

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE FILED  
TIME \_\_\_\_\_ M.

APR - 3 2018

NANCY KNIGHT,

PLAINTIFF,

and

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.

By: VIRLYNN TINNELL  
CLERK SUPERIOR COURT  
DEPUTY  
CASE No. CV=2018=04003

ORAL ARGUMENT

Before the Honorable Derek Carlisle, Judge

Monday, April 2, 2018

2:33 p.m.

Lake Havasu City, Arizona

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

Reported by: Dawn M. Duffey, Registered Professional  
Reporter, Arizona Certified Court  
Reporter No. 50039, California Certified  
Court Reporter No. 10491, Nevada Certified  
Court Reporter No. 722, Iowa Certified  
Reporter No. 1357



B8015CV201804003

1 APPEARANCES:

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3 FOR THE PETITIONER:

4 Pro Per

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7 FOR THE RESPONDENT:

8 Daniel Oehler, Esq.

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1 LAKE HAVASU CITY, ARIZONA

2 MONDAY, APRIL 2, 2018

3 2:33 P.M.

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5 (Whereupon, follows a partial transcript  
6 requested by Mr. Oehler.)

7 THE COURT: All right. Well, I have to make a  
8 decision. And, again, this was initially filed as a Motion to  
9 Dismiss for Failure to State a Claim with the argument being  
10 that pursuant to Rule 8 of the Arizona Rules of Civil  
11 Procedure, that Ms. Knight didn't have the authority to bring a  
12 claim.

13 So with respect to that, the Court has to look  
14 at that narrow issue of does she have the authority to bring a  
15 claim. And the basis for Ms. Knight having the authority to  
16 bring a claim is the -- sorry, my judicial assistant just sent  
17 me a note. The basis for Ms. Knight's claim is she is saying  
18 because of the Codes, Covenants, and Restrictions, that she is  
19 seeking to enforce those Codes, Covenants, and Restrictions,  
20 and that is basically her way of saying I have the authority to  
21 file this suit against somebody who lives in -- not directly  
22 next to me or not near me, who is not immediately in proximity  
23 to me, but is, I think, everybody agrees in a different tract  
24 at least.

25 The Codes, Covenants, and Restrictions for both

1 4076-A and 4076-B contain some similar language, and I don't  
2 know if I'll be able to read it on this monitor because it's  
3 somewhat small, but it was referenced in the Motion to Dismiss,  
4 and I think both parties are aware of it, and it's taking me a  
5 really long time to get there, but it says the violation or  
6 threatened or attempted violation of the Codes -- or the  
7 Covenants, Conditions or Restrictions -- I think I might have  
8 said it wrong -- shall be lawful for the Declarant, its  
9 successors or assigns, or any person or persons owning real  
10 property located within the subdivision to prosecute  
11 proceedings at law or in equity against all persons violating  
12 or attempting to violate.

13           So basically it's limited to all persons who --  
14 or any person owning real property located within the  
15 subdivision. And within the CC&R's, and, again, this started  
16 as a Motion to Dismiss, so I have to start with the CC&R's. It  
17 doesn't necessarily define subdivision, what is meant by  
18 subdivision.

19           But when I'm looking at the CC&R's, there are  
20 examples, and I'm just going with the most obvious example  
21 because it's the easiest one to articulate. The first article  
22 talks about a Committee of Architecture, and it says that there  
23 is created a Committee of Architecture, and then it says at  
24 such time that 90 percent of the lots within the subdivision  
25 have been sold by Declarant, or within one year of the issuance

1 of the original public report, whichever occurs first, the  
2 owners of such lots may elect three members to consist and  
3 serve on the Committee of Architecture.

4           The next paragraph says notwithstanding anything  
5 heretobefore stated -- maybe it's hereinbefore -- architectural  
6 review shall be vested in the initial Architecture Committee.  
7 And then it says until such time as 90 percent of the lots in  
8 Tract 4076, and in this instance B, have been sold by  
9 Declarant. And the ones for Tract 4076-A say the same thing,  
10 until 90 percent of the lots in 4076-A have been sold by the  
11 Declarant.

12           So when I look at that, it seems clear to me  
13 that the intent of the Codes, Covenants, and Restrictions is to  
14 define a subdivision as a tract. So a tract 4076-A is a  
15 subdivision, Tract 4076-B is a subdivision for purposes of the  
16 CC&R's. And, again, that is what I am focused on in my  
17 analysis is are the tracts the subdivision or is the whole  
18 community a subdivision.

19           And when I read the CC&R's, there is -- it is a  
20 subdivision. That's consistent with the fact that each tract  
21 has a different final plat. It's consistent with the fact that  
22 each of the tracts have their own CC&R's. So I am finding that  
23 the reference to subdivision within the CC&R's is a reference  
24 to a particular tract.

25           There is no dispute -- there's no genuine of

1 issue of material fact in this case that the Roberts' home is  
2 in Tract 4076-A. The Knight home is in a tract that was  
3 previously part of 4076-B, now is Tract 4163.

4 I am finding -- and I guess to answer a  
5 question, sorry, I'm going to digress for just a second. One  
6 of the exhibits, I think it was Exhibit 1-C, which is labeled  
7 as a subdivision index in the objections filed by Ms. Knight,  
8 and whether you can submit additional evidence after the Reply  
9 brief has been filed is probably questionable.

10 But even if I consider that, Exhibit 1-C, which  
11 was labeled as a Mohave County Subdivision Index, it lists, I'm  
12 assuming, subdivisions, and it lists Tract A, Tract B, Tract C,  
13 Tract D all separately. They are on consecutive lines. That  
14 would suggest that each one of those is a subdivision. So that  
15 is all consistent with each tract being its own subdivision.

16 And I am finding based on the language in the  
17 CC&R's, that the CC&R's give the authority for somebody within  
18 a tract to enforce the CC&R's for that tract.

19 MS. KNIGHT: With the exception of Provision 21  
20 and 22.

21 THE COURT: Ms. Knight --

22 MS. KNIGHT: Excuse me.

23 THE COURT: -- you've had your chance.

24 MS. KNIGHT: Your Honor, I'm sorry.

25 THE COURT: So because of that I am finding

1 that Ms. Knight does not have the authority to enforce any  
2 CC&R's in Tract 4076-A. However, there's also not a dispute  
3 that Tract 4163 was previously a part of 4076-B, and 4076-B  
4 specifically says it applies to lots and parcels within 4076-B.  
5 So Ms. Knight can enforce the CC&R's for 4076-B within  
6 Tract 4076-B. She can't enforce the CC&R's for 4076-B in a  
7 different tract. So she can't enforce those in 4076-A, but she  
8 can in 4076-B.

9 And since this is all just predicated on whether  
10 she has the authority to file a suit or not, what I am finding  
11 then is with respect to the two counts in the Complaint, the  
12 first count clearly discusses setbacks or the violation of  
13 setbacks with respect to a particular residence in 4076-A.

14 I am granting the Motion to Dismiss with respect  
15 to count 1 which deals with a particular lot, apparently the  
16 lot owned by the Roberts at this point in time. I am denying  
17 the Motion to Dismiss with respect to count 2 to the extent  
18 that she can -- at least has the authority to assert violations  
19 of signage or other violations in 4076-B.

20 Because I -- the language of the CC&R's says it  
21 runs with the parcels. This was part of the parcel. I don't  
22 see anything that says it was excluded once it was sold. So I  
23 am finding she can sue for things that occurred in 4076-B, not  
24 4076-A. So the Motion to Dismiss is granted with respect to  
25 count 1, denied with respect to count 2.

1 MS. KNIGHT: So the attempt -- may I, Your  
2 Honor? So the attempt to violate that happened under the BOS  
3 Resolutions that Mehdi -- I mean, he gave presentations and  
4 everything, that -- that is still -- I have authority for that;  
5 right? I think that's what you just said.

6 THE COURT: All I'm saying is I granted with  
7 respect to count 1, I'm denying with respect to count 2 because  
8 you do have the authority I am finding to -- limited to things  
9 that happen in 4076-B.

10 MS. KNIGHT: Okay.

11 THE COURT: So -- and my recollection of count 2  
12 is it's kind of limited to putting signs on unimproved lots.  
13 So if there are signs on unimproved lots in 4076-B, you might  
14 be able to pursue that. And, again, this is just whether she  
15 has the authority to sue or not.

16 So, Mr. Oehler, I don't know if you want to  
17 prepare a Proposed Form of Order with respect to the dismissal  
18 of count 1 or not or --

19 MR. OEHLER: Your Honor, I think, you know, we  
20 perhaps had best do that, and also include the Court's  
21 reasoning in regard to the signage. You know, I cannot sit  
22 here and say that any client I represent in this lawsuit has a  
23 single sign in the B Tract. I don't know. I, you know, was  
24 really focused on the A Tract issues.

25 THE COURT: And I understand that. I'm not



1 saying this resolves the case -- well, resolves the case with  
2 respect to count 1.

3 Again, this is just whether she --

4 MR. OEHLER: Correct.

5 THE COURT: I don't want to use the word  
6 standing, but it's basically a standing argument, and doesn't  
7 necessarily resolve whether there is a justiciable complaint  
8 with respect to things that are occurring in 4076-B or not.

9 MS. OEHLER: Yeah, Your Honor, if, you know,  
10 obviously after you recess, I would talk with the clerk (sic)  
11 and have her send me a copy of the transcript from which I  
12 would prepare a Proposed Form of Order.

13 THE COURT: All right. Well, anything else then  
14 at this point in time?

15 MR. OEHLER: No, Your Honor. And I would assume  
16 that it would be acceptable with the Court that we can follow  
17 this up with an affidavit dealing with the issue of fees and  
18 costs?

19 THE COURT: Yeah. And I didn't specifically  
20 address that issue because -- because I think that you won in  
21 part and lost in part since I dismissed one of the counts but  
22 not the other count.

23 MR. OEHLER: Well, Your Honor, you're  
24 certainly --

25 THE COURT: You can make a motion with respect

1 to that --

2 MR. OEHLER: Okay. Thank you.

3 THE COURT: -- and I'll deal with that issue. I  
4 don't need to resolve that right now.

5 MR. OEHLER: Thank you.

6 Anything else, Ms. Knight?

7 MS. KNIGHT: Probably, but I just -- can I  
8 confirm what I think the understanding is? In the CC&R's it  
9 says "attempted or threatened violation," and that's what Mehdi  
10 did when he went before the planning commission and then the  
11 Board of Supervisors to try to get anybody who wanted the  
12 setback reduction in the whole project, the whole Desert Lake  
13 Golf Course and Estates subdivision. I can proceed with that  
14 part of my complaint? I think that's what you said.

15 THE COURT: All I said is that count 1 is  
16 dismissed.

17 MS. KNIGHT: I haven't memorized what are  
18 count 1 and count 2. I understand it's --

19 THE COURT: Count 1 is the setback with respect  
20 to the house.

21 MS. KNIGHT: Okay.

22 THE COURT: That's dismissed. Count 2 is not  
23 dismissed --

24 MS. KNIGHT: Egregious parts of it, yes.

25 THE COURT: -- to the extent that you have the

1 authority for violation --

2 MS. KNIGHT: Under the same case.

3 THE COURT: -- in 4076-B only.

4 MS. KNIGHT: Yes, under the same case. We don't  
5 have -- so we now go to disclosure or what do we do? What is  
6 the next step? You answer now to that --

7 THE COURT: All right.

8 MS. KNIGHT: -- Mr. --

9 THE COURT: We'll send --

10 MR. OEHLER: Your Honor, I -- simply so we don't  
11 have additional argument in paper or in person, I would assume,  
12 therefore, that the notice of -- excuse me, the Order of  
13 Dismissal will dismiss Mr. and Mrs. Roberts since they're  
14 obviously in the A Tract and dealing exclusively here as  
15 Defendants as a result of their residence.

16 THE COURT: I would have assumed that as well,  
17 but I'm assuming you will submit a notice -- or a lodged  
18 judgment, and --

19 MR. OEHLER: I will.

20 THE COURT: -- there may or may not be  
21 objections to it --

22 MR. OEHLER: Sure.

23 THE COURT: -- but we'll go from there once I  
24 see it and once I rule on any objections to it.

25 MR. OEHLER: Thank you.

1 MS. KNIGHT: One other thing because what is --  
2 what I wrote in count 1 and count 2, they may have been  
3 intertwined. I'm not sure if they were separate. So can we  
4 do -- you have to dismiss all of count 1 and all of -- keep all  
5 of part 2 or just the part about the house?

6 THE COURT: I have dismissed all of count 1. I  
7 have limited count 2 as I've said.

8 MS. KNIGHT: So I have to go back and read all  
9 of count 1 and see what was dismissed. Okay.

10 THE COURT: All right. Stand at recess. And I  
11 do have another hearing that was supposed to start at 2:30.

12 (The proceedings were concluded at 2:49 p.m.)  
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CERTIFICATE OF REPORTER

I, Dawn M. Duffey, Official Reporter in the Superior Court of the State of Arizona, in and for the County of Mohave, do hereby certify that I made a shorthand record of the proceedings had at the foregoing entitled cause at the time and place hereinbefore stated;

That said record is full, true, and accurate;

That the same was thereafter transcribed under my direction; and

That the foregoing (12) typewritten pages constitute a full, true, and accurate transcript of said record, all to the best of my knowledge and ability.

Dated at Lake Havasu City, Arizona, this 2nd day of April 2018.



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Dawn M. Duffey, Registered Professional Reporter, Arizona Certified Reporter No. 50039, California Certified Reporter No. 10491, Nevada Certified Reporter No. 722 Iowa Certified Reporter No. 1357