

IN THE  
**Court of Appeals**  
STATE OF ARIZONA  
DIVISION ONE

**CASE MANAGEMENT STATEMENT**

COLETTE MCNALLY, Plaintiff/Appellant

v.

SUN LAKES HOMEOWNERS ASSOCIATION #1, INC.,

an Arizona non-profit corporation, Defendant/Appellee.

1 CA-CV-15-0744

Maricopa County Superior Court

Superior Court case number: CV2014-009496

Judge: The Honorable James T. Blomo

Colette McNally  
Name of Filing Party

/s/ Jacob A. Kubert  
Signature of Counsel or Party

November 10, 2015  
Date

## A. APPELLATE JURISDICTION

1. State the basis for appellate jurisdiction (*See* A.R.S. § 12-2101):

A.R.S. § 12-2101(A)(5)(b)

2. State the date the superior court filed the judgment/order you are appealing and state whether the court signed the ruling.

Order was signed by the Honorable James T. Blomo and filed on October 27, 2015 (see attached).

3. Provide the date each notice of appeal or cross-appeal was filed and identify the filing party.

Plaintiff/Appellant Colette McNally filed a Notice of Appeal on October 28, 2015.

4. If the time for appeal was extended by one of the motions identified in Arizona Rule of Civil Appellate Procedure 9(e)(1), identify the motion, the date it was filed, the date the superior court filed its ruling on the motion, and state whether the ruling was signed. N/A

5. If any motions are currently pending in superior court, identify the name of each motion and the date it was filed. N/A

6. Is the judgment/order appealed from certified as final pursuant to Arizona Rule of Civil Procedure 54(c)? No.

7. If any claims remain pending in the superior court, including claims for attorneys' fees, was the judgment/order made appealable pursuant to

Arizona Rule of Civil Procedure 54(b) or Arizona Rule of Family Law Procedure 78(B)? No.

**B. CASE INFORMATION**

1. List all parties to the superior court action.

**Plaintiff:** Colette McNally

**Defendant:** Sun Lakes Homeowners Association #1, Inc.

2. List any party in superior court that is not a party to this appeal and explain in detail why the party is not included in this appeal, e.g., the party was dismissed, not served, or other. Include specific relevant references to the record. N/A.
3. Describe briefly all claims (including counterclaims, cross-claims and third-party claims) asserted in the superior court and the manner each such claim was resolved in the superior court (i.e., bench trial, jury verdict, dismissal, summary judgment, or default judgment). Include specific relevant references to the record.

<b>Cause of Action</b>	<b>Party Asserting Cause of Action</b>	<b>Party Against Whom Relief Sought</b>	<b>Trial Court's Disposition</b>
Declaratory/Injunctive Relief (Count One of Verified Complaint)	Plaintiff, Colette McNally	Defendant, Sun Lakes Homeowners Association #1, Inc.	Signed Order filed on October 27, 2015 denying Plaintiff's Application for Preliminary Injunction

Breach of Contract (Count Two of Verified Complaint)	Plaintiff, Colette McNally	Defendant, Sun Lakes Homeowners Association #1, Inc.	Pending
Defamation (Count Three of Verified Complaint)	Plaintiff, Colette McNally	Defendant, Sun Lakes Homeowners Association #1, Inc.	Pending
False Light (Count Four of Verified Complaint)	Plaintiff, Colette McNally	Defendant, Sun Lakes Homeowners Association #1, Inc.	Pending
Punitive Damages (Count Five of Verified Complaint)	Plaintiff, Colette McNally	Defendant, Sun Lakes Homeowners Association #1, Inc.	Pending

### 3A. Brief Discussion of Plaintiff/Appellant's Claim and Disposition

Plaintiff is a duly elected member of the Board of Directors for defendant Sun Lakes Homeowners Association #1, Inc. (the "Association"). Since September 2013, the Association has screened Plaintiff from participating in executive sessions for allegedly violating executive session secrecy when she read her own private e-mail during an open Association meeting. Plaintiff alleges that the Association's sanction is unlawful because the Board has no legal authority to screen a democratically elected Board member from executive sessions and that the sanction is further improper because the Board imposed the sanction without providing Plaintiff any due process. Plaintiff has also asserted claims against the

Association for violating A.R.S. § 33-1804 (the “Open Meeting Law”) because the Board habitually discusses matters in executive session that are required to be discussed in open meetings and the Board has taken the position that as soon as anything is discussed in executive session, that matter, even if known to the public, becomes secret and can no longer be discussed with the community.

Based upon Plaintiff’s claims that the Board lacked authority to screen her from executive session, deprived her of due process before imposing the sanction and that the Board continues to violate the Open Meeting Law, Plaintiff asserted a claim for Declaratory/Injunctive Relief asking the trial court to restore her privileges as a Board Member and enjoin the Association from violating the Open Meeting Law. Plaintiff filed a Motion for Summary Judgment on this claim arguing that the Association lacked legal authority to screen her from executive session but the Honorable James T. Blomo refused oral argument and denied Plaintiff’s Motion without ruling what the applicable law was that gave the Board such authority and denied Plaintiff’s Motion on the grounds that there were issues of fact (even though Plaintiff’s Motion was “legally based”).

Thereafter, Plaintiff filed an Application for Preliminary Injunction on Count One of her Verified Complaint. Prior to the evidentiary hearing, Judge Blomo refused to allow Plaintiff to pursue her claim against the Association for violating the Open Meeting Law and, after the hearing, denied Plaintiff’s

Application for Preliminary Injunction to restore her Board privileges; again, without ruling what the applicable law was that gave the Board the authority to screen Plaintiff from executive session without due process.

Following Judge Blomo's denial of Plaintiff's Application for Preliminary Injunction from the bench, he issued an unsigned Minute Entry regarding this denial. Plaintiff filed a Petition for Special Action on October 23, 2015 asking the Court of Appeals to vacate Judge Blomo's ruling, define the applicable law, restore Plaintiff's Board privileges and find that the Association violated the Open Meeting Law. At the time Plaintiff filed her Petition for Special Action, she advised the Court of Appeals that she was expecting Judge Blomo to soon sign her proposed Order denying her application for Preliminary Injunction and that Plaintiff would be simultaneously requesting an expedited appeal as soon as Judge Blomo signed the Order.

The Court of Appeals declined Special Action jurisdiction on October 26, 2015 on the grounds that "Petitioner has an adequate remedy on appeal once the superior court files a signed order denying the request for preliminary injunction." The next day after the Court of Appeals issued its Order declining Special Action jurisdiction, Judge Blomo signed Plaintiff's Order denying her Application for Preliminary Injunction and Plaintiff has now filed a Notice of Appeal from that

Order and will be requesting expedited relief pursuant to ARCAP 3 and ARCAP 29(b).

4. Identify the issues to be raised on appeal.
  - (i) Does a Board of Directors have legal authority to screen a fellow elected Director from participating in executive sessions and ostensibly removing her as a Board Member given that the Board conducts significant Association business in executive session?
  - (ii) Did the Association violate A.R.S. § 10-3830(D) and Plaintiff's right to due process by screening her from executive session without a hearing and by shifting the burden to Plaintiff to have to file a lawsuit and seek injunctive relief to prove that she did nothing wrong in order to have her Board privileges reinstated?
  - (iii) Whether the Association should be compelled to comply with the Open Meeting Law considering that the Board has openly admitted to violating the Open Meeting Law by improperly discussing matters in closed meetings that are required to be discussed openly with members of the community and considering that the Board's Executive Session Minutes prove violations of the Open Meeting Law.
  
5. If this case involves an assertion or allegation that a state statute, ordinance, franchise, or rule is unconstitutional on its face, or that a municipal ordinance or franchise is facially invalid, have you complied with A.R.S. § 12-1841? N/A.

### **C. TRANSCRIPTS**

1. State the date you complied with Arizona Rule of Civil Appellate Procedure 11(c)(1) and (2) by ordering the transcript(s) necessary for proper consideration of the issues on appeal.

November 2, 2015

Identify the certified court reporter or authorized transcriber responsible for preparing the transcript(s): Jeanne Kappedal

Provide the court reporter's estimated date of completion of the transcript(s):

November 17, 2015

2. State the date you complied with Arizona Rule of Civil Appellate Procedure 11(c)(3) by filing a notice of transcript order and, if applicable, a statement of the issues. November 9, 2015

### **D. OTHER PENDING AND PRIOR PROCEEDINGS**

1. If any party to this appeal is the subject of a pending petition in bankruptcy court, identify the court and provide the case name and number. N/A.
2. Provide the case name and number of any other appeal, special action, or petition for review filed from the same, or a consolidated, superior court action.

McNally v. Hon. James T. Blomo, et. al. 1 CA-SA 15-0274

3. Provide the case name and number of any other appeal(s) pending in the Court of Appeals that involve the same parties, events, or transactions giving rise to this appeal. N/A.
  
4. Provide the case name and number of any known pending appeals in the Court of Appeals that raise the same or closely related issues. None to undersigned's knowledge.

### **E. CONTACT INFORMATION**

1. Filing Party

This Case Management Statement is filed by or on behalf of:

Name of Party: Colette McNally

Counsel: Steven W. Cheifetz, Esq.  
Jacob A. Kubert, Esq.  
Cheifetz Iannitelli Marcolini, P.C.

Address: 111 West Monroe Street, 17<sup>th</sup> Floor, Phoenix, Arizona 85003

Email address: [swc@cimlaw.com](mailto:swc@cimlaw.com); [jak@cimlaw.com](mailto:jak@cimlaw.com)

Telephone: (602) 952-6000

Check one:  Appellant  Cross-Appellant   
Appellee

For a joint statement by multiple appellants, provide contact information for additional appellants on a separate sheet accompanied by certification that they concur in the contents of this statement.

2. Opposing Party

Name of Party: Sun Lakes Homeowners Association #1, Inc.\_

Counsel for Opposing Party: Robert Grasso, Esq.  
Jenny J. Winkler, Esq.  
Grasso Law Firm, P.C.

Address: 2121 West Chandler Boulevard, Suite 100, Chandler, Arizona  
85224

Email address: [RGrasso@grassolawfirm.com](mailto:RGrasso@grassolawfirm.com);  
[JWinkler@grassolawfirm.com](mailto:JWinkler@grassolawfirm.com)

Telephone: (480) 739-1200

(List additional counsel/parties on separate sheet if necessary)

## CERTIFICATION OF SERVICE

I certify that on the 10<sup>th</sup> day of November, 2015, I electronically filed the foregoing Case Management Statement with Division One of the Arizona Court of Appeals and served a copy of same on the counsel of record for defendant/appellee by email and by depositing a true copy thereof in the United States mail addressed as follows:

Robert Grasso, Jr., Esq.

[rgrasso@grassolawfirm.com](mailto:rgrasso@grassolawfirm.com)

Jenny J. Winkler, Esq.

[jwinkler@grassolawfirm.com](mailto:jwinkler@grassolawfirm.com)

GRASSO LAW FIRM, P.C.

2121 West Chandler Boulevard, Suite 100

Chandler, Arizona 85224

Attorneys for Defendant/Appellee

/s/ Jacob A. Kubert

Jacob A. Kubert