

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-036771

06/01/2026

HONORABLE GREG S. COMO

CLERK OF THE COURT
C. Lacey
Deputy

TRILOGY AT POWER RANCH COMMUNITY ASSOCIATION SCOTT CARPENTER

v.

JOHN DOE, et al.

GEOFFREY G COLLINS
KEEGAN C KLEIN
JUDGE COMO

MINUTE ENTRY

On May 13, 2026, the Court heard oral argument on Defendant's motion to dismiss (filed 3-19-2026) and took the matter under advisement. The Court now issues its ruling granting the motion for the reasons discussed below.

Plaintiff's Allegations

Because this a motion to dismiss for failure to state a claim, the Court must accept as true the well-pleaded facts of the Third Amended Complaint.

Plaintiff alleges that Defendant Steve Berman sent multiple emails to members of the Trilogy at Power Ranch Community Association ("Association"), which criticized the Association's Board of Directors, its employees, and its members. Plaintiff alleges that the emails contained false and misleading information.

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The Association is governed by a volunteer Board of Directors elected by its members. It employs a professional staff to carry out its operations. It is not managed by an outside management company.

Plaintiff alleges that Berman sent the offending emails between May 20, 2025, through January 18, 2026. Berman allegedly sent the emails to interfere with the Association's operations, undermine confidence in its governance, disparage its employees and volunteers, and disrupt its relationship with its members.

Plaintiff alleges that on March 29, 2025, Berman sent an email to Association members concerning an ongoing recall election, in which he disparaged participants in the recall effort, characterized community disagreement in inflammatory terms and urged members to oppose the recall outside the Association's formal governance processes.

Plaintiff's Third Amended Complaint alleges the following claims against Berman: (1) tortious interference with business operations; (2) publication of injurious falsehood; and (3) hostile housing harassment. Plaintiff alleges multiple counts of each of these claims as each count is tied to a specific email set by Berman.

Tortious Interference with Business Operations

Arizona does not recognize a cause of action for tortious interference with business operations.

Arizona does recognize claims for tortious interference with contract and tortious interference with business expectancy. Both of these torts, however, involve a defendant who has interfered with a plaintiff's business relationships with third parties. Restatement (Second) Torts § 766 (Intentional Interference with Contract by Third Person) and § 766B (Intentional Interference with Prospective Contractual Relation).

Plaintiff does not allege that Berman interfered with its business relationships with third parties. Instead, Plaintiff (repeatedly) alleges:

Plaintiff T@PR has valid and ongoing business relationships with its Board of Directors, committee volunteers, employees, and members pursuant to its recorded governing documents and Arizona law.

See e.g. Third Amended Complaint, ¶ 33.

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An Association consists of its members, employees and volunteers. Thus, Plaintiff is alleging that Defendant interfered with the Association's business operations *with itself*. Plaintiff cites no legal authority for this novel tort claim.

The Court finds that Plaintiff fails to state a claim upon which relief may be granted with respect to each of its Counts for tortious interference with business operations.

Publication of Injurious Falsehood

The claim of injurious falsehood consists of publication of matter derogatory to the plaintiff's business of a kind calculated to prevent others from dealing with him or otherwise to interfere with his relations with others to his disadvantage. *Western Technologies, Inc. v. Sverdup & Parcel, Inc.*, 154 Ariz. 1, 4 (App. 1986) *see also* Restatement (Second) of Torts § 623A.

Plaintiff alleges the following with respect to each Count of Injurious Falsehood:

Defendant Steve Berman published [emails] by sending and disseminating [them], through the email account TrilogyNews@proton.me, to all or substantially all of the approximately 2,035 members of Plaintiff T@PR on [date].

See e.g. TAC, ¶ 38.

Thus, Plaintiff is alleging that Berman published false information about the Association to *its own members*. Plaintiff cites no authority that a person can be liable for publishing false information about an Association to the Association's own members, and the Court has not identified any Arizona authority directly on point. This appears to be an issue of first impression.

"Publication for defamation purposes is communication to a third party." *Dube v. Likins*, 216 Ariz. 406, ¶ 37 (App. 2007). For injurious falsehood, the publication must be "calculated to prevent *others* from dealing with [plaintiff]". *Western Technologies, Inc.*, 154 Ariz. at 4 (emphasis added). The Restatement also addresses the importance of publication to a third party:

A false statement ordinarily results in harm to the pecuniary interests of another through the action of third persons in reliance upon the statement.

Restatement (Second) of Torts § 623A, comm b.

The Court finds that Arizona currently does not, and likely will not, recognize a claim of injurious falsehood which is based on allegedly false statements about an Association made only

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to the Association's members. Such a statement is not a "publication", nor is it calculated to prevent third persons from dealing with the Association.

Further, as Defendant's motion argues, Plaintiff fails to plead any special damages in its Third Amended Complaint. Special damages are a required element of a claim for injurious falsehood. *Gee v. Pima County*, 126 Ariz. 116, 117 (App. 1980) (granting summary judgment on trade libel claim where plaintiff failed to plead special damages).

For both of these reasons, Plaintiff's Third Amended Complaint fails to state a claim for publication of injurious falsehood.

Fair Housing Act

Plaintiff alleges that Berman is liable under the Fair Housing Act, 42 U.S.C § 3601, and its implementing regulations, which prohibit discrimination and harassment in housing because of race, color, religion, sex, national origin, disability, and familial status.

On this claim, Plaintiff focuses on emails Berman sent disparaging Mike Flemming and Julie Harris. Plaintiff alleges the email targeted residents based on sex, disability, and familial status.

Berman's motion argues that the Association lacks standing to sue for alleged violations of the FHA, and that Plaintiff fails to sufficiently allege the elements of a hostile housing environment claim.

The FHA designates who may sue to enforce discriminatory housing violations. These include aggrieved persons, HUD and the Attorney General. *See* 42 U.S.C §§ 3610(a) and 3613(a), (e).

The United States Supreme Court has held that entities who suffer direct injury, such as the need to divert resources to address discrimination, have standing to bring a claim under the FHA. *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). Following *Havens*, various courts have recognized standing on behalf of fair housing organizations that have shown they suffered direct injury while combatting housing discrimination. *See generally, Fair Housing of Marin*, 285 F.3d 899 (9th Cir. 2002); *Arkansas ACORN Fair Housing, Inc., v. Greystone Development, Ltd. Co.*, 160 F.3 433 (8th Cir. 1998).

Neither party has cited authority which specifically addresses a homeowners association's standing to bring a housing discrimination claim under the FHA. There are, however, many

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examples of homeowner associations being sued by their members for housing discrimination. *See generally, Hollis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531 (6th Cir. 2014); *Hill v. River Run Homeowners Association, Inc.*, 438 F.Supp.3d 1155 (D. Idaho 2020).

Plaintiff argues that, per federal regulations, it is legally obligated to act to end a discriminatory housing practice by third persons. 24 C.F.R. Pt. 100 (final rule amending HUD regulations). Defendant responds that this rule recognizes an Association's potential liability, it does not create a right to bring claims offensively.

The Court finds, as a matter of first impression, that Plaintiff has standing to bring a claim for its own injury under the FHA. Further, the TAC, read in its entirety, alleges that Plaintiff has diverted resources and suffered organizational impairment due to Defendant's emails.

Despite having standing, Plaintiff fails to state a claim against Berman for creating a hostile housing environment. To be liable for creating a hostile housing environment, the defendant must have control or authority over the "terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities". 42 U.S.C. § 3604(b). Plaintiff does not allege that Berman has control or authority over his neighbors' right to enjoy their property free from discrimination. *See Cain v. Rambert*, 2014 WL 2440596 (E.D.N.Y. 2014) (plaintiff failed to state a hostile housing environment claim against her neighbors because they "have no authority or control over the management of the building").

Declaratory Judgment

Plaintiff's TAC includes a request for a declaratory judgment that Defendant's conduct "violates Plaintiff's governing documents, applicable Arizona law [and] federal housing law." Because Plaintiff has not alleged viable claims under any of these authorities, it has not shown a right to declaratory relief.

Leave to Amend

Plaintiff's Response does not seek leave to amend in the event the Third Amended Complaint is dismissed. The Court has significant doubts about Plaintiff's ability to state a claim on these facts, particularly since it has already amended the Complaint three times without identifying a viable legal theory. Thus, Plaintiff will have to file a motion for leave to amend, and demonstrate that it has a viable legal claim, before the Court will consider granting leave to again amend the Complaint.

Rulings

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IT IS ORDERED:

1. Granting Defendant Steve Berman's motion to dismiss filed on March 19, 2026.
2. Plaintiff's Third Amended Complaint is dismissed, without prejudice, in its entirety.
3. If Plaintiff seeks leave to amend the Complaint, it must file a motion to do so by **June 19, 2026**.
4. If Plaintiff does not seek leave to amend the Complaint, Defendant may thereafter lodge a proposed judgment, statement of taxable costs, and application for attorney fees (if sought).