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Sun Lakes Homeowners Association #1, Inc.

**IN THE COURT OF APPEALS**

**IN AND FOR THE STATE OF ARIZONA**

**DIVISION ONE**

COLETTE McNALLY,	)	Case No. 1 CA-CV 15-0744
	)	
Plaintiff/Appellant,	)	Maricopa County Superior Court
	)	Case No. CV2014-009496
v.	)	
	)	<b>DEFENDANT/APPELLEE</b>
SUN LAKES HOMEOWNERS ASSOCIATION	)	<b>SUN LAKES HOMEOWNERS</b>
#1, INC., an Arizona non-profit	)	<b>ASSOCIATION #1, INC.'S</b>
corporation,	)	<b>OBJECTION TO</b>
	)	<b>PLAINTIFF/APPELLANT'S MOTION</b>
Defendant/Appellee.	)	<b>TO ACCELERATE APPEAL</b>
	)	<b>PURSUANT TO ARCAP 29(a)(2)</b>
	)	

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Defendant/Appellee Sun Lakes Homeowners Association #1, Inc. (“the Association”) hereby objects to Plaintiff/Appellant’s Motion to Accelerate Appeal Pursuant to ARCAP 29(a)(2) (“Motion to Accelerate”).

Plaintiff/Appellant is a Sun Lakes homeowner who is currently serving her second elected term on the Association's Board of Directors. (*See* IR 48-51, at Sec. II, Stipulations of Material Fact and Law at ¶¶ 6-10, 20.) Plaintiff's current term on the Board ends in February 2017, and the Association's bylaws prohibit Plaintiff from seeking a third term on the Board. (*See id.* at ¶¶ 22-23.) The Association began screening Plaintiff from participating in executive sessions of the Association's Board of Directors during her first term, due to conduct that violated Plaintiff's duties of loyalty and confidentiality as a Director. (*See id.* at p. 1, l. 25 - p. 2, l. 4 & Sec. II, ¶¶ 11-19.)

Following Plaintiff's election to a second term, the Association, through counsel at an annual Board training session, offered to allow Plaintiff to participate in executive sessions if she would agree to maintain the confidentiality of information discussed in executive sessions. (IR 23, Exh. D at ¶ 21.) Plaintiff responded by walking out. (Tr. 8/12/15, at p. 77, ll. 1-12.) Since that time, Plaintiff has repeatedly confirmed – under oath – that she will *not* maintain the confidentiality of information discussed during executive session if she personally feels that the information should be published to the community and discussed at an open meeting of the Association's Board. (*See* IR 21, Exh. A at p. 85, l. 1 - p. 86, l. 2; Tr. 8/12/15, at p. 54, ll. 2-14.)

At the hearing on Plaintiff’s Application for Preliminary Injunction, Plaintiff attempted to justify her position by arguing that the Association’s Board of Directors discusses information in executive session that should be discussed in open session. (Tr. 8/12/15, at p. 171, l. 1 - p. 172, l. 20.) The trial court properly refused to consider that issue in connection with Plaintiff’s Application for Preliminary Injunction. (*See* Answering Brief 3/4/16, at Sec. III(D) & IV.) Plaintiff advances the same argument before this Court in an attempt to show that screening Plaintiff from executive sessions is causing her irreparable harm because she is “unable to properly represent her constituents’ interests.” (Motion to Accelerate at p. 4.) The argument perpetuates Plaintiff’s miss-comprehension of her role as a member of the Association’s Board of Directors. Plaintiff’s duty as a Board member is to the Association as a whole, and not to any individual homeowners or “constituents.” (*See* IR 25, Exh. E at pp. 1-4.) The issues here have nothing to do with constituencies, elections, or democratic process. The harm that Plaintiff alleges – that each executive session she misses is one that she cannot get back – is entirely personal to Plaintiff and clearly outweighed by the potential harm of providing Plaintiff with unfettered access to confidential information of the Association where she flatly refuses to preserve its confidentiality.

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Plaintiff's alleged harm is not a sufficient reason to accelerate this Court's consideration of Plaintiff's appeal. Plaintiff waited almost a year after filing suit to seek a preliminary injunction. (IR 1, 33 & 34.) The trial court ruled from the bench denying a preliminary injunction, but Plaintiff waited another six weeks to seek a formal, appealable order. (IR 56, 61.) And while asking this Court to expedite and accelerate its work on the case, Plaintiff has declined to expedite her own – she filed her Opening Brief and her Reply Brief on the dates that they were due, and demands oral argument.

Importantly, Plaintiff's claim for injunctive relief is coupled with claims for declaratory relief and damages, including punitive damages and attorney's fees. (*See* IR 1.) Even assuming that Plaintiff's appeal of the trial court's denial of a preliminary injunction becomes moot through the passage of time involved in this interlocutory appeal, Plaintiff's claims for declaratory relief and damages remain pending.

Expediting Plaintiff's appeal under these circumstances would be unfair to those who have waited and are still waiting for their day before this Court.

For all the foregoing reasons, the Association respectfully requests that the Court deny Plaintiff's Motion to Accelerate Appeal Pursuant to ARCAP 29(a)(2).

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RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of April, 2016.

**GRASSO LAW FIRM, P.C.**

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