

V/C

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MIRIAM TINNELL
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

NANCY KNIGHT,)
)
Plaintiff,)
)
vs.)
)
GLEN LUDWIG and PEARL LUDWIG, Trustees)
of THE LUDWIG FAMILY TRUST; FAIRWAY)
CONSTRUCTORS, INC.; MEHDI AZARMI;)
JAMES B. ROBERTS and DONNA M. ROBERTS,)
husband and wife; JOHN DOES 1-10; JANE DOES)
1-10; ABC CORPORATIONS 1-10; and XYZ)
PARTNERSHIPS 1-10.)
)
Defendants.)
)

NO.: CV-2018-04003
OBJECTION TO PLAINTIFF'S
5TH MOTION FOR LEAVE TO
AMEND COMPLAINT

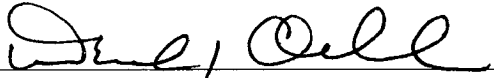
COME NOW, the Defendants, by and through their attorney, the undersigned, and
object to this the Plaintiff's 5th Motion to Amend Plaintiff's Complaint and respectfully request
that this Court deny Plaintiff's motion as has occurred on the four prior motions to amend. This
Objection is supported by the attached Memorandum of Points and Authorities and is filed in
accordance with the provisions of the Arizona Rules of Civil Procedure, Rules 7, 8, 9, 12, 15,
59(d) and 60 (c)(1).



Defendants further request an award of Defendant's attorney fees and costs.

RESPECTFULLY SUBMITTED this 2 day of July 2019.

LAW OFFICES OF DANIEL J. OEHLER


DANIEL J. OEHLER,
Attorney for Defendants

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MEMORANDUM OF POINTS AND AUTHORITIES

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2 This pleading of the Plaintiffs represents her 5th Motion to Amend that has been
3 preceded by other various Motions to Reconsider, Motions for Injunctive Relief and/or Motions
4 for Declaratory Judgment. Of the 11 or 12 motions previously filed, this Court has consistently
5 denied each of Plaintiff's motions, most recently ruling on June 13, 2019, denying a motion for
6 Reconsideration of Declaratory Judgment; a motion for Declaratory Judgment on the signage
7 issue; Plaintiff's second or third (depends on wording used by Plaintiff to describe her motions,
8 such as Motion to "Alter"; Motion to "Stay Execution" of the Court's dismissal with prejudice
9 of Count 1 of Plaintiff's complaint (entered June 11, 2018).

11 Plaintiff's prior and seemingly relentless efforts to amend her complaint, including the
12 5th effort currently before the Court are best described by Judge Carlisle in his June 11, 2018,
13 ruling wherein the Court discussed Plaintiff's initial Motion to Amend, stating:

15 "On May 2, the Plaintiff filed a motion to amend the complaint. The Defendants filed a
16 response and the Plaintiff filed a reply. Although the proposed amended complaint contained
17 some cosmetic changes, the primary modification was that the plaintiff was seeking
18 reimbursement for the expense of the taxpayers in determining whether to grant one of the
19 Defendant's request for a variance of the setback requirements. Additionally, the plaintiff
20 sought relief for other property owners. The Court finds that the Plaintiff's attempts to expand
the scope of this case should be denied. The Plaintiff has presented no authority for the
proposition that she has the authority to represent the taxpayers or other property owners.
Therefore, the amendment would be futile.

21 **IT IS ORDERED** denying the motion for leave to amend the complaint."

22 Multiple subsequent motions were filed by Plaintiff subsequent to her failed June 11,
23 2018, effort above referenced, including a 33 page with 36 pages of exhibits, Motion to Amend
24 filed on October 22, 2018. This second motion was and is very similar to the motion currently
25 before the Court. In deciding the October 2018 motion, this Court found:
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1 “The Plaintiff primarily requested the Court reconsider its previous decision that the
2 Plaintiff does not have the authority to seek enforcement for violations of the CC&R’s which
3 occur in Tracts in which she does not reside. To the extent that the motion for leave to amend
4 is a motion pursuant to ARCP Rule 59, it is not timely and the Plaintiff has not established
5 excusable neglect.
6

7 To the extent that the motion for leave to amend is a motion for reconsideration
8 pursuant to ARCP Rule 7.1(e), the Plaintiff has not presented any basis to seek relief for
9 violations of the CC&Rs beyond the CC&Rs themselves. As the Court previously indicated,
10 the CC&Rs restrict who can seek relief, and the Plaintiff cannot seek relief for violations of the
11 CC&Rs in Tract 4076-A because she is not a property owner in that Tract.

12 To the extent that the Motion for leave to amend seeks amendment of the complaint, the
13 Court previously dismissed count one because the Plaintiff did not have standing to seek relief
14 for violations in any Tract other than Tract 4076-B (or Tracts which were previously a part of
15 Tract 4076-B). Although the proposed amended complaint includes some cosmetic changes,
16 the primary purpose of the proposed complaint is to reassert the claims in count one. The Court
17 finds the amendment would be futile.
18

19 **IT IS ORDERED** denying the motion for leave to amend complaint.”

20 The same arguments and similar facts as those currently before this Court were
21 presented to this Court in Plaintiff’s Motion to Reconsider Judge Carlisle’s Dismissal of Count
22 I with prejudice that Plaintiff filed on April 26, 2019, and that was ruled on June 13, 2019.
23 Although the motion was potentially untimely under ARCP 59 (b)(1), 59 (d), or 60 (c)(1), the
24 Court provided the Plaintiff the benefit of the doubt and ruled factually on Plaintiff’s motion,
25 rather than procedurally, finding:
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27 “Plaintiff’s Motion for Reconsideration of the Court’s order dismissing Count I which
28 was signed June 11, 2018, rehashes the arguments already considered by this Court when
entering its rulings. The Court does not find such to be persuasive; therefore

IT IS ORDERED denying Plaintiff’s Motion for Reconsideration of Dismissal of
Count I (filed April 26, 2019)”

 Six days later, Plaintiff filed this her 5th Motion to Amend Plaintiff’s complaint.

1 A factual review of the proposed 5th amended complaint covers the vast majority of
2 substantially all of the issues previously described by this Court as “cosmetic changes”
3 or “rehashing” old unsuccessful arguments, although the Plaintiff does include new arguments
4 about a neighboring subdivision named Fairway Estates, which will be addressed later in this
5 memorandum.

6 Plaintiff’s allegations section generally talk about multiple new potential parties, such as
7 home owners Grice (¶26); U.S. Southwest Realty (¶21); Mr. and Mrs. Rovino, Mr. Sange, Mr.
8 Siavosh (¶52); a new adjacent subdivision, “Fairway Estates” (¶50); claims of Desert Lakes
9 Golf Course and Estate or Desert Lakes property owners (¶54-56); alleges administrative
10 violations of the Arizona Department of Real Estate regarding Disclosure (¶27); alleged
11 procedural violations of Mohave County zoning laws for all Desert Lakes Tracts (¶31); alleges
12 misinformation disseminated by the Mohave County Planning Director throughout the Desert
13 Lakes Community (¶44).

14 Many of these allegations have previously been argued by Plaintiff and subsequently
15 been addressed by the Court. The Court has initially found that Plaintiff has standing to bring
16 this action exclusively regarding Tracts 4076B and the “re-subdivision of a parcel originally
17 within Tract 4076B, now known as Tract 4163. Tract 4163 is where Plaintiff lives and owns
18 Plaintiff’s residence. The Court has found that Plaintiff has standing to litigate regarding these
19 two subdivisions as she is an owner therein. Should Plaintiff wish, she is arguably free to join
20 as parties’ Plaintiff or parties’ Defendant, John and Jane Does, who are owners in those two
21 identified tracts if Plaintiff believes they have violated Tract 4076B CC&Rs. Plaintiff may, for
22 example, sue her spouse who resides with Plaintiff in Tract 4163 as Plaintiff’s and her spouse’s
23 home is built in violation of Tract 4076B rear yard setback requirement as is every single home
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1 in Tract 4163. Plaintiff is free to serve Mr. and Mrs. Grice, the Rovinos, etc., U.S. Southwest,
2 Mohave County Planning Director, the State Land Department or some or all of the remaining
3 homeowners in Tract 4076B should she decide to do so. Plaintiff can serve these owners,
4 companies, legal entities without amending her complaint this is the purpose of naming John
5 Doe defendants as Plaintiff did in her caption.

6 What Plaintiff is once again attempting to include in her complaint are additional Desert
7 Lakes subdivisions which is a futile act and for which she has no standing as previously
8 determined by this Court, such as Tract 4076A, 4076C, 4076D, 4076E, etc.. Plaintiff now
9 further attempts to add as a party Defendant a neighboring subdivision, Fairway Estates, as
10 alleged violators of Tract 4076B CC&Rs as stated in her Prayer for Relief claiming that
11 Plaintiff has a “constitutional right to peace and safety” which are being violated by her
12 neighbors who live in the adjoining Fairway Estates subdivision and their “noxious and
13 annoying activities”. (Plaintiff prayer for relief in Plaintiff’s proposed amended complaint).
14
15

16 THE LAW

17
18 Defendants incorporate herein Defendant’s previously filed legal memoranda produced
19 in response to Plaintiff’s four previously filed and failed Motions seeking this Courts
20 permission to amend Plaintiff’s complaint on May 14, 2018, July 9, 2018, November 16, 2018
21 and May 10, 2019. Each of the Defendant’s initial 3 objections are attached hereto as exhibits
22 A, B, and C and incorporated herein.
23

24 The issues of “Claim Preclusion” applies to all subdivision Tracts, including all Desert
25 Lakes Golf Course and Estate Tracts, except Tract 4076B and Tract 4163 and all other
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1 surrounding subdivision in which Plaintiff is not an owners and therefore has “no standing”
2 (see memoranda of May 11, 2018).

3 The issue of “futility” applies. (See memoranda of May 11, 2018)\

4 The Defendant’s have provided to this Court on May 11, 2018, and November 16,
5 2018, the legal basis to deny Plaintiff’s current and at least 5th effort to amend or gain
6 reconsideration of the existing Court orders. This Court’s consistent prior rulings, including
7 Plaintiff’s failed arguments seeking relief from actions taken or not taken by various non-
8 parties, including Mohave County, a body politic, the Arizona State Land Department, and
9 Plaintiff’s request for damages for mental anguish resulting from Plaintiff’s filing and litigating
10 this complaint, for Plaintiff’s request for recovery of attorney fees, for damages due Plaintiff for
11 appearing before the Board of Supervisors, and for apparently and most recently alleging
12 damages from noxious and annoying noises and activities taking place in a neighboring
13 subdivision (Fairway Estates) are all instances of futile instances of efforts and claims as
14 explained in each of the above referenced memoranda.
15

16 The issue before this Court is reasonably simple. Are the 1989 CC&Rs recorded for
17 Tract 4076B of Desert Lakes Golf Course and Estates enforceable today or have they been
18 rendered unenforceable as a result of a total lack of enforcement over the period of the past 31
19 years? Prior rezoning applications, noise from a neighboring subdivision, administrative
20 remedies from the State Land Department, lack of enforcement in other individual Desert Lakes
21 independent subdivisions are all and will continue to be irrelevant.
22

23 **SUMMATION**

24 Plaintiff continues under the guise of a Motion to Amend to attempt to change this
25 Court’s ruling limiting Plaintiff to complain exclusively about the Tract (4163) within which
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1 Plaintiff resides and since Tract 4163 is a “re-subdivision” of a parcel that was within Tract
2 4076B. This Court more than a year past ruled that Plaintiff does not have the legal right or
3 standing to argue about subdivisions in which Plaintiff is not an owner. Plaintiff has, by a year-
4 old decision of this Court no legal basis to expand her complaint to other
5 properties/subdivisions. This Court ruled in June of 2018 that each Tract of Desert Lakes and
6 Golf Course and Estates were separate, independent subdivisions, with their separate sets or no
7 set (4163) of CC&Rs. In Plaintiff’s June 19 filing, Plaintiff is for the 5th time seeking to amend
8 Plaintiff’s complaint (actually once again requesting reconsideration of this Court’s prior orders
9 in clear violation of ARCP 59 and ARCP 60. On lines 22 thru 25 of page 3 of Plaintiff’s
10 Motion where Plaintiff correctly states that Plaintiff’s complaint as it now exists “will limit
11 Defendants to only those committed violations or caused to commit violations in Tract 4076B”.
12 This is not what Plaintiff wants regardless of this Court’s decision. Plaintiff continues,
13 relentlessly to argue the existence of a “masterplan” covering the “Desert Lakes Golf Course
14 and Estate, Tract 4076”. There is no Tract 4076!

16 Plaintiff asks to have Plaintiff’s rights restored that were taken from her as a result of
17 the dismissal of Count I of her complaint in April of 2018 via Summary Judgment, p 6, lines 9-
18 23, of Plaintiff’s current Motion. This is a direct violation of ARCP Rule 59 (d).

20 Plaintiff’s arguments to amend or more accurately once again for reconsideration are
21 actually efforts to expand Plaintiff’s standing to a completely new subdivision that is simply
22 nearby Plaintiff’s residence. Plaintiff has been restricted by Court order and Plaintiff’s right to
23 litigate is limited to the subdivision in which she resides which includes Tract 4076B.

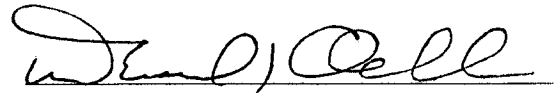
25 Simply put on page 10 of Plaintiff’s current motion “. . . Plaintiff respectfully requests
26 this Court grant Plaintiff’s leave to amend the complaint as proposed and attached to this
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1 Motion and to restore her prosecution rights to Count I as violations of CC&Rs. (Emphasis
2 supplied), p. 10, lines 5-18 Motion to Amend.

3 To act affirmatively on Plaintiff's request, the Court would be required to vacate this
4 Court's own dismissal of Count I which was dismissed with prejudice in June of 2018. There
5 is no basis in law, fact, nor under any applicable rule that warrants such action by the Court.

6 Defendants are entitled to an immediate award of Defendant's attorney fees and costs
7 incurred in responding to this the 5th motion to amend filed by Plaintiff and in any event an
8 amount not less than Six Thousand Dollars (\$6,000).

9 RESPECTFULLY submitted this 2nd day of July 2019.
10

11
12 
13 **DANIEL J. OEHLER**
14 Attorney for Defendants

15 Copy of the foregoing mailed
16 on the 2nd day of July 2019 to:

17 Nancy Knight
18 1803 E. Lipan Circle
19 Fort Mohave, AZ 86426

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EXHIBIT
A

1 LAW OFFICES
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W/O ORIGINAL
ATTACHED EXHIBITS

Filed
5-14-18
@ 4:41 P
E Mail

8 Daniel J. Oehler, Arizona State Bar No.: 002739
9 Attorney for Defendants

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF MOHAVE**

12 NANCY KNIGHT,

13 Plaintiff,

14 vs.

15 GLEN LUDWIG and PEARL LUDWIG, Trustees
16 of THE LUDWIG FAMILY TRUST; FAIRWAY
17 CONSTRUCTORS, INC.; MEHDI AZARMI;
18 JAMES B. ROBERTS and DONNA M.
19 ROBERTS, husband and wife; JOHN DOES 1-10;
20 JANE DOES 1-10; ABC CORPORATIONS 1-10;
21 and XYZ PARTNERSHIPS 1-10.

22 Defendants.

NO.: CV-2018-04003

**OBJECTION TO PLAINTIFF'S
MOTION TO AMEND COUNT 2
OF HER COMPLAINT**

23 COME NOW, the Defendants, by and through their attorney, the undersigned, and object to
24 Plaintiff's Motion to Amend Count 2 of Plaintiff's Complaint. This Objection is supported by the
25 attached Memorandum of Points and Authorities and is filed in accordance with the provisions of
26 the Arizona Rules of Civil Procedure, Rules, 8, 9, 12 and 15.

27 RESPECTFULLY SUBMITTED this 14 day of May, 2018.

LAW OFFICES OF DANIEL J. OEHLER

28 
Daniel J. Oehler
Attorney for Defendants

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Rule 15 of the Arizona Rules of Civil Procedure (A.R.C.P.), and more specifically, Rule
3 15(a)(2) applies to the matter before the Court. Previously, this Court has considered Defendants'
4 Motion to Dismiss. The basis of the dismissal application has been briefed by both sides and the
5 Court has heard oral arguments ruling, as a matter of law, that the Motion to Dismiss was
6 appropriately considered by the Court as a motion for summary judgment. The Court announced its
7 decision granting Defendants' requested dismissal on a summary judgment basis in open court as
8 to Count 1 of Plaintiff's Complaint and there are currently pending before this Court requested forms
9 of final order.

10 Under the applicable rules, a motion to amend the remaining Count 2 of Plaintiff's original
11 Complaint can be initiated and Count 2 can be amended only after consideration by the Court and
12 at the discretion of the Court (see, A.R.C.P., Rule 15(a)(2)).

13 This Court's verbal decision being issued immediately subsequent to the conclusion of oral
14 arguments on the Defendant's then pending Motion to Dismiss, disposed summarily Count 1 of
15 Plaintiff's Complaint. Count 1 alleged that certain of the Defendants had initiated a request before
16 the Mohave County Planning Commission to amend certain setback requirements throughout the
17 various separate subdivisions that were independently and separately created by different developers,
18 each of which, with one exception, ultimately recorded separate CC&Rs and each of which were
19 assigned and given separate tract numbers, although, collectively, all of the subject separate
20 subdivisions utilized in part the name "Desert Lakes Golf Course & Estates."

21 Count 1 of Plaintiff's Complaint alleged CC&R violations, specifically, setback requirement
22 violations on a specific lot owned and occupied by the Roberts Defendants. The Roberts
23 Defendants' residence is located within Tract 4076-A.

24 In Plaintiff's prayer for relief regarding the alleged set back violations that purportedly
25 occurred at 5732 Club House Drive, a Tract 4076-A lot that the portion of the Roberts' home be
26 removed. The Court found on April 2, 2018, that on the basis of standing, the Plaintiff did not have
27 standing to litigate Tract 4076-A alleged violations or purported violations, and therefore has
28 dismissed Count 1 of Plaintiff's Complaint.

1 Plaintiff, at that point, as a result of the Court's finding that Plaintiff, who resides in
2 Tract 4163, which is a "resubdivided" parcel of Tract 4076-B does have potential standing to argue
3 purported signage violations and is in a position to attempt compliance with the Tract 4076-B
4 CC&Rs that permit a person who owns property within Tract 4076-B to individually or personally
5 enforce the CC&Rs of that subdivision. Plaintiff, of course, does not reside in Tract 4076-B, but
6 rather Tract 4163, which, again, is a resubdivision of a portion of Tract 4076-B. In any event, Count
7 2 of Plaintiff's Complaint is, as of this writing, the only existing Count that is before this Court and
8 is, therefore, the single remaining basis for any potential amendment and any such amendment is
9 fully within the discretion of this Court. Count 2 requests injunctive relief (see page 16, line 11 of
10 Plaintiff's original Complaint). It requests at paragraph 61 "preliminary and permanent injunctions
11 enjoining the Defendants from all current signage violations on unimproved lots." Plaintiff's
12 Complaint further, in paragraph 62, requests "preliminary and permanent injunctions enjoining
13 Defendants from any existing or future violations of CC&Rs including but not limited to setback
14 reductions and signage on unimproved lots." Although original Count 2 does not specify any
15 specific existing setback violation in Tract 4076-B and of course an injunction against future
16 hypothetical events is not actionable. Plaintiff requests in paragraph 63 that:

17 "Plaintiff is entitled to reasonable monetary compensation that does
18 not exceed the jurisdictional limit of the Court including but not
19 limited to filing fees, compensation for hours of research, emails,
20 letters and postage, and physical and emotional distress from the
battle to protect her Desert Lakes Community from CC&R violations
the amount found due by a jury herein or found due by judgment of
the court."

21 Count 2 of the original Complaint is the remaining count before this Court and specifically
22 the count and only count that is or can be subject matter of Plaintiff's requested amendment. In
23 Plaintiff's Complaint, her request for relief dealing exclusively with Count 2 allegations asked for
24 "an injunction immediately and permanently removing all signage on unimproved lots that is in
25 violation of Desert Lakes Golf Course & Estates CC&Rs." Plaintiff's proposed amendment, then,
26 must be limited to those requested injunctions applying exclusively to Tract 4076-B, although, there
27 are no specifically alleged violations identifying any party to the Complaint. Plaintiff goes on to
28 request a recovery for her actual and consequential damages. Plaintiff further requests

1 “compensation” scheme proposing to deliver dollars to all property owners. Next, Plaintiff asks for
2 a declaratory judgment with the Court forgiving CC&R construction violations for an unknown class
3 of owners apparently to be forgiven by this Court once the Court determines that the subject owners
4 had “... unknowingly purchased a home that had been built, in error or deliberately, by any builder,
5 as out of compliance with the CC&Rs.” Finally, Plaintiff asks for her attorney’s fees and costs,
6 although Plaintiff is a “pro per” complainant, is not an attorney and is not therefore eligible to be
7 awarded attorney’s fees for the actions she has undertaken.

8 With the above in view, we then look at the proposed amendment that is captioned “Breach
9 of Contract - Violations of Covenants, Conditions and Restrictions,” the same being attached to the
10 Plaintiff’s Motion to Amend.

11 **CLAIM PRECLUSION**

12 First of all, we must address the issue of claim preclusion. This Court has previously, on the
13 basis of its summary judgment holding, that Plaintiff is precluded from pursuing the cause of action
14 against the Roberts and any alleged Tract 4076-A violations which are the only setback violations
15 set forth in the original Complaint or the proposed Amended Complaint. It is unquestioned that a
16 party may amend their pleadings only at the discretion of the court and after and if the court grants
17 leave to allow such an amendment. Rule 15, A.R.C.P. It is further unquestioned that amendments
18 are to be allowed liberally. See, MacCollum v. Perkinson, 185 Ariz. 179, 185, 913 P.2d 1097, 1103
19 (App. 1996). This same Court of Appeals case states, however, that an amendment should not be
20 granted in a situation where the court finds that the requested amendment results in undue delay in
21 the request, bad faith, undue prejudice, or futility in the amendment. See, MacCollum v. Perkinson,
22 185 Ariz. at 185, 913 P.2d at 1103.

23 The issue of claim preclusion is briefly but succinctly addressed in several Arizona cases,
24 including Tumacacori Mission Land Development, Ltd. v. Union Pacific Railroad Co., 231 Ariz.
25 517, 297 P.3d 923, 653 Ariz. Adv. Rep. 21 (Ariz. App. 2013), wherein the Arizona Court of
26 Appeals, Division 2, Department B, as recently as 2013, states:

27 “The doctrine of claim preclusion, or res judicata, bars a claim ‘when
28 a former judgment on the merits was rendered by a court of
competent jurisdiction and the matter now in issue between the same

1 parties or their privities was, or might have been determined in the
2 former action.’ Hall v. Lalli, 194 Ariz. 54, ¶7, 977 P.2d 776, 779
(1999); see also, Aldrich & Steinberger v. Martin, 172 Ariz. 445, 448,
3 837 P.2d 1180, 1183 (App. 1992).” Tumacacori, supra, at p. 925.

4 The Tumacacori, supra, court went on to quote Airfreight Exp. Ltd. v. Evergreen Air Ctr.,
5 Inc., 215 Ariz. 103, ¶12, 158 P.3d 232, 237 (App. 2007), quoting Dressler v. Morrison, 212 Ariz.
6 279, ¶15, 130 P.3d 978, 981 (2006):

7 “A single claim cannot be ‘split,’ and ‘includes all rights of the
8 plaintiff to remedies against the defendant with respect to all or any
9 part of the transaction, or series of connected transactions, out of
10 which the action arose.’ Heinig v. Hudman, 177 Ariz. 66, 865 P.2d
11 110, 115 (App. 1993), quoting Restatement (Second) of Judgments
12 §254 (1982). ‘Transaction’ is interpreted pragmatically by
13 considering whether the underlying facts are ‘related in time, space,
14 origin, or motivation,’ and whether the parties would expect them to
15 be treated as a unit for trial. Restatement §24.” Tumacacori, supra,
16 at p. 926.

17 In the Tumacacori, supra, court’s conclusion dealing with this issue, the court found that in
18 a situation where it found that:

19 “... it would have been futile to permit Tumacacori to amend its
20 complaint. Therefore, the court did not abuse its discretion by
21 denying the motion to amend.” Tumacacori, supra, at p. 926.

22 Practically speaking, we have the identical issue currently before the Court. Plaintiff is
23 attempting to draw into her original Count 2 through her proposed amendment many of the same
24 allegations that have been dealt with on the issue of front yard setback of the Roberts’ home located
25 at 5732 S. Club House Drive, Tract 4076-A, now pulling it back into Count 2 as she attempts to do
26 in Plaintiff’s new paragraphs 21, 26, 43, 48, 54 and 58 of Plaintiff’s proposed Amended Complaint.

27 FUTILITY

28 A review of Plaintiff’s prayer for relief set forth on pages 21 and 22 of the proposed
Amended Complaint are not matters of relief that can nor will they be entered in Plaintiff’s favor by
this Court. First of all, Plaintiff is looking for a judgment from the Court alleging “attempts” on the
part of undesignated defendants to violate the Declaration of Covenants, Conditions and Restrictions
in Tract 4076-B. Plaintiff is looking for a recovery of “actual and consequential damages” being
awarded to herself “for her efforts in the battle against the attempted violations of setback reductions

1 in Tract 4076-B.” Plaintiff is apparently looking to initiate a class action on behalf of, as she
2 describes, “all property owners for diminished value to be determined by the court or at time of trial
3 due to the taking of front and/or rear views as a result of defendant’s construction that violated the
4 CC&Rs of Desert Lakes in Tract 4076-B.” Plaintiff has fully failed to initiate and take such steps
5 as are required under and pursuant to the provisions of Rule 23, A.R.C.P., in establishing class action
6 litigation and processing certification orders as are required under the pursuant to Rule 23.
7 Similarly, Plaintiff, of course, is not a licensed attorney and not in a position to initiate class actions
8 on behalf of any property owner other than herself and on behalf of lots that are in Tract 4076-B per
9 this Court’s April 2, 2018, orders finding that the Plaintiff is a 4076-B lot owner.

10 Plaintiff alleges and seeks a judgment against the Defendants in the amount of \$12,500.00
11 for and on behalf of the “Mohave County Development Services General Fund.” See, proposed
12 Amended Complaint, Prayer for Relief (I), p. 22, line 15. Each of these requests are “futile” efforts
13 on the part of the Plaintiff, as the term “futile” is interpreted by a multitude of Arizona decisions
14 discussed below. Attached hereto as **Exhibit A** is a copy of a letter from the Chief Civil Deputy of
15 the County of Mohave which advises this Court and the world that Mrs. Knight, the Plaintiff in this
16 cause of action, does not, cannot, did not and will not represent Mohave County or any branch of
17 Mohave County in this or any action.

18 Plaintiff’s requests are “futile” and represent “futility” which in and of itself is an appropriate
19 basis for this Court to deny Plaintiff’s Motion for Leave to Amend. As stated in Timmons v. Ross
20 Dress for Less, Inc., 234 Ariz. 569, 572, ¶17, 324 P.3d 855, 858 (App. 2014), where the Court of
21 Appeals found:

22 “Motions to amend should be granted unless the court finds specific
23 cause, such as futility, to deny the amendment.” Id.

24 Indeed, Plaintiff’s requests for relief and demands for judgment are futile and beyond that
25 which the Court, under any circumstance, can legally grant. In addressing these issues, the Arizona
26 Court of Appeals, as recently as 2017, in Twin City Fire Ins. Co. v. Leija, 403 P.3d 587 (Ariz. App.
27 2017), not only cited Timmons, supra, but also found that the superior court did not abuse its
28 discretion in denying a motion to amend in stating:

1 “Although mere delay may not justify denial of leave to amend,
2 ‘[n]otice and substantial prejudice to the opposing party are critical
3 factors in determining whether an amendment should be granted.’
4 Owen v. Superior Court, 133 Ariz. 75, 79, 649 P.2d 278, 282 (1982)
5 (quoting Hageman v. Signal L.P. Gas, Inc., 486 F.2d 479, 484 (6th
6 Cir. 1973)). ‘[P]rejudice is ‘the inconvenience and delay suffered
7 when the amendment raises new issues or new parties into the
8 litigation.’ Spitz v. Bache & Co., Inc., 122 Ariz. 530, 531, 596 P.2d
9 365, 366 (1979) (quoting Romo v. Reyes, 26 Ariz.App. 374, 376, 548
10 P.2d 1186 (1976).” Twin City Fire Ins. Co., supra, at p. 595.

11 Clearly, new issues are being raised by the Plaintiff in her proposed Amended Complaint and
12 beyond these new issues, each of which represent futile efforts on the part of the Plaintiff. Plaintiff’s
13 proposed amendments should not be allowed where they are but a futile gesture. As stated by Walls
14 v. Arizona Department of Public Safety, 170 Ariz. 591, 826 P.2d 1217 (Ariz. App., 1991), the
15 Arizona Court of Appeals in dealing with a previously entered summary judgment followed by a
16 request to amend the pleadings, the Court found:

17 “On this same issue, the court in Eria v. Texas Eastern Transmission
18 Corp., 377 F.Supp. 344, 345 (E.D.N.Y. 1974), stated as follows:
19 ‘While it is true that leave to amend a pleading is usually freely given,
20 ... if the amended pleading could be defeated by a motion for
21 summary judgment, [the court’s] grant[ing] [of] leave to amend
22 would be a futile gesture.’ Therefore, the trial court did not abuse its
23 discretion in denying Walls’ leave to amend his complaint.” Walls,
24 supra, at p. 1223.

25 Class action efforts cannot be pursued by non-lawyer pro per complainants. Plaintiff does
26 not represent Mohave County, a body politic. Plaintiff is not entitled to recover attorney’s fees for
27 her “pro per” legal practice.

28 CONCLUSION

Plaintiff has not alleged a single specific allegation dealing with setback issues that have
occurred in Tract 4076-B by any Defendant herein. The setback issue that was set forth in Plaintiff’s
original Complaint existed in Count 1. Count 1 has been dismissed by this Court. There is nothing
to amend in regard to Count 1. Plaintiff’s efforts to bootstrap her way back into nonspecific possible
alleged future setback violations in Tract 4076-B is not a litigable issue. One cannot, for instance,
in clear and black and white language, prosecute a defendant for a possible future civil wrong on the
basis that the speculative alleged future civil contract violation might at some unknown future date

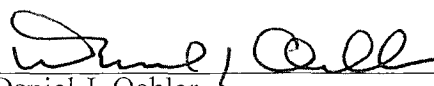
1 come about. Effectively, Plaintiff is alleging throughout the majority of her proposed Amended
2 Complaint that some or perhaps all of the Defendants might violate at some unknown date in the
3 future a CC&R setback requirement. Such a claim is futile and not actionable. We cannot prosecute
4 one for a possible civil wrong that has not occurred.

5 At the conclusion of the summary judgment hearing, Plaintiff was left with a potential ability
6 to prosecute alleged code violations by the named Defendants as to signage violations, if any, that
7 may have occurred in Tract 4076-B, exclusively. Any effort on the part of Plaintiff to process a class
8 action suit on behalf of all owners in the Desert Lakes community is futile. Plaintiff is not eligible
9 to initiate and has not properly initiated a Rule 23 class action litigation. Plaintiff does not represent
10 Mohave County and cannot prosecute an action on behalf of a third party even if Plaintiff were a
11 licensed attorney unless or until Plaintiff was retained by Mohave County to do so. Even then,
12 Plaintiff's cause of action seeking reimbursement for expenses incurred by Mohave County's
13 compliance with the County's notification requirements as set forth in Mohave County's ordinances
14 does not represent an actionable wrong. One cannot successfully acquire a judgment for the benefit
15 of Mohave County on the basis that Mohave County incurred expenses required by Mohave County
16 to comply with Mohave County's own ordinance, namely, the notification and processing
17 requirements as set forth in the County Planning Commission application process. Plaintiff's
18 requests in her Amended Complaint and Plaintiff's allegations therein set forth are either "issue
19 precluded" as to the Roberts and the Roberts' home and are "futile, all in accordance with the
20 decisions cited hereinabove. Plaintiff's request to amend her Complaint should be denied.

21 Defendants are entitled to and should be awarded, in accordance with the provisions of
22 A.R.S. §12-341.01 and A.R.S. §12-349, as well as the provisions of A.R.S. §12-3201, their actual
23 attorney's fees and costs incurred in preparing this Objection.

24 RESPECTFULLY SUBMITTED this 16 day of May, 2018.

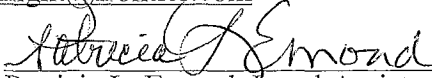
25 LAW OFFICES OF DANIEL J. OEHLER

26 
27 Daniel J. Oehler,
28 Attorney for Defendants

1 **COPY** of the foregoing emailed
2 this 14th day of May, 2018, to:

3 Honorable Derek Carlisle
4 Mohave County Superior Court
5 Division 2
6 2001 College Drive
7 Lake Havasu City, Arizona 86403
8 (928) 453-0739 Mary
9 making@courts.az.gov

10 Plaintiff Pro Per
11 Nancy Knight
12 1803 E. Lipan Circle
13 Fort Mohave, Arizona 86426
14 (928) 768-1537
15 nancyknight@frontier.com

16 By: 
17 Patricia L. Emond, Legal Assistant
18
19
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21
22
23
24
25
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28

EXHIBIT

B

1 LAW OFFICES
2 DANIEL J. OEHLER
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(928) 758-3988
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E-Filed
7-9-2018 @
5:03 pm

5 Daniel J. Oehler, Arizona State Bar No.: 002739
6 Attorney for Defendants

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9	NANCY KNIGHT,)	NO.: CV-2018-04003
10	Plaintiff,)	OBJECTION TO PLAINTIFF'S MOTION/S TO AMEND COMPLAINT
11	vs.)	
12	GLEN LUDWIG and PEARL LUDWIG, Trustees)	
13	of THE LUDWIG FAMILY TRUST; FAIRWAY)	
14	CONSTRUCTORS, INC.; MEHDI AZARMI;)	
15	JAMES B. ROBERTS and DONNA M.)	
16	ROBERTS, husband and wife; JOHN DOES 1-10;)	
17	JANE DOES 1-10; ABC CORPORATIONS 1-10;)	
18	and XYZ PARTNERSHIPS 1-10.)	
19	Defendants.)	


18 COME NOW, the Defendants, by and through their attorney, the undersigned, and
19 respectfully request that this Court deny Plaintiff's motion/s to amend Plaintiff's Complaint. This
20 Objection is based upon the provisions and requirements of Arizona Rules of Civil Procedure
21 (A.R.C.P.), Rule 15, and more specifically, Rule 15(a)(4). No pleading has been filed (or if filed
22 none has been provided to the undersigned) that even marginally complies with the provisions of
23 Rule 15 in general, and specifically the provisions of Rule 15(al)(4).

24 Pursuant to this Court's determination on or about June 29, 2018, that the Plaintiff's
25 previously filed pleadings were to be considered a motion to amend, it should be noted that the
26 Plaintiff continues in random pleadings, including the pleading filed today, July 9, 2018, to attempt
27 to alter or amend this Court's prior orders such as Plaintiff's efforts to sue on behalf of Mohave
28 County taxpayers for certain but apparently not all of the subject Defendants for some \$12,500

1 allegedly expended by Mohave County to comply with its ordinance notice requirements; attempting
2 to impose restrictions and alleging violations against some but not all alleged CC&R wrongdoers;
3 continuing to complain about a potential award of attorney's fees; continuing to seek re-litigation
4 of a completely separate and independent cause of action (Mohave County Superior Court Case No.
5 CV-2016-04026); alleging apparent CC&R violations concerning parking a boat in Tract 4163, etc.
6 Effectively, it would be impossible to prepare in accordance with the Arizona Rules of Civil
7 Procedure and pleading practice applicable in the State of Arizona any responsive pleading regarding
8 what the amended complaint did or did not consist of. For these reasons, Plaintiff's request to
9 amend must be denied.

10 RESPECTFULLY SUBMITTED this 9th day of July, 2018.

11 LAW OFFICES OF DANIEL J. OEHLER

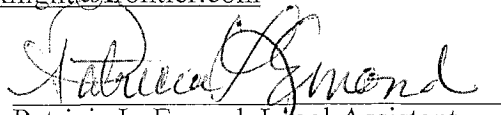
12 
13 Daniel J. Oehler,
14 Attorney for Defendants

14 **COPY** of the foregoing emailed
15 this 9th day of July, 2018, to:

16 Honorable Derek Carlisle
17 Mohave County Superior Court
18 Division 2
19 2001 College Drive
20 Lake Havasu City, Arizona 86403
21 (928) 453-0739 Mary
22 making@courts.az.gov

23 Plaintiff Pro Per
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27 (928) 768-1537
28 nancyknight@frontier.com

By:


Patricia L. Emond, Legal Assistant

EXHIBIT

C

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W/O ORIGINALS
ATTACHED EXHIBITS

E-Filed
11-16-2018
@ 2:47 pm

5 Daniel J. Oehler, Arizona State Bar No.: 002739
6 Attorney for Defendants

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF MOHAVE

9 NANCY KNIGHT,

10 Plaintiff,

11 vs.

12 GLEN LUDWIG and PEARL LUDWIG, Trustees
13 of THE LUDWIG FAMILY TRUST; FAIRWAY
14 CONSTRUCTORS, INC.; MEHDI AZARMI;
15 JAMES B. ROBERTS and DONNA M.
16 ROBERTS, husband and wife; JOHN DOES 1-10;
17 JANE DOES 1-10; ABC CORPORATIONS 1-10;
and XYZ PARTNERSHIPS 1-10.

Defendants.

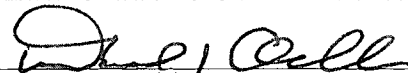
NO.: CV-2018-04003

OBJECTION TO PLAINTIFF'S
MOTION TO AMEND THE
COMPLAINT/MOTION TO
SET ASIDE MOTION FOR
RECONSIDERATION OF
SUMMARY JUDGMENT
RULINGS AND ORDERS

18 COME NOW, Defendants, Glen Ludwig and Pearl Ludwig, Trustees of the Ludwig Family
19 Trust, Fairway Constructors, Inc., and Mehdi Azarmi, the remaining named Defendants hereinafter
20 collectively referred to as the "Defendants," by and through their attorney, the undersigned, and
21 respectfully request that this Court deny this, Plaintiff's third motion to amend and/or motion for
22 reconsideration of this Court's prior orders entered June 11, 2018, and/or August 24, 2018. This
23 Objection is supported by the attached Memorandum of Points and Authorities and is filed in
24 accordance with the provisions of Arizona Rules of Civil Procedure, Rules 7, 8, 9, 12, 15 and 59(d).

25 RESPECTFULLY SUBMITTED this 16th day of November, 2018.

26 LAW OFFICES OF DANIEL J. OEHLER

27 
28 Daniel J. Oehler,
Attorney for Defendants

1944-1945
1946-1947

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 A brief history of this file reflects the fact that an original Motion to Dismiss was filed by the
3 Defendants which the Court ultimately treated as a Motion for Summary Judgment. Hearing on the
4 Motion for Summary Judgment occurred on April 2, 2018. At the conclusion of oral arguments, the
5 Court entered its ruling granting the Motion to Dismiss with respect to Count 1 and denying
6 Defendants' Motion to Dismiss with respect to Count 2. Thereafter, a formal Order was submitted
7 to the Court by the Defendants on or about April 11, 2018. Various objections and motions were
8 thereafter filed and on June 11, 2018, this Court formally entered its Findings and Order Dismissing
9 Count 1 of Plaintiff's Complaint. The Court, on June 11, 2018, also denied Plaintiff's first Motion
10 to Amend Plaintiff's Complaint that Plaintiff had filed on May 2, 2018, the Court in its June 11,
11 2018, Order finding that:

12 "Although the proposed Amended Complaint contains some
13 cosmetic changes, the primary modification was that the Plaintiff was
14 seeking reimbursement for the expense of the taxpayers in
15 determining whether to grant one of the Defendants' requests for a
16 variance of the setback requirements. Additionally, the Plaintiff's
17 sought relief for other property owners, the Court finds the Plaintiff's
18 attempts to expand the scope of this case should be denied and
19 Plaintiff has presented no authority for the proposition that she has
20 authority to represent taxpayers or other property owners, therefore
21 the amendment would be futile.

22 IT IS ORDERED denying the Motion for Leave to Amend the
23 Complaint."

24 On the same date, June 11, 2018, the Court signed the Findings and Order Dismissing Count
25 1 of Plaintiff's Complaint that included, in part, the following findings:

26 "A. Tract 4076-A Desert Lakes Golf Course & Estates is
27 a separate subdivision with separately recorded CC&Rs separate and
28 apart from Tract 4076-B, and separate and apart from the remaining
Desert Lakes Golf Course & Estates subdivisions each of which were
developed by multiple and different owners/developers over the
period of approximately 13 years (1989 - 2002);

B. Desert Lakes Golf Course & Estates and the various
Tracts are not a master planned community subject to a single nor
"master" set of CC&Rs. Each separated subdivision has its separate
CC&Rs except only Tract 4163 which has no separately recorded
CC&Rs;

C. Plaintiff is not the Declarant, nor is Plaintiff the
Declarant's successor or assign, nor is Plaintiff an owner, nor a

1 person owning real property within the subdivision Desert Lakes Golf
2 Course & Estates Tract 4076-A;

3 D. Defendants, James A. Roberts and Donna M. Roberts,
4 his wife, own their home and reside in Desert Lakes Golf Course &
5 Estates Tract 4076-A (Defendants' Motion to Dismiss Exhibit "C");"

6 The Court then went on to enter certain other findings including a finding that the subdivision
7 in which the Plaintiff resides known as Tract 4163 is a re-subdivision of Parcel VV and a part of the
8 abandoned Parcel KK of Desert Lakes Golf Course & Estates Tract 4076-B and therefore the
9 Plaintiff, according to this finding, has attributable ownership standing to enforce the CC&Rs of
10 Tract 4076-B.

11 Specifically, the Court entered an order on June 11, 2018, that the Plaintiff lacked standing
12 to bring the action under Count 1, and further that the Roberts Defendants residing in Tract 4076-A
13 were dismissed with prejudice from the action, and all remaining named Defendants in Plaintiff's
14 Complaint were dismissed with prejudice under Count 1.

15 On or about June 20, 2018, the Plaintiff filed a second "Motion to Alter or Amend Orders
16 3 and 4" that were entered by the Court on June 11, 2018, as above referenced. Nine days later, on
17 June 29, 2018, this Court entered an order requiring or designating Plaintiff's June 20, 2018, Motion
18 to Alter or Amend be treated as a motion to amend and not as a motion to reconsider. An Objection
19 to Plaintiff's second motion to amend was filed on July 9, 2018, and on or about July 10, 2018, the
20 Plaintiff filed her Reply.

21 Plaintiff's second motion to amend generally centered around the allegation that "the
22 Defendant has falsely interpreted the result of the oral arguments" regarding Defendants' original
23 Motion to Dismiss that was argued to the Court on April 2, 2018. The Plaintiff went on to allege
24 in this second motion that:

25 "The narrow issue of Ms. Knight's authority to bring a claim was
26 adjudicated in favor of the Plaintiff for Tract 4076-B. All counts of
27 the complaint for Tract 4076-B are therefore valid claims." See,
28 Plaintiff's Motion to Alter or Amend Orders 3 and 4, 6/20/2018, p.
2, lines 19-22.

Plaintiff continued to argue that:

"The confusion rests with the Court's Motion to Dismiss with respect

1 to Count 1 in its entirety rather than with respect to the Roberts'
2 house. Since the ruling cited above was only to deny Count 1 with
3 respect to the one residence owned by the Roberts due to its lot being
4 situated in Tract 4076-A, the reconsideration of minor changes in
5 verbiage than that written by Attorney Oehler and signed by the
6 Honorable Derek Carlisle is warranted on the grounds of clarification
7 and elimination of confusion.” See, Plaintiff’s Motion to Alter or
8 Amend Orders 3 and 4, 6/20/2018, p. 3, lines 15-22.

9 The Plaintiff went on to state:

10 “... why the Court and Mr. Oehler were confused.” See, Plaintiff’s
11 Motion to Alter or Amend Orders 3 and 4, 6/20/2018, p. 3, lines 23-
12 24.

13 Plaintiff went on to provide in her pleadings her proposed amended verbiage for the
14 “reconsideration by the Court of its Orders 3 and 4.”

15 On August 24, 2018, the Court, after considering Plaintiff’s second Motion to Amend, the
16 Objection filed by Defendants and Plaintiff’s second Reply to Defendants’ Objection, entered the
17 Court’s second Order denying Plaintiff’s second Motion to Alter or Amend.

18 On October 22, 2018, the pending third Motion for Leave to Amend the Complaint
19 requesting again that the Court reconsider its prior ruling and orders based upon new documentary
20 evidence.

21 This, the third motion filed by Plaintiff clearly appears to be a motion for reconsideration.
22 Such a motion is inappropriate and prohibited under and pursuant to the Arizona Rules of Civil
23 Procedure, Rule 59(d).

24 In the alternative, should the Court consider this third motion simply a motion to amend, the
25 basis for which alleges:

26 “...new evidence in support of Plaintiff’s full rights to enforce
27 covenants, conditions and restrictions (hereinafter CC&Rs) in her
28 entire Desert Lakes Golf Course & Estates Subdivision Tract 4076
(hereinafter ‘Desert Lakes Subdivision’).” See, Plaintiff’s Motion,
10/22/2018, p. 2, lines 16-22.

Such an amendment as requested necessitates the vacating of the Court’s prior orders and is
a reconsideration pursuant to ARCP, Rule 59(d). Plaintiff’s requested relief should be denied.

Once again, Plaintiff is attempting to use what she considers newly discovered evidence that
there exists a some sort of “master planned community” known as “Desert Lakes Golf Course &

1 Estates Tract 4076.” No such tract exists! Plaintiff alleges that:

2 “The problem with the findings of the Court was that the zoning
3 history of the project and the owner of the land that created the master
4 plan for the final plat was not known at the time nor was there
5 evidence of the one subdivision name of ‘Desert Lakes Golf Course
& Estates Tract 4076.’” See, Plaintiff’s Motion, 10/22/2018, p. 3,
6 lines 2-6.

7 Plaintiff goes on to allege that she believes the zoning history which was processed by
8 multiple developers, multiple owners and for multiple added parcels of land over the past 20 years
9 provides evidence that the seven or eight separate subdivisions that were ultimately created represent
10 “...one subdivision and master plan...” See, Plaintiff’s Motion, 10/22/2018, p. 3, lines 15-17.
11 Plaintiff attached multiple zoning exhibits that Plaintiff purports to support the fact that there is one
12 subdivision. Of course, there is not a single subdivision or any subdivision known as Tract 4076
13 there is only a “tentative” tract sometimes referred to as a preliminary plat. (See Plaintiff’s
14 Exhibit 1.) There are multiple separate subdivisions known as Tract 4076-A, 4076-B, 4076-C, 4076-
15 D, as well as additional subdivisions that utilized the name of Desert Lakes Golf Course & Estates
16 such as the very subdivision in which Plaintiff resides, namely, Tract 4163 as well as Tract 4159.
17 This allegation that clearly lacks any support from any documentation that has been submitted by
18 the Plaintiff flies directly in the face of this Court’s specific findings issued in June 2018 that Tract
19 4076-A is a separate subdivision with separately recorded CC&Rs, separate and apart from Tract
20 4076-B and separate and apart from the remaining Desert Lakes Golf Course & Estates subdivisions,
21 each of which were developed by multiple and different owners/developers over a period of
22 approximately 13 years (1989 through 2002). Further, this Court specifically found that Desert
23 Lakes Golf Course & Estates is not a master planned community and that it is not subject to a single
24 or master set of CC&Rs.

25 Plaintiff has not provided a “master” set of CC&Rs. Plaintiff is unable to do so simply
26 because they do not and never have existed. Plaintiff simply alleges that the zoning process that
27 takes place long prior to the creation and recordation of any subdivided plat created a “master plat”
28 and created “master CC&Rs” encumbering all lands in the area of the seven (7) separate subdivisions
that were ultimately recorded by various land owners between 1988 and approximately 2004. Again,

1 there has never been recorded in the records of Mohave County any tract known as Tract 4076. No
2 such tract has been produced by the Plaintiff because it does not exist. The June 11, 2018, finding
3 by this Court remains absolutely and unequivocally in place. No new evidence of any type has been
4 submitted to this Court indicating that any subdivision has ever been recorded known simply as Tract
5 4076, and it has not been provided, again, because it does not exist.

6 For some unknown reason, Plaintiff attaches partial copies of several State of Arizona
7 Subdivision Disclosure Reports also known as Public Reports. One such exhibit deals with a “public
8 disclosure” regarding Tract 4076-A. This Report issued effective June 11, 2014, shows that at the
9 time of issuance, some but not all of the named Defendants in this litigation were the owners of ten
10 (10) lots in that tract. What is reflected in this public disclosure is the fact that some of the
11 Defendants had acquired more than six (6) individual lots within Tract 4076-A, namely, a total of
12 ten (10) lots in 2014, and pursuant to A.R.S. §32-2181(E), were required to file a Disclosure Report.
13 The subject 2014 Report discloses that there are certain CC&Rs that were originally recorded 24
14 years earlier for Tract 4076-A, a project that in its entirety and upon the recordation of the original
15 plat consisted of some 241 lots covering an acreage of 92.98 acres and, further, that the original
16 subdivision plat was recorded at Fee No. 89-26061. See, Plaintiff’s Motion, 10/22/2018, Exhibit
17 2, Subdivision Disclosure Report, pp. 7-11. This has nothing whatsoever to do with the issue of an
18 alleged “master plan” project nor a “master plan set of CC&Rs.” The report prepared by some of
19 the named Defendants makes specific reference to the CC&Rs for Tract 4076-A exclusively and
20 recorded in Book 1554 of Official Records at Page 197. (See Plaintiff’s Exhibit 2, p. 18.) It does
21 not refer to any CC&Rs for any subdivision other than Tract 4076-A.

22 Plaintiff’s newly discovered evidence seems to rely on either zoning cases that were
23 processed over an approximate 10 year period or various comments in State Reports issued or
24 processed by the State of Arizona Department of Real Estate between 1987 and 1998 (see, Plaintiff’s
25 Motion, 10/22/2018, Exhibit 2, dealing with subdivision Tract 4159, Tract 4163, Tract 4097-C or
26 Subdivision Disclosure Report for 10 individual lots in Tract 4076-A in 2014).

27 First, a zoning case has nothing specifically to do with the creation and development of a
28 subdivision. Zoning simply designates the use of a parcel or lot and how it can be developed such

1 as commercial, manufacturing, multifamily, single family, etc. Zoning also typically establishes
2 setback requirements that vary with the type of structures that can be located thereon. Zoning does
3 not create a “master plan.” Zoning does not create a “planned community.” A recorded subdivided
4 plat (a tract map) creates a subdivision.

5 Zoning for Plaintiff’s subdivision Tract 4163 that includes a portion of the privately owned
6 actual golf course and clubhouse known as Desert Lakes Golf Course was originally designated in
7 the recorded plat map of the tract as “multiple family.” See, **Exhibit A** attached hereto.
8 Subsequently, the private owner of the golf course and clubhouse sold a portion of the golf course
9 (Parcel KK of Tract 4076-B) and Parcel VV of Tract 4076-B to 1043 Arizona Property, LLC (see
10 Plaintiff’s Exhibit 1, p. 16) who processed a rezone application and obtained a rezone classification
11 for both portions of the golf course parcel that it purchased from the golf course owner, KK and
12 Parcel VV of Tract 4076-B changing the zoning to SD-R (Special Development Residential) with
13 the approval to create 32 lots smaller than Tract 4076-B lots and ranging from 4,800 to 5,775 square
14 feet. This SD-R zoning specially called out 10' rear yard setbacks for all 32 lots and contrary to the
15 20' setback referenced in the Tract 4076-B CC&R (see Plaintiff’s Exhibit 1, pp. 16 and 17). Zoning
16 does not a subdivision make. Zoning such as that reflected in Plaintiff’s Exhibit 1, pp. 16-18, was
17 also contingent upon the recordation of the final plat for tentative Tract 4163. (Plaintiff’s Exhibit
18 1, p. 17, line 4.) Each zoning resolution attached by Petitioner in her Exhibit 1 deals with
19 preliminary or tentative plats/tracts (see Plaintiff’s Exhibit 1, pp. 6, 7, 11 and 17.)

20 Exhibit 2 of Plaintiff’s new evidence consists of the “state reports.” State reports are
21 informational documents assembled by the various subdividers involved and provided to and by the
22 State Land Department. They are intended for informational purposes only. They are not contracts
23 between the State, the developer nor a future lot owner. State reports begin with the following:

24 “Property Report Disclaimer. This report is NOT A
25 RECOMMENDATION NOR AN ENDORSEMENT by the State of
26 Arizona of this land but is provided for information purposes ONLY.
27 The report reflects information provided by the subdivider and
28 obtained by the Department in its review process in accordance with
the provisions of Title 32, Chapter 20, Article 4, of the Arizona
Revised Statutes, as amended. **NOTE** that not all of the information
in this report has been verified by the Department; certain information
has been accepted by the Department as true and accurate based on

1 attestation of the subdivider and/or the subdivider's agents. You
2 should verify all facts before signing any documents. The
3 Department has not passed upon the quality or quantity of any
improvement or structure and does not assume responsibility in either
event." Plaintiff's Motion, 10/22/2018, Exhibit 2, pp. 1, 3 and 6.

4 Finally, Plaintiff directs this Court to the apparent "newly discovered evidence" represented
5 by a portion of the Board of Supervisors Meeting Minutes dated October 3, 2016 (Plaintiff's
6 Exhibit 3).

7 This is a meeting where a rezone amendment was discussed and several Board of Supervisor
8 members spoke in favor of the request and three spoke/voted against the amendment submitted by
9 one of the Defendants herein. The amendment failed by a vote of two in favor and three opposed.
10 Plaintiff spoke in opposition.

11 The failure of the proposed amendment has nothing whatsoever to do with Plaintiff's
12 standing to attempt enforcement of CC&Rs in any subdivision other than potentially Tract 4076-B
13 and Tract 4163. Defendant Azarmi had every right to file a request for the amendment just as the
14 representative did successfully for the owner of the land that ultimately was subdivided into Tract
15 4163 with small lots and 10' rear setbacks. (Plaintiff's Exhibit 1 at pages 16 and 17.)

16 There are zero "community owned" or common areas or properties located in any of the
17 subdivisions including the tracts at issue, Tracts 4076-A, 4076-B or 4163. The golf course and
18 clubhouse are privately owned. (See, **Exhibit B.**) There is no homeowner association and there
19 never has been an association. There has never been enforcement of the CC&Rs for Tracts 4076-A
20 or 4076-B and this Court has previously found that there are no CC&Rs for Tract 4163.

21 A.R.S. §33-1802 helps us to better understand what Plaintiff is calling the various
22 subdivisions that use the name "Desert Lakes Golf Course and Estates." This statute defines what
23 is now referred to as a "planned community" in paragraph 4:

24 "4. "Planned community" means a real estate development that
25 includes real estate owned and operated by or real estate on which an
26 easement to maintain roadways or a covenant to maintain roadways
27 is held by a nonprofit corporation or unincorporated association of
owners, that is created for the purpose of managing, maintaining or
improving the property and in which the owners of separately owned
lots, parcels or units are mandatory members and are required to pay
assessments to the association for these purposes."

1 Absolutely none of these criteria exist nor have they ever existed for what Plaintiff calls “her
2 Desert Lakes Community.” No real estate owned or operated by a nonprofit corporation nor
3 unincorporated association of owners, nor do owners have any real estate to manage, maintain or
4 improve, nor is there any mandatory membership or mandatory assessments to any association for
5 those purposes. While it is acknowledged that A.R.S. §33-1801, et seq., as cited above did not exist
6 in 1987 and during the times when the various Desert Lakes subdivisions were developed,
7 nonetheless it does provide this Court with insight to the types of elements that are typically part of
8 a “master planned community.” (See **Exhibit C.**)

9 **SUMMATION**


10 There is no new evidence supporting the existence of a “master planned community” subject
11 to a master set of CC&Rs. Conversation and a ruling by the Board of Supervisors not to amend a
12 zoning ordinance, does not create a “master planned community,” nor does any number of zoning
13 cases dealing with multiple distinct, different and separate subdivisions create a “master planned
14 community.” Finally, miscellaneous State of Arizona public information reports do not create a
15 master planned community. This Court’s multiple prior orders denying Plaintiff’s prior two efforts
16 should stand and this Plaintiff’s third effort should also be denied.

17 This matter should be treated as a request of the Court to reconsider under Arizona Rules of
18 Civil Procedure, Rule 59(d), and should be denied.

19 Defendants should be awarded their reasonable attorney’s fees and costs in preparing this,
20 the third response to Plaintiff’s amendment efforts and the reversal of the Court’s prior orders.

21 RESPECTFULLY SUBMITTED this 16th day of November, 2018.

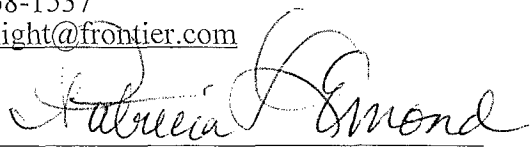
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