's breach
2 directly injures a shareholder individually).

3
4 Plaintiff's claims in dispute do not seek redress for harm to the Association's common
5 elements or collective interests nor to enforce the CC&Rs against the board members.
6 Rather, they allege repeated statutory violations, ultra vires acts, and breaches of
7 fiduciary duties of the Declaration and By-Laws that targeted Plaintiff personally –
8 such as public shaming, retaliatory exclusion from participation, denial of records,
9 inequitable allocation of expenses, and disclosure of confidential information – causing
10 distinct reputational, emotional, and financial harm not shared equally by all members
11 and selectively targeting the Plaintiff. Plaintiff does not allege violations of these
12 statutes or contracts as her cause of action but instead these two Board Members
13 violated the statutes and the contracts as they violated their fiduciary duties to a
14 specific shareholder – the Plaintiff.

15 Plaintiff's Complaint alleges multiple direct violations causing individualized harm to
16 her, not the Association. For example:

17
18 **Retaliatory Exclusion and Partiality in violation of fiduciary duty of shareholder**
19 **Plaintiff (Claims 1 and 6)**

20 Under the provisions of A.R.S. §10-3830 and A.R.S. §10-3842, Directors and Officers of a
21 corporation are required to discharge their duties in good faith. Directors "owe a
22 fiduciary duty to the corporation and to its shareholders." *Atkinson v. Marquart*, 112
23 Ariz. 304, 306, 541 P.2d 556, 558 (1975). The allegations include and the Defendants do
24 not deny that at all times while Defendants were Officers or Directors of the

1 Association, they owed the Shareholders, including Plaintiff, a fiduciary duty.
2 "Gottmann unilaterally removed Plaintiff from the Landscaping Committee without a
3 board vote or cause, in violation of A.R.S. § 33-1248 (requiring open meetings and votes
4 for actions) and Declaration of Restrictions 9.E (majority board vote required)
5 (Complaint, p. 2 (Claim 1, Statement of Facts); p. 44 (describing unilateral action
6 outside scope of authority). This denied Plaintiff exclusively her right to participate, a
7 personal injury not shared by others. Gottmann also showed preferential and selective
8 treatment by allowing favored members extended speaking time while cutting Plaintiff
9 off at meetings (e.g., February 17, 2024 meeting, where only Plaintiff was silenced
10 before allotted time expired) (Complaint, p. 45 (describing prevention of Plaintiff from
11 speaking at February 17, 2024 meeting). While these acts allegedly violate A.R.S. § 10-
12 3830 (no immunity for bad faith) and Restatement § 6.13 (duty of fair treatment to
13 individual members). Plaintiff's cause of action is a violation of a Board Member's duty
14 to a shareholder – Plaintiff. Unlike derivative claims for general mismanagement, this
15 targets Plaintiff's specific exclusion, causing her distress and loss of governance rights.
16 It is apparent from the record of the overall conduct of Defendants, that there was an
17 effort to prevent Plaintiff from actively participating in her association activities and
18 governance. Thus, these allegations should survive the Motion to Dismiss, and the
19 Plaintiff requests reconsideration.

20
21 **Denial of Records Access (Claim 2):** Gottmann unilaterally and repeatedly denied
22 Plaintiff's timely requests for records, such as February 22, 2024 (bank statements
23 withheld) (Complaint, p. 27, ¶ 1 (describing denial of February 22, 2024 request)) and
24 August 13, 2024 (architectural forms refused) (Complaint, p. 30, ¶ 10 (describing

1 August 13, 2024 records request denial)), violating A.R.S. § 33-1258(A) (requiring access
2 within 10 days). These allegations were not acts of the association but instead acts of
3 Gottman directly targeted at the Plaintiff. This prevented Plaintiff from monitoring
4 finances affecting her unit, a direct statutory right. Gottmann also withheld insurance
5 details, only from Plaintiff. This is not a collective harm; it impeded Plaintiff's
6 individual ability to enforce her rights, distinct from other members.

7
8 These harms are not "appurtenant" to common elements in a derivative sense; they
9 directly impair Plaintiff's statutory and contractual rights. They violate a board
10 member's duties to a shareholder.

11 Requiring 25%-member support under A.R.S. § 10-3631 would deny redress for
12 personal retaliation, conflicting with A.R.S. § 32-2199.01 (any member may enforce the
13 governing documents). These claims are against the two Board Members for violation
14 of their fiduciary duties against an individual shareholder – the Plaintiff, permissible
15 under Arizona Statute.

16
17 Here are the causes of action further broken down from the Claims in the Complaint.
18 These claims with their accompanying points clarify the individual harm upon the
19 Plaintiff as the Directors violated their fiduciary duties to the Plaintiff. Plaintiff is
20 currently amending the Complaint for clarification and to remove the derivative
21 allegations against the two Board Members.

22 **Claim 1 (Under Violation of Open Meeting Laws but a Violation of Fiduciary Duty**
23 **to a Shareholder)**

- 1
- Point 2: Gottmann unilaterally removed Plaintiff from the Landscaping Committee, which she had led for three years and wished to continue participating in.
 - Point 5: At the March 16, 2024 board meeting, Gottmann refused to allow Plaintiff to read a statement correcting board meeting minutes and repeatedly cut her off while she tried to explain the corrections.
 - Point 15: At the June 15, 2024 board meeting, Gottmann unilaterally refused to allow Plaintiff to make corrections to the meeting minutes.
 - Point 20: Gottmann unilaterally targeted Plaintiff by sending a defamatory letter to the community on September 17, 2024, blaming Plaintiff personally (using her name 9 times) for the board's need to hire an attorney. Plaintiff alleges that Gottman used his position to target Plaintiff specifically. A violation of his fiduciary duty to a shareholder.

14

15 **Claim 2 (Failure to Turn Over Records Timely):**

- All points (1 through 23): Gottman unilaterally repeatedly denied, delayed, or partially fulfilled Plaintiff's specific requests for association records (e.g., financials, contracts, invoices, architectural change forms, violation letters), often beyond the 10-business-day statutory limit, with some denials explicitly stating Plaintiff had no right to them as a non-board member.

21

22 **Claim 6 (Showing Partiality/Preferential Treatment):**

- Point 1: Gottmann unilaterally removed Plaintiff from the Landscaping Committee (repeat of Claim 1, Point 2).

- 1 • Point 2: Gottmann selectively enforced a 2-minute speaking limit at meetings
2 (e.g., February 17, 2024), cutting off Plaintiff while allowing all others to exceed
3 it, and prevented her from finishing a prepared statement addressing open
4 meeting law violations.
- 5 • Point 3: At the March 16, 2024 meeting, Gottmann and Anderson questioned the
6 purpose of Lisa Marx's statements, cut her off prematurely, allowed disruptive
7 comments against her, spoke to her rudely/condescendingly, and permitted
8 Anderson to angrily chide her publicly.
- 9 • Point 4: Gottmann omitted Plaintiff's comments about board meeting minute
10 accuracy from the March 2024 minutes while including others' comments.
- 11 • Point 5: After dissolving the Landscaping Committee, Gottmann and Anderson
12 excluded Plaintiff from volunteer landscaping/maintenance projects (e.g., filling
13 grass depressions, painting tree trunks, spraying weeds, mulching, spreading top
14 soil, refinishing shutters).
- 15 • Point 6: The "Workers Comp-If Any" policy (obtained unilaterally by Gottmann)
16 effectively excluded Plaintiff from volunteer coverage, as it required board
17 motions for official participation, limiting it to exclude the Plaintiff.
- 18 • Point 8: At the October 12, 2024 Budget Committee meeting, Gottmann
19 dismissed Plaintiff's explanations about the "Walls In" insurance policy, giving
20 incorrect information and refusing to consider her points or seek a second
21 opinion. While this might seem a minor breach, it still should survive a Motion to
22 Dismiss.
- 23 • Point 10: Gottmann and Anderson hosted HOA BBQs, parties, and gift
24 distributions multiple times a year (e.g., holidays like Mother's Day, Memorial

1 Day, July 4th, Labor Day, Halloween, Thanksgiving, Christmas), inviting favored
2 community members and excluding Plaintiff.

- 3 • Point 13: Gottmann was dismissive of Plaintiff's emails requesting information,
4 providing information, or complaining about property conditions, often ignoring
5 them while readily addressing other community members' personal needs.
- 6 • Point 14: Gottmann unilaterally ignored Plaintiff's requests to add her items to
7 the Annual Meeting agenda, turning it into a regular board meeting where the
8 only items to be addressed were Gottmann's and an agenda with the annual
9 meeting package was not submitted to homeowners.
- 10 • Point 15: Gottmann arbitrarily denied Plaintiff's request for printed copies of
11 association communications (including the 2025 annual meeting package and
12 ballot), claiming she had her own email and printer.

13
14 **B. Defendants' Acts Are Ultra Vires and Directed and Targeted toward Only the**
15 **Plaintiff.**

16 The ruling erred by implying director immunity under A.R.S. § 10-3830. This statute
17 shields only good-faith acts within authority; it excludes "intentional misconduct" or
18 "knowing violation of law" or selective targeting of members. Gottmann's and
19 Anderson's unilateral decisions were directly aimed at only the Plaintiff. These are in
20 breach of their fiduciary duty to the shareholder homeowner, Plaintiff. These are the
21 allegations against Gottman and Anderson. This is sufficient to survive a Motion to
22 Dismiss.

23
24 **C. Dismissal Without Leave to Amend Violates Rule 15**

1 Even if amendment were needed, dismissal without opportunity violates Ariz. R. Civ.
2 P. 15(a) (amendments freely granted). The Complaint already details facts;
3 reconsideration aligns with justice.
4

5 **III. RELIEF REQUESTED**

- 6 1. Partially vacate the July 31, 2025 dismissal of claims against Gottmann and
7 Anderson;
8 2. Reinstate those claims direct claims;
9 3. Alternatively, grant leave to amend.
10

11 Respectfully submitted this 10th day of August, 2025.

12 /s/ Lisa Marx
13

14 Lisa Marx, Pro Se

15 13610 N. 111th Ave.

16 Sun City, AZ 85351

17 (602) 748-7781

18 Email: aimtodogood@gmail.com
19
20

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9
10 This 10th day of August, 2025, to:

11
12 Charles H. Oldham, Esq.

13
14 1400 E. Southern Avenue, Suite 400

15
16 Tempe, AZ 85282-5691

17
18 Chuck.Oldham@chdblaw.com

19
20 By: /s/Lisa Marx

21

22

23

24