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IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THOMAS J. GUSICH, an individual,

Plaintiff,

vs.

SUN CITY GRAND COMMUNITY
ASSOCIATION, INC., an Arizona
corporation,

Defendant.

Case No. **CV2025-002634**

COMPLAINT

Plaintiff Thomas J. Gusich (“Gusich”) alleges:

PARTIES AND JURISDICTION

1. Gusich, a resident of Maricopa County, Arizona, lives and owns property in Sun City Grand, a planned community as that term is defined in A.R.S. § 33-1802, in Surprise, Arizona, and a Member of Defendant Sun City Grand Community Association, Inc. (the “Association”).

2. The Association is an Arizona nonprofit corporation responsible for owning, managing, and operating common areas and facilities of Sun City Grand. The affairs of the Association are managed by its Board of Directors (the “Board”).

3. Jurisdiction and venue are proper in this Court.

4. This is a Tier 2 case.

GENERAL ALLEGATIONS

5. The Association's Amended and Restated Bylaws (the "Bylaws") establish the terms and qualifications of the Board. A true and correct copy of the Bylaws is attached as Exhibit 1.

6. The Board consists of five to seven Directors (presently, seven), each with one equal vote, who are elected to two-year terms. However, the minimum number of directors required to exercise the full authority of the Board is just three.

7. In 2023, the Board included Doug Brady, Rene Mitchell, Jeffrey Gibbs, and Carol White (collectively, the "Majority"). The Majority continued to serve on the Board in its 2024 term, while Mitchell ran again and was reelected on April 1, 2024.

8. Gusich was a vocal critic of the Majority throughout its 2023 term. He built his campaign around bringing change to Association operations. Specifically, he vowed to contribute to the Board's "transparency and accountability," "fiscal restraint and responsibility," "timely and effective problem resolution," "advocacy for the community as a whole," and "preservation of property values."

9. On April 1, 2024, Gusich was elected to the Board with overwhelming backing of the Association's membership. The new Board also included Ben Serns and Gabrielle Dawson. Gusich takes his role as a director and the fiduciary duty he owes the Association seriously. He is direct and to the point in exercising his duties as Director.

10. The Board was unhappy with the community's choice to elect Gusich as a Director.

11. On April 2, 2024, the Board held a training session for its new Directors. When pressed by the Majority at this session, Gusich indicated he intended to uphold his fiduciary duties to the community even if it meant opposing the Majority.

12. The Majority took issue with Gusich's stated position, and, upon

1 information and belief, immediately began attempts to implement a code of conduct
2 that would allow the Majority to police, discipline, and publicly criticize the
3 activities, speech, and conduct of other directors.

4 13. On April 11, 2024, the first official meeting of the new Board, the Board
5 purportedly adopted Grand Standards of Behavior for Board Directors (the “Grand
6 Standards”). A copy of the Grand Standards is attached as Exhibit 2.

7 14. Upon information and belief, the Majority adopted the Grand Standards
8 for the purpose of attempting to sideline and silence Gusich as well as to justify
9 publicly disparaging Gusich to the entire membership and accusing him of not falling
10 into line with the Majority.

11 15. The Grand Standards, to the extent otherwise validly adopted, impose
12 vague and subjective aspirational requirements that Directors will “act in the best
13 interests of the Association as a whole,” “strive to do what is best for the Association
14 as a whole,” “act in good faith and in the best interest of the Association.” Although
15 Gusich has always acted in the best interests of the Association in the performance
16 of his duties as Director, the Grand Standards allow a majority (or, the Majority) to
17 punish Gusich if they believe he is not acting “in the best interests of the
18 Association.”

19 16. The Grand Standards, to the extent otherwise validly adopted, further
20 impose a gag order and compulsory cheerleading on minority directors. The Grand
21 Standards expressly prohibit Directors from making critical statements that might
22 “degrade decisions of the majority” and compel minority directors to “support the
23 decisions of the majority of the Board regardless of the position the Director may
24 have taken at the time of the vote.”

25 17. The Grand Standards, to the extent otherwise validly adopted, further
26 impose vague and entirely subjective “civility” requirements on Directors to, among

1 other things, “conduct themselves at all times with civility and respect,” to keep their
2 language and conduct “professional,” and to refrain from “harassing or disparaging
3 behavior or language against any other Director, member, resident, vendor,
4 Association management, and Association employee.” The Grand Standards,
5 however, do not define “civility,” “respect,” “professional,” or “harassing or
6 disparaging behavior or language,” and instead appear to invite definition on a
7 subjective, *ad hoc* basis by those seeking to enforce the Grand Standards against a
8 Director.

9 18. The Grand Standards provide violations of the document are subject to
10 a four-step incremental enforcement policy requiring: (step one) counseling in an
11 executive session, (step two) public rebuke in an open meeting, (step three) a written
12 letter of censure, and (step four) the Board choosing to pursue either removal of the
13 minority member or a “breach of fiduciary duty lawsuit.” The Grand Standards,
14 however, do not state how the four-step enforcement policy is initiated or by whom.
15 In effect, the Grand Standards allow a majority of the Board to punish and publicly
16 berate minority members for not supporting its decisions or otherwise making
17 statements or taking positions that the majority believes is not in the best interest
18 of the Association.

19 19. The Grand Standards compel the Board to initiate the enforcement
20 process against any Director “who is shown to be in violation of the governing
21 documents.” However, the Grand Standards do not describe how, when, or by whom
22 a targeted Director will be “shown to be in violation of the governing documents or
23 any written policy or resolution adopted by the Board.” Nor do they identify the
24 process, if any, the Board follows in finding a director, like Gusich, to be a violation
25 necessitating the Grand Standards’ four-step punishment process that leads to
26 public rebuke and censure, removal, or even a lawsuit for breach of fiduciary duty.

1 20. In effect, the Grand Standards allow the Board to enforce violations of
2 the Grand Standards but dispense with any of the usual and reasonable hallmarks
3 of due process or even proof. The Grand Standards further allow the decision as to
4 whether a director, like Gusich, has been “shown to be in violation” to be made in
5 secret by a majority before the enforcement policy is initiated to compile the “written
6 list of the behaviors the Director is engaging in.”

7 21. Shortly after he was elected, the Majority accused Gusich of violating
8 the Grand Standards as a director. Under the pretense of following the Grand
9 Standards’ enforcement policy, the Majority rebuked Gusich at one or more executive
10 sessions and then held an open board meeting in which it continued to disparage,
11 defame, and paint him in a false light. The Majority then began sending a series of
12 email blasts to members of the community, publicly detailing their grievances and
13 complaints (in express violation of the same Grand Standards they were purportedly
14 enforcing) and falsely reporting Gusich to be in violation of the Association’s
15 governing documents.

16 22. Gusich was not in violation of any valid or enforceable provision of the
17 governing documents. Although the Majority has sent out numerous updates and
18 referenced “the issues” with Gusich, the Majority has not followed the Grand
19 Standards’ enforcement policy. Although the Majority has proceeded ahead into
20 steps two and beyond, Gusich has not been provided with a written list of behaviors
21 alleged to have harmed the Association.

22 23. After a series of meetings on September 11, 2024, the Majority declared
23 Gusich to be unrepentant and held an open board meeting in front of hundreds of
24 homeowners under the pretense of escalating its enforcement of the Grand Steps to
25 the second step for the unproven and unstated violations of the Grand Standards.

26 24. Upon further information and belief, the Majority has directly or

1 indirectly threatened Directors who are unwilling or disinclined to participate in the
2 campaign against Gusich.

3 25. In the time since the September 11, 2024, meetings, director Ben Serns
4 approached Gusich and apologized for the Majority's handling of the disciplinary
5 process and further expressed that he should never have thrown his official support
6 in with the Majority.¹

7 26. On October 31, 2024, the Board held an open meeting to further publicize
8 its grievances against Gusich and give the members of the community an
9 opportunity to provide feedback, thoughts, and concerns on the public record.

10 27. Upon information and belief, the Majority provided each Board member
11 with a script to read during the meeting to falsely portray the rest of the Board as
12 united against Gusich. The façade of the united front fell when Serns indicated he
13 was forced to read a script, did not agree with the Majority's position, and only
14 complied with the wishes of the Majority in hopes of ending their campaign against
15 Gusich.

16 28. Gusich then delivered a speech in response to the scripted, but
17 intentionally vague, accusations. The speech was met with applause and cheers from
18 the audience, a reaction the Majority announced to be "disrespectful."

19 29. The Majority followed the meeting with additional email blasts about
20 Gusich, continuing to disparage him and paint him in a false light. Upon information
21 and belief, the Majority disclosed information discussed in confidential Board
22 meetings and otherwise disparaged Gusich in clear violation of the same Grand
23 Standards it is seeking to enforce against Gusich. Not surprisingly, the Majority has
24

25
26 ¹ The Majority has since declared Serns to be in violation of the Grand Standards
and has begun undertaking enforcement action. *See* ¶ 32 below.

1 not policed their own violations of the Grand Standards with the same vigor, or even
2 at all.

3 30. By the Grand Standards' design, only minority members can be found in
4 violation of the Grand Standards by the majority; it is only a violation, in other
5 words, if a majority wants to pursue enforcement.

6 31. On January 16, 2025, Rene Mitchell and the Defendant's counsel refused
7 to allow Gusich to participate in the January 16, 2025, closed Board meeting, even
8 though Plaintiff's counsel authorized Defendant's counsel to speak with Gusich on
9 matters unrelated to the ongoing dispute between Gusich and the Majority.

10 32. Upon information and belief, none of the topics for the executive meeting
11 concerned the accusations concerning Gusich. Nevertheless, the Majority, by and
12 through their attorney, used the fact that Gusich had retained counsel in response
13 to the accusations against him as a pretext for excluding him from an executive
14 meeting he had every right to attend.

15 33. Upon information and belief, the Majority actively excluded Gusich from
16 the meeting to prevent him from partaking in the vote to initiate the disciplinary
17 process against Serns.

18 34. In doing so, the Majority has directly infringed on Gusich's right to vote
19 on the matter, and to otherwise discharge his fiduciary duties as a Director.

20 35. Upon information and belief, the Majority is refusing to allow Gusich to
21 participate in executive sessions, and significantly harming his ability to perform his
22 duties as a director, on the basis of the charges against him and his decision to retain
23 counsel to use in defense of the frivolous accusations against him.

24 36. Gusich has asked the Majority to: (i) allow him to participate in Board
25 meetings, (ii) stop disseminating community email blasts intended to villainize him,
26 and (iii) to indemnify him pursuant to the Association's Bylaws. The Majority has

1 refused each of these requests.

2 37. The Majority has taken, and continues to take, enforcement action
3 against Gusich with respect to actions, decisions, or statements he has made by
4 reason of being a director of the Association. The Majority has acted, and continues
5 to act, intentionally to sideline, silence, and sabotage Gusich as a director because
6 he refuses to comply with arbitrary and unreasonable demands about how he should
7 and should not fulfill the fiduciary duties he owes to the Association.

8 38. The Majority continues to cite Gusich's alleged ongoing violations of the
9 Grand Standards as a pretext for the Board's ongoing efforts to compel compliance
10 from other members and for excluding Gusich from participating in Board decisions
11 as an equal Board member on par with the other members.

12 **COUNT ONE**
13 **Declaratory Judgment**

14 39. Gusich incorporates the foregoing allegations as if set forth fully herein.

15 40. An actual and ripe controversy has arisen and now exists between the
16 parties concerning, among other things, the validity and enforceability of the Grand
17 Standards, the legality and unreasonableness of the Majority's enforcement actions,
18 and whether he is entitled to indemnity for having to defend the Majority's efforts to
19 punish him for activities he has taken as a board member.

20 41. Specifically, Gusich seeks a declaratory judgment that: (i) the Grand
21 Standards are invalid, unenforceable, and an unreasonable exercise of the Board's
22 discretionary rulemaking and enforcement policies for all the reasons alleged above,
23 (ii) the Board or Majority do not have the power to enforce the Grand Standards,
24 (iii) the Board has violated the Grand Standards to the extent that they are
25 enforceable, (iv) to the extent that the Grand Standards are enforceable, they do not
26 authorize the Majority to exclude Gusich from executive meetings, and (iv) Gusich is

1 entitled to indemnity from the Association for all actions taken against him. Gusich
2 also seeks an injunction to enforce the Court's rulings to ensure that the rulings are
3 complied with.

4 42. This claim is brought pursuant to the Uniform Declaratory Judgment
5 Act, A.R.S. § 12-1831, *et seq.*, and Arizona Rules of Civil Procedure, Rule 57.

6 43. This controversy will continue until resolved by the Court.

7 44. Plaintiff is entitled to recover his costs and attorneys' fees incurred
8 herein pursuant to Section 6.5 of the Association's Bylaws, the CC&Rs, A.R.S. §§ 12-
9 341, 12-341.01, and 12-1840.

10 **COUNT TWO**
11 **Breach of Contract**

12 45. Plaintiff incorporates the above allegations as if fully set forth herein.

13 46. The Declaration and Bylaws constitute a contract between the
14 Association and each of the owners subjected to it, including Plaintiff.

15 47. Section 6.5 of the Association Bylaws provides that the Association
16 shall indemnify every director and committee member
17 against all expenses, *including attorney fees*, incurred by
18 them in connection with any action, suit, or other proceeding
19 (including settlement of any suit or proceeding, if approved
20 by the Board) to which he or she may be a party by reason of
being or having been a director or committee member of the
Association.

21 The directors and committee members shall not be liable for
22 any mistake of judgment, negligent or otherwise, except for
23 their own individual willful misfeasance, malfeasance,
24 misconduct, or bad faith. The directors shall have no
25 personal liability with respect to any contract or other
26 commitment made or action taken in good faith on behalf of
the Association. The Association shall indemnify and forever
hold each such director and committee member harmless

1 from any and all liability to others on account of any such
2 contract commitment or action. Any right to indemnification
3 provided for herein shall not be exclusive of any other rights
4 to which any present or former director or committee
5 member may be entitled. The Association shall, as a
6 Common Expense, maintain adequate general liability and
officers' and directors' liability insurance to fund this
obligation, if such insurance is reasonably available.

7 48. Gusich has requested indemnity in connection with the Board's
8 enforcement actions.

9 49. The Association has refused, breaching its contract with Gusich.

10 50. Gusich is entitled to indemnity and has been damaged in an amount to
11 be proven at trial.

12 51. Plaintiff is entitled to recover his costs and attorney's fees pursuant to
13 Section 6.5 of the Association's Bylaws and A.R.S. §§ 12-341 & 12-341.01.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff demands and prays for judgment as follows:

16 (A) Awarding a declaratory judgment declaring the Grand Standards
17 to be void, invalid, unlawful, or otherwise unenforceable;

18 (B) Awarding a permanent injunction against Defendant, banning
19 Defendant from enforcing the Grand Standards;

20 (C) Awarding Plaintiff his reasonable attorneys' fees and costs; and

21 (D) Awarding Plaintiff such relief as this Court deems just and proper.

22 DATED this 22nd day of January 2025.

23 **DESSAULES LAW GROUP**

24 By: /s/ Jonathan A. Dessaulles
25 Jonathan A. Dessaulles
26 *Attorney for Plaintiff*