

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2021-000258-001 DT

06/15/2022

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT

P. McKinley

Deputy

HAINING XIA

HAINING XIA

14830 E RHOADS CT

FOUNTAIN HILLS AZ 85268

v.

DORSEY PLACE CONDOMINIUM  
ASSOCIATION (001)

NICHOLAS C NOGAMI

JUDGE KILEY

OFFICE OF ADMINISTRATIVE

HEARINGS

REMAND DESK-LCA-CCC

JRAD DECISION / AFFIRMED

**OAH Case No. 21F-H21200016-REL**

Appellant Haining Xia (“Appellant”) appeals from the July 14, 2021 decision (“Final Decision”) of Administrative Law Judge Sondra J. Vanella (the “ALJ”) dismissing Appellant’s Homeowners Association Dispute Process Petition. For the following reasons, this Court affirms.

**PROCEDURAL HISTORY**

In November 2019, Appellant, along with two other plaintiffs (the “Superior Court Plaintiffs”), filed suit in Maricopa County Superior Court challenging the validity of a termination agreement (the “2019 Termination Agreement”) that, by its terms, terminated the condominium governing the residential complex where they lived. In their pleadings as amended, the Superior Court Plaintiffs sought declaratory and other relief against Appellee Dorsey Place Condominium Association (“Appellee”) and another defendant. *See generally* Second Amended Complaint in *Haining Xia, et al. v. Dorsey Place Condominium Association et al.*, Maricopa County Superior Court Case No. CV2019-055353 (the “Superior Court case”). In

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support of their claims, the Superior Court Plaintiffs alleged that the 2019 Termination Agreement was “invalid and void” because it was not adopted in accordance with the governing bylaws and statutory requirements, and therefore that the subsequent “transfer of title” is “invalid.” Second Amended Complaint in *Haining Xia, et al. v. Dorsey Place Condominium Association et al.*, Maricopa County Superior Court Case No. CV2019-055353 (“CV2019-055353” or the “Superior Court case”), at ¶¶ 46, 55.

In August 2020, Appellee and the other defendant each filed motions to dismiss in the Superior Court case. In Appellee’s motion to dismiss, Appellee argued that the Superior Court Plaintiffs “have failed to state a claim” because their pleadings failed to “plead facts that, if true,” would establish “that the condominium termination was not done in compliance with A.R.S. § 33-1228 and/or the Association’s governing documents.” [Appellee’s] Motion to Dismiss or, in the Alternative, Motion for More Definite Statement, filed in CV2019-055353 at p. 7. The co-defendant’s motion to dismiss asserted a similar argument. *See* Defendant PFP Dorsey Investments, LLC’s Motion to Dismiss Plaintiffs’ Second Amended Complaint, filed in CV2019-055353 on August 13, 2020, at pp. 8-9 (“[T]aking the allegations [in the pending complaint] as true, the condominium termination was completed pursuant to the statutory requirements of A.R.S. § 33-1228.”).

The Superior Court Plaintiffs filed their response in opposition to Appellee’s motion to dismiss on September 16, 2020. *See* [Superior Court Plaintiffs’] Response to [Appellee’s] Motion to Dismiss and PFP Dorsey Investments, LLC’s Motion to Dismiss, filed in CV2019-055353 on September 16, 2020. In their response in opposition to Appellee’s motion to dismiss, the Superior Court Plaintiffs asserted, *inter alia*, that Appellee “improperly terminated the condominium” because it “failed to take steps consistent with its bylaws” and “did not comply with A.R.S. § 33-1228.” *Id.* at pp. 2, 11, 13. As a result, the Superior Court Plaintiffs argued, Appellee’s actions “in adopting” the 2019 Termination Agreement are “void and unenforceable,” and so the Termination Agreement itself is “void and unenforceable.” *Id.* at p. 13.

Just a few days after the Superior Court Plaintiffs filed their response in opposition to Appellee’s motion to dismiss in the Superior Court case, Appellant initiated this case by filing a Homeowners Association Dispute Process Petition (the “Petition”) with the Arizona Department of Real Estate (the “Department”) on September 21, 2020. In his Petition, Appellant took the same position that he took in the Superior Court case, *i.e.*, that the 2019 Termination Agreement is invalid because Appellee failed to comply with applicable procedural requirements. Specifically, Appellant asserted in the Petition that,

[s]ince [he] purchased [his] unit on Feb 9, 2018 at [the complex], the HOA never elected the board at its Annual Members Meetings...This is a direct violation of HOA Bylaws Article 3.3, Article 4.1, and Article 4.4.

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Petition at p. 2. Asserting that “there was no duly elected board directors and no duly appointed officers,” Appellant insisted that the three individuals who are “named as directors of the board” hold their offices as a result of “a usurpation of corporate powers.” *Id.* Appellant requested “a ruling to declare” that documents signed by those individuals in their capacity as “corporate officers,” “including the [2019] Termination Agreement,” are “null and void.” *Id.*

The Petition was assigned for a hearing before the Office of Administrative Hearings (the “OAH”). Prior to the hearing, Appellee filed a Motion to Dismiss with the OAH, asserting that “this matter must be dismissed...due to lack of jurisdiction.” Index of Record (“I.R.”) No. 14, [Appellee’s] Motion to Dismiss, at p. 1. In support of its position, Appellee asserted that “[t]he OAH only has jurisdiction to hear disputes between a ‘Unit owner’ and a ‘Condominium’ as such terms are” statutorily defined, and that Appellee is not, in fact, “a Condominium.” *Id.* at pp. 1-2. Appellee explained that “its Condominium status was terminated in 2019,” and so the OAH does not have jurisdiction over this dispute.” *Id.* at p. 2.

In his response to the Motion to Dismiss that Appellee filed with the OAH, Appellant insisted that the OAH did, in fact, have jurisdiction over this case because “the so-called HOA termination agreement” was not validly adopted. I.R. No. 18, Response to Motion to Dismiss, at p. 2.

Meanwhile, after further briefing, the judge in the Superior Court case issued a ruling granting the motions to dismiss “for the reasons advanced by Defendants in their motions and reply briefs[.]” Minute Entry of December 15, 2020 in CV2019-055353 at p. 2.

In the reply it filed in support of the Motion to Dismiss that it had filed with the OAH, Appellee informed the ALJ that the judge in the Superior Court case had dismissed Appellant’s claims in that case and argued that “the judge’s decision in that case makes clear that the Association’s Condominium status pursuant to A.R.S. § 33-1202 is terminated.” [Appellee’s] Reply in Support of Its Motion to Dismiss at pp. 1-2.

On January 4, 2021, the ALJ issued a ruling stating that Appellee’s Motion to Dismiss “cannot be ruled upon at this time.” Minute Entry dated January 4, 2021 at p. 1. The ALJ explained as follows:

This conclusion is based upon the fact that the Minute Entry issued by [the judge in the Superior Court case] referenced motions and reply briefs filed, upon which the motion to dismiss with prejudice was granted based on the “reasons advanced” in those filings. The undersigned has not had the benefit of seeing those filings, and therefore, is unaware of the reasons asserted

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therein. Absent those documents, the undersigned cannot determine if [Appellee's] position is appropriate or can be granted.

Consequently, the Motion will be addressed at the scheduled hearing.

*Id.*

The hearing before the ALJ took place on January 7, 2021. Roughly two weeks later, the ALJ issued an Administrative Law Judge Decision (the "January 22<sup>nd</sup> ALJ Decision") stating in part that "the issue regarding the validity of the termination agreement has been adjudicated in" the Superior Court case and that the OAH "does not have the authority to overturn or modify that ruling." January 22<sup>nd</sup> ALJ Decision at p. 3 ¶ 9. The ALJ thus accepted the Superior Court's determination that the Termination Agreement is valid. *See id.* Instead of then dismissing the OAH case for lack of jurisdiction, however, the ALJ proceeded to address the merits of Appellant's claim. Holding that Appellant had failed to present documentary evidence sufficient to satisfy his burden of establishing a failure on Appellee's part to comply with the provisions of its governing documents, the ALJ dismissed Appellant's Petition. *Id.* at p. 5 ¶¶ 7-8.

Appellant then requested a rehearing, asserting that he had, in fact, submitted documentary evidence to the OAH prior to the January 7<sup>th</sup> hearing date. I.R. No. 42, Homeowners Association Dispute Rehearing Request, at p. 1.

A rehearing was held on July 2, 2021. Shortly thereafter, the ALJ issued an Administrative Law Judge Decision (the "July 14<sup>th</sup> ALJ Decision") stating that, although Appellant "alleged that [Appellee] failed to hold proper elections in 2018 and 2019," he had "failed to establish that an election was required during either of those years." July 14<sup>th</sup> ALJ Decision at p. 5 ¶ 7. Accordingly, the ALJ determined, again, that Appellant's Petition should be dismissed. *Id.* at p. 5.

Appellant filed a timely notice of appeal. This Court has jurisdiction pursuant to Ariz. Const. art. VI § 16 and A.R.S. §§ 12-124 and -905(A).

### DISCUSSION

After reviewing the Appeal Brief filed by Appellant and the Answering Brief filed by Appellee, the Court agrees with Appellee that the Department and the OAH lacked subject matter jurisdiction over this dispute.<sup>1</sup>

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<sup>1</sup> Although Appellee requested Oral Argument, the Court finds the parties' positions well-presented in the briefing, and so will rule without Oral Argument. *See* J.R.A.D. 9.

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As Appellee correctly argues, the Department and the OAH have jurisdiction to hear disputes between a “Unit owner” and a “Condominium” as such terms are defined by A.R.S. § 33-1202(10) and (23). *See* A.R.S. § 32-2199.01(A) (providing that the Department may conduct a hearing on “a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33...”). In the Superior Court case, Appellant and the other Superior Court Plaintiffs challenged the validity of the 2019 Termination Agreement. In their briefing on Appellee’s motion to dismiss, the parties disputed whether the 2019 Termination Agreement had been validly adopted, or whether Appellee had failed to comply with applicable procedural requirements. In granting the motions to dismiss “for the reasons advanced by Defendants in their motions and reply briefs,” Minute Entry of December 15, 2020 in CV2019-055353 at p. 2, the Superior Court judge accepted Appellee’s argument that the 2019 Termination Agreement had been validly adopted, and rejected Appellant’s argument to the contrary.

The determination of the validity of the 2019 Termination Agreement in the Superior Court case was entitled to preclusive effect in the administrative proceedings. *See Guertin v. Pinal County*, 178 Ariz. 610, 612 (App. 1994) (administrative decision upholding dismissal was entitled to collateral estoppel effect, barring employee from re-litigating wrongful discharge claim in superior court). *See also Thompson v. State Dep’t of Licensing*, 982 P.2d 601, 603 (Wash. 1999) (trial court decision has preclusive effect in subsequent administrative proceedings involving the same parties).

Because, as the Superior Court determined, the 2019 Termination Agreement is valid, Appellee was no longer a condominium at the time the Petition was filed in September 2020. Accordingly, the Department and the OAH lacked jurisdiction pursuant to A.R.S. § 32-2199.01(A) to adjudicate the claims raised in the Petition. Therefore, the ALJ should have dismissed the Petition for lack of jurisdiction.

Although the ALJ dismissed the Petition on the merits instead of jurisdictional grounds, the Court must affirm the ALJ’s ruling if it is correct for any reason. *See Spence v. Bacal*, 243 Ariz. 504, 507 ¶ 3 (App. 2018) (ruling will be affirmed “the result was legally correct for any reason”). *See also Fappani v. Bratton*, 243 Ariz. 306, 309 ¶ 8 (App. 2017) (“[W]e will affirm the court’s order dismissing a complaint if it is correct for any reason.”). Accordingly, the Court affirms the dismissal of Appellant’s Petition.

Appellee requests an award of attorney fees and costs. *See* Answering Brief at p. 11. The Court is not prepared to determine, at this time, whether Appellee is or is not entitled to such an award. The Court will therefore enter a partial final judgment affirming the dismissal of the Petition, reserving the issue of attorney fees and costs to be addressed in further briefing.

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Accordingly,

**IT IS ORDERED** affirming the July 14, 2021 Administrative Law Judge Decision dismissing Appellant's Homeowners Association Dispute Process Petition.

Appellee's request for an award of fees and costs is the only matter that remains pending in connection with this appeal. This is a partial final judgment. There is no just reason for delay, and so the Court directs entry of this partial final judgment pursuant to J.R.A.D. 13 and Ariz. R. Civ. P. 54(b).

*/s/ Daniel J. Kiley*

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THE HON. DANIEL J. KILEY  
Judge of the Superior Court

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