

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001318

04/28/2016

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

BRODIE POOLE, et al.

JONATHAN A DESSAULES

v.

VELDA ROSE ESTATES HOMEOWNERS
ASSOCIATION

CHRISTINA N MORGAN

HEARING

Courtroom: ECB-512

8:49 a.m. This is the time set for oral argument regarding Plaintiffs' February 17, 2016 Application for Order to Show Cause and Defendant's March 21, 2016 Motion to Dismiss. Plaintiffs Brodie Poole, Susan Rice and Gwendolyn Krogstad are present and represented by Counsel Jonathan A. Dessauls and Chelsea M. Kartler, who also represent Plaintiffs Richard Bertling, Dianne Taylor Bertling and Stan Hayes. Defendant Velda Rose Estates Homeowners Association is represented by Counsel Christina N. Morgan. Defendant's client representative, Gloria Deneson, is present as are several board members of the Defendant.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Oral argument is presented.

IT IS ORDERED taking these matters under advisement.

The court addresses the parties regarding this litigation and options for resolving the case.

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9:18 a.m. Matter concludes.

Later

Before the court are Plaintiffs' Application for Order to Show Cause and Defendant Association's Motion to Dismiss, which turn on the same legal issue: Are Plaintiffs, who are members of the Association, entitled to copies of ballots cast by Association members and other records pertaining to the election of the Association's Board?

A.R.S. § 33-1805(A) directs that "all financial and other records" of a homeowners' association be made available to members, subject to certain exceptions. The court concludes that records of the Association's election are "other records" within the meaning of this statute. The purpose of the statute is to permit association members to meaningfully monitor the actions of their association or its board. Monitoring whether an association has properly and honestly conducted elections is squarely within the interests protected by the statute.

A.R.S. § 33-1805(B)(4) permits the Association to withhold from disclosure "[p]ersonal . . . records of an individual member of the association." To the extent an election record identifies either which property owners voted or how they voted, it constitutes a personal record of an individual member that is exempt from production.

The ballots for the Association's election are designed to be secret; they contain no place for the member to provide his or her name or other identifying information. Thus, those records are not personal and must be produced. To the extent any member chose to write their name on a ballot, they voluntarily made that information non-personal. The envelopes containing ballots, however, are personal because they identify who voted in the election.

Based on the foregoing,

IT IS ORDERED denying the Association's Motion to Dismiss.

IT IS FURTHER ORDERED granting Plaintiffs' Application in part as follows. Within 30 days of this order, the Association shall make available for inspection to Plaintiffs or their representative all ballots cast in the Board of Directors election.

IT IS FURTHER ORDERED that the parties file a joint status memorandum no later than **June 15, 2016** stating whether any matters remain to be adjudicated in this matter and, if so, attaching a scheduling order.