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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

WILLIAM M. BROWN, an individual,

Case No. CV2017-055475

Plaintiff,

v.

**REPLY TO PLAINTIFF’S RESPONSE
TO MOTION TO DISMISS BOARD OF
DIRECTOR DEFENDANTS LAAVEG,
TOLK, GREIG AND ELLINGTON**

**TERRAVITA COUNTRY CLUB,
INC., an Arizona non-profit
corporation; STERLING J. LAAVEG,
President TCC, Inc., and his spouse;
PAUL DAVID TOLK, Vice President
TCC Inc., and his spouse; WILLIAM
H. GREIG, Secretary TCC, Inc., and
his spouse; MICHAEL T.
ELLINGTON, Treasurer TCC, Inc.,
and his spouse; JOHN DOES I-X and
JANE DOES I-X and their spouses;
CARPENTER, HAZLEWOOD,
DELGADO & BOLEN, PLC; JOSHUA
M. BOLEN 024053; ANJALI J.
PATEL 028138,**

*Assigned to the Honorable
John R. Hannah, Jr.*

Defendants.

Defendants Sterling J. Laaveg and Jane Doe Laaveg, Paul David Tolk and Jane Doe Tolk, William H. Greig and Jane Doe Greig, and Michael T. Ellington and Jane Doe Ellington (collectively, the “Director Defendants”), by and through undersigned counsel, hereby reply to Plaintiff’s Response to Defendants’ Motion to Dismiss Board of Director Defendants Laaveg, Tolk, Greig, and Ellington (“Response”). This Reply is supported by all pleadings in this matter, which are incorporated herein by reference.

1 Plaintiff asks this Court to find the Director Defendants in contempt for allegedly
2 failing to comply with the Office of Administrative Hearing's ("OAH") July 14, 2017
3 order and the Arizona Department of Real Estate's ("ADRE") July 24, 2017 final order
4 (collectively, the "Orders") requiring Defendant Terravita Country Club, Inc. ("TCC") to
5 produce specific documents requested by Plaintiff.
6

7 Plaintiff's Response detours from the issue at hand – the fact that the Director
8 Defendants are not proper parties to this lawsuit – by now alleging that the Director
9 Defendants treated him unfairly, thereby breaching their fiduciary duties owed to Plaintiff
10 as Directors of TCC, and thereby subjecting the Director Defendants to a contempt of court
11 finding for failing to comply with the OAH and ADRE Orders. Plaintiff's argument in
12 support of his detour do not help him reach his conclusion that the Director Defendants are
13 proper parties to this lawsuit.
14

15 Plaintiff argues that the Director Defendants owe certain fiduciary duties to TCC.
16 This is not a fact that the Director Defendants dispute. Indeed, Section II(C) of the Director
17 Defendants' Motion to Dismiss outlines the fiduciary duties the Director Defendants owe
18 to TCC. Importantly, Section II(C) sets forth the beneficiary of those duties – TCC – and
19 not TCC's individual members. Plaintiff, however, misses this distinction and instead
20 attempts to argue that the duties TCC owes to its individual members are the same duties
21 the Director Defendants owe to Plaintiff.
22

23 Section 6.13 of the Restatement (Third) of Property (Servitudes) ("Restatement")
24 sets forth the duties TCC, as a common-interest community, owes to its individual
25 members, whereas Section 6.14 of the Restatement sets forth the duties the Director
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1 Defendants owe to TCC. TCC, and not the Director Defendants, owes a duty to treat its
2 individual members fairly. *Id.* at § 6.13. If Plaintiff feels TCC is not treating him fairly, his
3 claim is against TCC, and not the Director Defendants. *See Id.* at Comment A ¶ 5. While §
4 6.14 states that directors and officers of common-interest communities owe a duty to deal
5 fairly with its members, any claim that the Director Defendants are not dealing with
6 Plaintiff fairly is TCC's claim, not Plaintiff's individual claim. The individual members,
7 acting on behalf of TCC, duly elect their directors. In that same vein, the individual
8 members, again acting on behalf of TCC, can cause their directors to be removed if they
9 feel they are not upholding their duties owed to TCC.
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11

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13 As Plaintiff points out in his Response, the requisite number of individual members
14 required to act on behalf of TCC recently called a membership meeting in an attempt to
15 recall certain directors (which failed). TCC acts either by the direction of its duly elected
16 board of directors, or it acts by the direction of the requisite number of individual members
17 banding together. This latter act is the proper course for addressing claims that the Director
18 Defendants breached their fiduciary duties because TCC, and not individual members, is
19 the beneficiary of those duties.
20
21

22 Plaintiff's detour into the duties owed by the Director Defendants aside, the fact
23 remains that TCC, and not the Director Defendants, is the only proper party in any such
24 contempt of court proceedings because TCC, and not the Director Defendants, is the party
25 against which Plaintiff brought his OAH and ADRE claim, and TCC is the party the OAH
26 and ADRE ordered to produce certain documents requested by Plaintiff. Further, Plaintiff
27 is attempting to enforce the Order through contempt of court proceedings against the
28

1 Director Defendants despite the fact that TCC fully complied with the OAH and ADRE
2 Orders.

3
4 For the reasons stated above and in the Director Defendants' Motion to Dismiss,
5 Plaintiff improperly named the Director Defendants as parties to this matter; Plaintiff
6 failed to state a claim upon which relief can be granted against the Director Defendants;
7 and most importantly, the OAH and ADRE Orders in no way bind the Director
8 Defendants, which leaves Plaintiff's recourse against TCC alone.

9
10 Therefore, the Director Defendants respectfully request that the Court dismiss all
11 of Plaintiff's claims with prejudice against the individually named Director Defendants,
12 and request that the Court award attorneys' fees and costs expended in defending
13 against these frivolous claims.
14

15 RESPECTFULLY SUBMITTED this 22nd day of November 2017.

16 Carpenter, Hazlewood, Delgado & Bolen, LLP

17
18 By: /s/Allison Preston

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20 Allison Preston 029346
21 1400 E. Southern Ave., Suite 400
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23 **CERTIFICATE OF SERVICE**

24 ORIGINAL of the foregoing electronically
25 filed this 22nd day of November, 2017, with:

26 Clerk of the Court
27 Maricopa County Superior Court
28 www.AZTurboCourt.gov

1 COPY of the foregoing mailed
2 this 22nd day of November, 2017, to:

3 William M. Brown
4 6751 East Amber Sun Drive
5 Scottsdale, AZ 85266
6 *Plaintiff*

7 /s/Tamara Zhilyaev _____
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