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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 Mark Gottmann and Dennis Anderson
15 Defendant.

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

Honorable Randall H. Warner

16
17 **I. INTRODUCTION**

18 Petitioner requests that the court deny the motion by Defendants Mark Gottmann
19 and Dennis Anderson to dismiss all claims against them in the Breach of Contract case
20 that is filed against the Tara Condominium Association and names Mark Gottmann
21 and Dennis Anderson, personally. The case is not a derivative case. It is a breach of
22 contract case brought by the petitioner for numerous breaches of the Declaration and
23 violations of the state laws that govern condominiums in Arizona. The evidence will
24

1 show that a majority of the violations regarding the breach of contract were committed
2 by Mark Gottmann while he was NOT operating in good faith, was NOT following the
3 Declaration of the Tara Condominium Association and was violating state laws that
4 govern condominiums which puts him in a position of operating outside of his scope
5 of authority as many of the violations were committed while Mark Gottmann acted
6 unilaterally in violation of the open meeting laws. Dennis Anderson is named
7 personally for the particular violations where he was NOT operating in good faith, was
8 NOT following the Declaration of the Tara Condominium Association and was
9 violating state laws that govern condominiums which puts him in a position of
10 operating outside of his scope of authority.

11 The Business Judgement Rule protection for board members is not limitless. Mark
12 Gottmann and Dennis Anderson have violated the governing documents and state
13 statutes repeatedly and individually, putting them in a position of violating their
14 fiduciary duty, acting negligently, NOT operating in good faith and operating outside
15 of their scope of authority, thus they can be held personally responsible for their
16 actions.

17 **II. STANDARDS FOR BOARD MEMBERS**

18 There are numerous guidelines that express the parameters and scope of authority
19 in which a board member can act and must act. Those parameters also have
20 restrictions limiting what a board member can and cannot do. Anything done outside
21 of that scope of authority is in violation of the Declaration and state laws and the board
22 member is not acting in good faith and leaves them unprotected by the Business
23 Judgement Rule.

1 According to the Tara Condominium Association Articles of Incorporation point 4.

2 **Character of Affairs:**

3 "The character of affairs which the Corporation initially intends
4 to conduct in Arizona is to uphold and enforce the provisions of the
5 Declaration of Restrictions, Establishment of Board Management
6 and Lien Rights recorded at Docket number 8008, page 724,
7 records of the Maricopa County Recorder, and all amendments
8 thereto, and to perform such other powers and duties as are
imposed or granted to the Corporation by the By-Laws of the
Corporation."

9 The board's duty is to uphold the Declaration of Restrictions and By-Laws.

10 According to ARS 33-1202(B) Definitions

11 "In the condominium documents, unless specifically provided
12 otherwise or the context otherwise requires, and in this chapter:
13 6. "Board of directors" means the body, regardless of its name,
14 designated in the declaration and given general management powers to act
on behalf of the association."

15 According to ARS 10-801(B). Board of directors

16 "B. All corporate powers shall be exercised by or under the
17 authority of and the business and affairs of the corporation
18 shall be managed under the direction of its board of directors,
subject to any limitation set forth in the articles of incorporation
19 or in an agreement authorized under section 10-732."

20 According to ARS 10-140(8) Definitions

21 8. "Board of directors" means the group of persons vested with
22 the management of the affairs of the corporation irrespective of
23 the name by which the group is designated and includes the
governing body or bodies of a water users' association if the
24 articles of incorporation of the water users' association provide

1 for a governing body or bodies denominated other than as a
2 board of directors.”

3 Board of directors is used in the plural form and never indicates that an action can
4 taken by an individual board member unilaterally.

5 According to the Tara Condominium Declaration of Restrictions point 9.E. which
6 gives the parameters in which a board can act on behalf of the unit owners:
7 9.E. “A majority vote of the Managers shall entitle said Board
8 to carry out action on behalf of the owners of the units.”

9 This Declaration restriction requires a majority vote of the manages for the board to
10 take action on behalf of the unit owners and does not give power to one board member
11 to take action.
12

13 ARS 33-1248(A) and (F)states:

14 ARS 33-1248 (A)and (F) Open meetings; exceptions “ A.
15 Notwithstanding any provision in the declaration, bylaws
16 or other documents to the contrary, *all meetings of the unit
17 owners' association and the board of directors, and any
18 regularly scheduled committee meetings, are open to all
19 members of the association or any person designated by
20 a member in writing as the member's representative and
21 all members or designated representatives so desiring shall
22 be permitted to attend and speak at an appropriate time during
23 the deliberations and proceedings.* The board may place
24 reasonable time restrictions on those persons speaking during
the meeting ***but shall permit a member or a member's
designated representative to speak once after the board
has discussed a specific agenda item but before the board
takes formal action on that item in addition to any other**

1 **opportunities to speak.** The board shall provide for a
2 reasonable number of persons to speak on each side of an
3 issue. Persons attending may audiotape or videotape those
4 portions of the meetings of the board of directors and meetings
5 of the members that are open. The board of directors of the
6 association shall not require advance notice of the audiotaping
7 or videotaping and may adopt reasonable rules governing the
8 audiotaping or videotaping of open portions of the meetings of
9 the board and the membership, but such rules shall not preclude
10 such audiotaping or videotaping by those attending, unless the
11 board audiotapes or videotapes the meeting and makes the
12 unedited audiotapes or videotapes available to members on
13 request without restrictions on its use as evidence in any dispute
14 resolution process. **Any portion of a meeting may be closed only if
15 that portion of the meeting is limited to **consideration** of one or
16 more of the following:*

- 17 1. Legal advice from an attorney for the board or the association.
18 On final resolution of any matter for which the board received
19 legal advice or that concerned pending or contemplated litigation,
20 the board may disclose information about that matter in an open
21 meeting except for matters that are required to remain confidential
22 by the terms of a settlement agreement or judgment.
- 23 2. Pending or contemplated litigation.
- 24 3. Personal, health or financial information about an individual
member of the association, an individual employee of the
association or an individual employee of a contractor for the
association, including records of the association directly related
to the personal, health or financial information about an
individual member of the association, an individual employee
of the association or an individual employee of a contractor for
the association.
4. Matters relating to the job performance of, compensation
of, health records of or specific complaints against an
individual employee of the association or an individual

1 employee of a contractor of the association who works under
2 the direction of the association.

3 5. Discussion of a unit owner's appeal of any violation cited
4 or penalty imposed by the association except on request of
5 the affected unit owner that the meeting be held in an open
6 session.

7 F. It is the policy of this state as reflected in this section that
8 all meetings of a condominium, whether meetings of the unit
9 owners' association or meetings of the board of directors of
10 the association, be conducted openly and that notices and
11 agendas be provided for those meetings that contain the
12 information that is reasonably necessary to inform the unit
13 owners of the matters to be discussed or decided and to ensure
14 that unit owners have the ability to speak after discussion of
15 agenda items, but before a vote of the board of directors or
16 members is taken. Toward this end, any person or entity that
17 is charged with the interpretation of these provisions, including
18 members of the board or directors and any community
19 manager, shall take into account this declaration of policy and
20 shall construe any provision of this section in favor of open
21 meetings." *EMPHASIS ADDED

22 Any action of the board that is not an emergency must take place in a properly
23 noticed meeting that gives the members (Plaintiff in this case) the right to address the
24 board before the board takes formal action. These actions can not take place in an
Executive Meeting (Closed meeting) as these meetings are only reserved for

1 consideration of the 5 points stated in the law. All actions of the board members
2 individually and personally, that do not follow these rules is a breach of contract, proof
3 that the board members are not operating in good faith and that they are operating
4 outside of their scope of authority.

5 The Condominium Act and Not for Profit Corporation Act are directed to all board
6 members and owners to follow, regardless of one's experience as a board member,
7 knowledge or lack of knowledge of the laws and regardless of the fact that board
8 members are unpaid volunteers. State law and the governing documents prevent
9 condo board members from being paid.

10 Mark Gottmann and Dennis Anderson both became board members in January of
11 2023. During their first year as board members, there were at minimum 19 duly
12 noticed and held regular and or special board meetings called, 7 Executive Meetings
13 and 2 Budget Committee meetings that they attended in order for the board to conduct
14 the needed business of a self-managed association. There was ample opportunity for
15 the board members to learn procedures, the need for a board votes to take action and
16 proper minutes taken and given to members for transparency of the Board's actions.

17 In January of 2024, transcripts of the January 11, 2024 organizational meeting will
18 reflect that Mark Gottmann stated numerous times, "I am supremely overqualified for
19 every position of the board." This is contrary to the plea of being new and
20 inexperienced as excuses for Mark Gottmann's repetitive violations of the Declaration,
21 By-Laws and state statutes.

22 **III. CLAIM-BY-CLAIM ARGUMENTS**

23 Each and every one of the 12 Claims stated in the Plaintiff's complaint is: 1. a direct
24 claim against the Tara board of directors and or Mark Gottmann and Dennis Anderson

1 personally, for breach of contract of the Tara Declaration, By-laws and state statutes. 2.
2 each claim states something similar to the Tara Board of Directors and Mark Gottmann
3 and or Dennis Anderson personally, failed to act in good faith, were negligent in their
4 duties, acted arbitrarily, capriciously, and practiced an abuse of discretion when they
5 violated their fiduciary Duty of Care, Duty of Loyalty and Duty to Act Within the
6 Scope of Authority by violating state statutes and the Tara Declaration of Restrictions.
7 3. The legal basis to seek damages against individual board members comes from the
8 fact that they did not operate in good faith, were not following the Declaration of
9 Restrictions, By-Laws and state statutes and therefore were operating outside of their
10 scope of authority removing them from the protections of the Business Judgment
11 Rule. Every board decision should align with the association's bylaws, CC&Rs, and
12 state statutes.

13 **IV. THE COMPLAINT DOES NOT VIOLATE THE NONPROFIT CORPORATION** 14 **ACT'S LIMITATIONS ON DIRECTOR LIABILITY**

15 The evidence will show that the board, Mark Gottmann and or Dennis Anderson
16 personally: 1. Did NOT act in good faith. 2. Did not act with the care an ordinarily
17 prudent person in a like position would exercise under similar circumstances. 3. Did
18 NOT act in a manner the director reasonably believes to be in the best interests of the
19 corporation.

20 Violating the Declaration, By-Laws and State Statutes violates all of these principles.
21 The actions were not just practiced once or twice by mistake. The actions were
22 repetitive and intentional, even after the violations were brought to the attention of the
23 board, Mark Gottmann and or Dennis Anderson personally.
24

1 **V. LEGAL BASIS EXISTS FOR IMPOSING PERSONAL MONETARY**
2 **SANCTIONS ON INDIVIDUAL DIRECTORS**

3 Petitioner's claims are direct claims against the Tara board of directors, and Mark
4 Gottmann and or Dennis Anderson personally for violations of the Declaration, By-
5 Laws and state statutes resulting in various different monetary losses depending on the
6 particular claims. It has already been ordered by the court that damages can only be
7 claimed for person losses.

8 **VI. LEGAL FEES**

9 Petitioner requests that any and all attorney's fees be denied.

10 **VII. CONCLUSION**

11 For the reasons stated and as the evidence will prove in the 405 plus exhibits already
12 disclosed, in the audio files not yet transcribed and as the photographic exhibits
13 regarding the landscaping will show that the board of directors and Mark Gottmann
14 and or Dennis Anderson personally are guilty of violating the Declaration, By-laws and
15 State Statutes in this breach of contract claim causing financial and other damages to
16 Petitioner.

17 Therefore, petitioner request that the motion to dismiss all claims against Mark
18 Gottmann and Dennis Anderson personally and with prejudice be denied.

19 Petitioner further requests that attorney's fees and any other further relief be denied.

20 Respectfully submitted this 20th day of July, 2025.

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