

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2025-015220

08/05/2025

HONORABLE DAVID MCDOWELL

CLERK OF THE COURT  
E. Valadez  
Deputy

JIMBO L L C

KIM ROBERT MAEROWITZ

v.

SAFARI DRIVE CONDOMINIUM  
ASSOCIATION

ERIN E MCMANIS

JUDGE MCDOWELL

**RULING ON MOTION TO DISMISS  
RULING ON MOTION FOR PRELIMINARY INJUNCTION**

On April 30, 2025 Plaintiff filed *Jimbo LLC's Motion for Preliminary Injunction* and a *Complaint for Injunctive Relief*. In these filings Jimbo LLC seeks injunctive relief ordering Safari not to do anything inconsistent with Jimbo's designated representative, Oleg Bortman, being the only eligible candidate on the 2025 board of directors ballot. Jimbo contends its representative was the only individual who submitted a completed candidate application prior to the January 19, 2025 deadline and should have been the only individual listed on the Condominium Association board of directors ballot for the March 2025 election.

A hearing was held on June 30, 2025 to address the *Motion for Preliminary Injunction*.

On May 20, 2025 Defendant Safari Drive Condominium Association filed a *Motion to Dismiss* arguing Jimbo's claim is limited to injunctive relief and the injunctive relief must be sought before the action is taken. Here, Safari contends Jimbo was required to seek injunctive relief before the board of directors election in March 2025. Jimbo filed a *Response* to the motion on June 4, 2025, and the matter was fully briefed by the June 30, 2025 hearing.

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**BACKGROUND**

Jimbo LLC owns a commercial condominium in the Safari Drive Condominiums located in Scottsdale, Arizona.

Safari Drive Condominium Association is an Arizona non-profit corporation.

In late December/early January 2025 applications were solicited for two open positions on the condominium association board of directors.

On January 9, 2025 Jimbo LLC's designated representative, Oleg Bortman, submitted his application for a position on the board of directors and a signed Board of Director Code of Conduct.

The deadline for submission of the application forms was Friday, January 19, 2025.

According to the testimony adduced at the June 30, 2025 hearing, three additional board candidates (Charlie Ray, Fritz Beesemyer, and Jeff Arthur) submitted applications on January 19, 2025 but did not sign them until January 20, 2025.

On February 12, 2025 a virtual meeting was held where condominium owners were permitted to ask questions of the candidates. All four candidates participated in that video meeting.

The election was conducted through an on-line platform. On March 18, 2025 the property manager for the condominium owners association announced the results. Ray and Beesemyer received the most votes and were elected to the board of directors.

On April 30, 2025 Jimbo filed this action seeking declaratory relief including a determination that he was the only candidate who submitted his application timely and he should have been the only candidate on the ballot.

**ARGUMENTS**

Jimbo argued in his filings and during the hearing that the Association previously strictly enforced the submission deadlines and that strict enforcement precluded Mr. Bortman from being on the ballot in 2024. The Association offered a different explanation indicating why Mr. Bortman was not on the ballot in 2024.

Jimbo argued strict interpretation of the deadline contained in the invitation for applications precluded Messers Ray, Beesemyer, and Arthur from appearing on the ballot because their applications were not signed and dated until the day after the deadline. Jimbo argues because Ray,

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Beesemyer, and Arthur were not properly on the ballot, one of the open board positions must go to Mr. Bortman.

Jimbo also argued the applications of Ray, Beesemyer, and Arthur were not accompanied by a signed Board of Directors Code of Conduct which made their submission incomplete. The Property Manager testified the code of conduct did not need to be signed unless an individual is elected and it was not part of the application.<sup>1</sup>

The Association argued Jimbo's sole remedy was to seek an injunction prior to the election and his delay until after the election prevented him from challenging the validity of the election. The Association relied on A.R.S. §10-3304(B)(2). Jimbo argued A.R.S. §10-3304(C) authorized it to sue to "set aside" the wrongful act.

**WHAT REMEDIES ARE AVAILABLE TO AN OWNER FOR ACTS OF THE ASSOCIATION?**

An owner in an association who suffers individual harm has authority to challenge the acts of the corporation pursuant to A.R.S. §10-3304. That statute provides,

**A.** Except as provided in subsection B of this section, the validity of corporate action shall not be challenged on the ground that the corporation lacks or lacked power to act.

**B.** A corporation's power to act may be challenged by any of the following:

1. In a proceeding by members of a corporation that is not a condominium association as defined in § 33-1202, or a planned community association as defined in § 33-1802, having at least ten per cent or more of the voting

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<sup>1</sup> The "Safari Drive 2025 Annual Membership Meeting and Request for Board Candidates" form does not specify the code of conduct needs to be signed and returned it states, "If you are interested in serving on the Board of Directors, please complete the following information as well as the attached questionnaire to be included with the official ballot sent to all homeowners". Below that statement are four lines to be filled in, a request for a brief statement of qualifications, and a signature and date line. The following page asks nine questions. The Code of Conduct is a separate two-page document outlining the expectations of Board Members. On the second page there are four lines, two for dates, and two for the Board Member's name, title, and signature. The separate nature of the documents and the signature designation on the Code of Conduct indicates the Code of Conduct would not need to be signed and submitted with the application (without something else indicating that a candidate is considered a "board member" with the submission of the application.

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power or by at least fifty members, unless a lesser percentage or number is provided in the articles of incorporation, against the corporation to enjoin the act.

2. In a proceeding by any member of a condominium or a planned community association against the corporation to enjoin the act pursuant to title 12, chapter 10, article 1.

3. In a proceeding by the corporation, directly, derivatively or through any receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the corporation.

**C.** In a member's proceeding under subsection B, paragraph 1 of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

**INJUNCTIVE RELIEF:**

A.R.S. §10-3304(B)(2) entitles a member to injunctive relief. Here Jimbo sought injunctive relief related to the 2025 election more than thirty days after the election was confirmed. The Association argues his request for an injunction is too late. Jimbo argued irreparable damage would result if an injunction is not issued.

Injunctive relief is available for future conduct. *Modular Mining Systems Inc., v. Jigsaw Techs Inc.*, 221 Ariz. 515 ¶12 (App. 2009). Jimbo asserts the injunction sought is to prevent the board from taking any action inconsistent with his entitlement to serve on the board. While this is not phrased as a request to set aside the election, the effect is the same and there is no way to prevent the board from acting inconsistent with recognizing Jimbo's representative as a member of the board without setting aside the election which placed Ray and Beesemyer on the board. The 2025 election has already occurred, so injunctive relief as to that election is no longer available. The Court cannot enjoin an act that occurred prior to the filing of the complaint.

Jimbo would be entitled to injunctive relief affecting future elections if he demonstrated a likelihood that the defendant will, in the future, engage in the conduct sought to be enjoined." *State ex rel. Babbitt v. Goodyear Tire & Rubber Co.*, 128 Ariz. 483, 486 (1981). The burden of proof to establish that likelihood of future occurrence falls on Jimbo. *Modular*, 221 Ariz. 519 ¶12 (App. 2009). Jimbo did not establish the likelihood of future violations. He demonstrated that an election occurred in 2024 in which he was unable to participate because his application was approximately a week after the submission deadline and an election occurred in 2025 in which three individuals submitted unsigned applications on the deadline, but did not sign them until the day after the

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submission deadline. The two fact patterns established do not indicate the 2024 situation reoccurred in 2025 or which of the two the Association will use in 2026.

In a strikingly similar case, *Tober v. Civano 1: Neighborhood Association*, the Court of Appeals addressed an owner's challenge to an association election. 2 CA-CV 2012-0129 (App. 2013). While *Tober* is unreported, it is instructive as to how courts of this state should interpret this statute (A.R.S. §10-3304<sup>2</sup>) and apply it in a factually similar case. In *Tober* an owner of a home in the association filed an action challenging the association election after it was completed. The Court of Appeals stated in ¶12,

...because Tober did not seek to enjoin the 2011 election procedure before the election was finalized, she could not later challenge the election on the ground that Civano had lacked the power to act.

In *Tobler*, the Court of Appeals also referenced the case of *Zajac v. City of Casa Grande*, 209 Ariz. 357, ¶14 (2004) for the proposition that “[I]f parties allow an election to proceed in violation of the law which prescribes the manner in which it shall be held, they may not, after the people have voted, then question the procedure.”. See *Tobler*, ¶12. Like the plaintiff in *Tobler*, Jimbo did not seek to enjoin the election before it occurred, instead he waited until after the election was completed. Like the plaintiff in *Tober*, Jimbo knew of the purported defects in the election process (permitting three people to appear on the ballot which he claims were not eligible due to purportedly late submission of applications) but waited until the election was complete before he challenged it.

The Court finds Jimbo is not permitted to challenge the validity of the election after it occurred.

Jimbo has not established entitlement to injunctive relief related to the board election for 2025 or future board elections.

**IT IS ORDERED** denying Jimbo's request for a preliminary injunction.

**REVERSAL OF PRIOR ACTION**

Jimbo argues, pursuant to A.R.S. §10-3304(C) he is entitled to set aside the act of the Board. However, A.R.S. §10-3304(C) only applies to actions filed pursuant to subsection B, paragraph 1; as indicated in the first line of A.R.S. §10-3304(C) – “In a member's **proceeding under subsection**

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<sup>2</sup> The history of this statute indicates the version of A.R.S. §10-3304 which was before the Court in *Tobler* contains substantially similar sections B and C.

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**B, paragraph 1 of this section** to enjoin an unauthorized corporate act, the court may...”  
[Emphasis added].

Subsection B, paragraph 1 states,

1. In a proceeding by members of a corporation **that is not a condominium association as defined in § 33-1202, or a planned community association as defined in § 33-1802**, having at least ten per cent or more of the voting power or by at least fifty members, unless a lesser percentage or number is provided in the articles of incorporation, against the corporation to enjoin the act.

[Emphasis added].

Jimbo’s action is against the Safari Drive Condominium Association – so this action does not fall within Subsection B, paragraph 1. Because this action is not within Subsection B, paragraph 1, it does not qualify under Subsection C. Without the ability to qualify as a proceeding under Subsection C, Jimbo is left with the remedies under Subsection B, paragraph 2 which does not include the ability to set aside an act of the corporation.

**IT IS ORDERED** denying Jimbo’s request to set aside the former act of the corporation because that remedy is not authorized by statute.

Based upon the forgoing analysis, **IT IS ORDERED** granting the Association’s May 20, 2025 *Motion to Dismiss*.

**IT IS ORDERED** dismissing this action in its entirety.