

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-055353

04/17/2026

HONORABLE MELISSA IYER JULIAN

CLERK OF THE COURT
A. Cage
Deputy

JIE CAO, et al.

JIE CAO
14850 E GRANDVIEW RD
FOUNTAIN HILLS AZ 85268

v.

LORNE POLGER, et al.

JEFFERSON R HAYDEN
LOUIS D LOPEZ
STONE XIA
14850 E GRANDVIEW DR
FOUNTAIN HILLS AZ 85268
HAINING XIA
14850 E GRANDVIEW RD
FOUNTAIN HILLS AZ 85268
CHARLES E MARKLE
JUDGE JULIAN

RULING

Re: Motion for Partial Reconsideration and Motion for Leave to File Response

Pending before this Court are (1) Defendants' Motion for Partial Reconsideration of the March 13, 2026 Minute Entry, filed March 18, 2026; (2) Defendants' Motion to Confirm Arbitration Award, filed March 18, 2026; and (3) Plaintiffs' Motion for Leave to File Response to Defendants' Reply in Support of Motion to Confirm Arbitration Award, filed April 9, 2026, by which Plaintiffs seek leave to respond to Defendants' Motion to Confirm Arbitration Award.

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As explained in further detail below, partial reconsideration of the Court's March 13, 2026 order is required as the Court erred in relying on the 2019 version of the statute, rather than the version that became "effective in 2018."

The Court also finds good cause to allow Plaintiffs to substantively respond to the merits of the confirmation motion, given Plaintiffs' apparent misunderstanding regarding the scope of the Court's orders prohibiting further motion practice without leave.

ANALYSIS

Reconsideration Motion

In its March 11, 2026 ruling, filed March 13, 2026, this Court correctly recognized that the 2018 version of A.R.S. § 33-1228 governs the valuation procedure at issue on remand. The Court erred, however, by then quoting and relying on language that appears only in the later version of the statute, effective August 27, 2019, rather than in the 2018 version that controls here.

The 2019 version of A.R.S. § 33-1228(G)(1) requires arbitration by an arbitrator affiliated with a national arbitration association and under that association's rules. The 2018 version does not contain that language. Instead, the 2018 statute provides that if the second appraisal exceeds the association's appraisal by more than five percent, the unit owner shall submit to arbitration at the association's expense, and the arbitration amount is the final sale amount. The Court's March 13, 2026 order relied on the wrong statutory text after correctly identifying the governing version. *See also Cao v. PFP Dorsey Investments, LLC*, 257 Ariz. 109, 118, ¶ 45 (2024) (holding that "the 2018 version of § 33-1228, which was in effect when the condominium was terminated, applied.").

For these reasons, the partial reconsideration motion is granted, and the March 13, 2026 order is modified, as set forth below.

Leave to File Response to Motion to Confirm

Plaintiffs' request for leave to respond to the Motion to Confirm Arbitration Award is also granted. The Court's March 11, 2026 ruling permitted the filing of a motion to confirm the arbitration award, notwithstanding the order's prohibition on other, unrelated motions. (*See* 3-13-26 Minute Entry at p. 11, ¶ 7, requiring the filing of an "application to confirm the arbitration award" before the dismissal deadline.) The same order imposed broad filing restrictions and stated that future filings outside those specifically authorized would require leave, with response and reply deadlines to be set by court order.

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In light of the broad order limiting unauthorized motion practice, Plaintiffs' belief that they were not permitted to respond to the pending Motion to Confirm Arbitration Award without a further order from the Court was reasonable. *Cf. Ulibarri v. Gerstenberger*, 178 Ariz. 151, 164 (App. 1993) (trial court abuses discretion when leave to file untimely response is denied where untimely response was the result of excusable neglect). Good cause exists to permit Plaintiffs to file a substantive response to the pending motion to confirm the award.

DISPOSITION

Accordingly,

IT IS ORDERED granting Defendants' Motion for Partial Reconsideration of the March 13, 2026 Minute Entry.

IT IS FURTHER ORDERED vacating the following portions of the Court's March 11, 2026 ruling, filed March 13, 2026:

1. Page 8, the paragraph beginning, "The parties argue past each other on a key point because the statute does not merely say 'arbitrate' in the abstract" and continuing onto page 9 through the sentence ending, "at the Association's expense."
2. Page 10, under section "C. Arbitration Procedure Orders," numbered paragraphs 2, 3, and 4.
3. Page 11, under section "C. Arbitration Procedure Orders," numbered paragraph 6, to the extent that paragraph requires the parties to identify an arbitration association affiliation and rules to be used.

IT IS FURTHER ORDERED that the Court clarifies that the governing arbitration procedure is set by the Termination Agreement and A.R.S. § 33-1228(G)(1) (2018), as mandated by the Arizona Supreme Court.

IT IS FURTHER ORDERED that, except as modified by this ruling, all other orders set forth in the Court's March 11, 2026 ruling, filed March 13, 2026, remain in effect.

IT IS FURTHER ORDERED granting Plaintiffs' Motion for Leave to File Response to Defendants' Motion to Confirm Arbitration Award and extending the deadline for Plaintiffs to file a response to Defendants' Motion to Confirm Arbitration Award to **May 4, 2026**.

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IT IS FURTHER ORDERED that Defendants may file a new reply brief in support of the Motion to Confirm Arbitration Award as permitted under Rule 7.1(a)(3) once Plaintiffs' response is filed and served.

IT IS FURTHER ORDERED holding Defendants' Motion to Confirm Arbitration Award, filed March 18, 2026, in abeyance pending filing of the supplemental briefing ordered herein.