

FILED
BY: *ra* *ra*

2020 MAY 11 AM 8:32

VIRLYNN TINNELL
SUPERIOR COURT CLERK

1 NANCY KNIGHT
2 1803 E. Lipan Circle
3 Fort Mohave, AZ 86426
4 (928) 768-1537
5 nancyknight@frontier.com

6 Plaintiff Pro Per

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,
13 TRUSTEES OF THE LUDWIG FAMILY
14 TRUST; FAIRWAY CONSTRUCTORS, INC.;
15 MEHDI AZARMI; JAMES B. ROBERTS
16 AND DONNA M. ROBERTS, HUSBAND
17 AND WIFE; JOHN DOES 1-10; JANE DOES
18 1-10; ABC CORPORATIONS 1-10; AND XYZ
19 PARTNERSHIPS 1-10.

20 Defendants.

CASE NO.: CV 2018-04003

21 **MOTION TO DISMISS**
22 **DEFENDANTS' MOTION FOR**
23 **SUMMARY JUDGMENT FOR**
24 **FAILURE TO JOIN INDISPENSABLE**
25 **PARTIES**

26 **Assigned to Hon. Lee Jantzen**

27 COMES NOW Nancy Knight, Plaintiff Pro Per, pursuant to A.R.C.P. 19, pleading
28 with the Court to dismiss the Defendant's dispositive motion for failure to join
indispensable parties who could be substantially affected by the outcome of a claim of
abandonment of the Covenant, Conditions and Restrictions (hereinafter "CC&Rs") of
Desert Lakes Golf Course and Estates Subdivision Tract 4076 (hereinafter "DLGCE").
The rule retains the basic principle that parties must be joined where this is required by
"equity and good conscience." *Shields v. Barrow*, 58 U.S. 130, 17 How. 130, 15 L. Ed.
158 (1854); *Bolin v. Superior Ct.*, 85 Ariz. 131, 333 P.2d 295 (1958); *Smith v. Rabb*, 95

MOTION TO DISMISS MSJ FOR FAILURE TO JOIN INDISPENSABLE PARTIES - 1



1 Ariz. 49, 386 P.2d 649 (1963); *State of Washington v. United States*, 87 F.2d 421 (9th
2 Cir. 1936).

3
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 A few violations that have remedy does not support a conclusion that the
6 fundamental character of DLGCE has changed from that of a master planned golf course
7 and estates subdivision, The rights of property owners could be affected if the
8 Defendant's claim of abandonment of the CC&Rs is successful.
9

10 Indispensability of parties is a matter of law.

11 In *Siler v. Superior Court*, 83 Ariz. 49, 54, 316 P.2d 296, 299
12 (1957); "Indispensable parties are those without whom the
13 action cannot proceed".

14 In *Gila Bend v. Walled Lake Door Co.*, 107 Ariz. 545, 549,
15 490 P.2d 551, 555 (1971): "In Arizona, the test of indispensability
16 is whether the absent person's interest in the controversy is such
17 that no final judgment or decree could be entered, doing justice
18 between the parties actually before the court and without injuriously
19 affecting the rights of others not brought into the action."

20 In *Wright v. Incline Will. Gen. Improvement Dist.*, 597 F.Supp.2d
21 1191, 1207 (D.Nev.2009): "In an action to set aside a lease
22 or contract, all parties who may be affected by the determination
23 of the action are indispensable."

24 In *Karner v. Roy White Flowers, Inc.*, 527 S.E.2d 40, 44 (N.C.2000):
25 "It is only necessary to join other lot owners in an action to abrogate
26 and not to enforce CC&Rs. All property owners affected by a
27 restrictive covenant are necessary parties to an action to invalidate that
28 covenant."

29 The Defendants filed their dispositive motion without joining indispensable
30 parties. Abandonment of the entire Declaration of CC&Rs for Tract 4076-B is pending

1 Oral Arguments today, May 11, 2020 at 1:30 pm. Defendants have been provided an
2 Excel Spreadsheet of the names and Assessor Parcel Numbers for 673 indispensable
3 parties within the entire DLGCE Subdivision Tract 4076 in Plaintiff's 4th Supplemental
4 Disclosure.
5

6 If the abandonment proceeding is limited to the entire Declaration in Tract 4076-B
7 CC&Rs only, then property owners in four of the six said tracts in the Subdivision Tract
8 4076 has been calculated to be 252 indispensable parties. These four tract's lots are cited
9 in Tract 4076-B CC&Rs as lots in said Tract 4076-B, lots in said tract 4132, lots in said
10 tract 4076-D, and lots in Parcel VV known as Tract 4163 Unit E which runs with the land
11 in Tract 4076-B CC&Rs. **Exhibit 1** – Page 897, Book 1641 identifying the blocks and
12 lots cited in Tract 4076-B CC&Rs.
13
14

15 The contract is a matter of law. Complete abandonment appears to be construed in
16 precedent cases as complete abandonment of the entire Declaration for each and every
17 restriction or condition with a measure of frequency of occurrence and other critical
18 criteria that had to be met. A calculation and determination of what constitutes a high
19 frequency of violations may be a matter of fact for the jury.
20
21

22 Complicating the issue further is the non-waiver clause in all versions of said
23 tract Declarations. If complete abandonment of the entire Declaration cannot be proven, a
24 restriction within the Declaration remains enforceable, despite prior violations. Due to the
25 non-waiver clause, no failure of any person to enforce a specific violation of a restriction
26 in the past, shall impact Plaintiff's right to enforce in this law suit. The non-waiver
27
28

1 clause, 3rd sentence in clause 20, Book 1641, page 899 states: “No failure of the Trustee
2 or any other person or party to enforce any of the restrictions, covenants or conditions
3 contained herein shall, in any event, be construed or held to be a waiver thereof or
4 consent to any further or succeeding breach or violation thereof or consent to any further
5 or succeeding breach of violation thereof.”

7
8 Indispensable parties have a right to defend their interests. At the present time,
9 the Court has adjudicated Plaintiff’s rights to prosecute violations for lots in only the
10 Tract 4076-B CC&Rs. Plaintiff has attached a list of the 252 Indispensable Parties subject
11 to this adjudicated limitation. **Exhibit 2** – Excel Worksheet of Indispensable Parties in
12 four said tracts.

14 Defendants have been aware of Rule 19 and have not made an effort to serve
15 indispensable parties. This case cannot be dismissed in the absence of the Indispensable
16 Parties.

18 RESPECTFULLY SUBMITTED this 11th day of May, 2020.

19
20 
21 Nancy Knight
22 Plaintiff Pro Per

23 COPY of the foregoing emailed on this 11th day of May, 2020 to:
24 djolaw@frontiernet.net
25 Attorney for Defendants

26 Daniel J. Oehler, Esq.
27 Law Offices of Daniel J. Oehler
28 2001 Highway 95, Suite 15
Bullhead City, Arizona 86442

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1
Page 897 from Tract 4076-B CC&Rs
Defines the Blocks and lots affected by the Declaration

Tract 4076-B CC & RS

①

be completed within twelve (12) months from the commencement of construction. Mobile homes and all structures built, constructed or prefabricated off the premises are expressly prohibited, including but not limited to modular or manufactured structures and existing structures.

2. No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

3. No lot shall be conveyed or subdivided smaller than that shown or delineated upon the original plat map, but nothing herein contained shall be so construed as to prevent the use of one lot and all or a fraction of an adjoining lot as one building site, after which time such whole lot and adjacent part of the other lot shall be considered as one lot for the purposes of these restrictions.

4. All buildings on lots not adjacent to the golf course being lots shall have a minimum of one thousand four hundred (1,400) square feet of living space, exclusive of garages, porches, patios and basements. Buildings on all other lots, being those lots adjacent to the golf course, in Tract 4076-B shall have a minimum of one thousand six hundred (1,600) square feet of living space, exclusive of garages, porches, patios and basements. No construction shed, basement, garage, tent, shack, travel trailer, recreational vehicle, camper or other temporary structure shall at any time be used as a residence.

5. All buildings shall have: (i) a maximum building height of Thirty (30) feet from the surface of the lot to the peak of the highest projection thereof; (ii) no more than two stories; (iii) no exposed radio, radio-telephone, television or microwave receiving or transmitting antennas, masts or dishes; (iv) no airconditioning unit on roofs; (v) a closed garage with interior dimensions of no less than twenty (20) feet; (vi) on any roof visible from ground level at any point within Tract 4076-B as its exposed visible surface, clay, concrete or ceramic tile, slate, or equal as may be approved by the Committee on Architecture; (vii) tempered glass in all windows facing fairways and driving range lakes.

6. All buildings and projections thereof on lots not adjacent to the golf course being Lots 31, 32, 33, 34, 35, 36, 37, 41, 42, 69, 74, 78, 79, 80, and 108 Block F, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 Block G, Lots 21, 22, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38, 66, 67, and 68 Block H, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 Block I, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 Block J, and Lots 1, 2, 3, 4, 5, 6, and 7 Block K shall be constructed not less than twenty feet (20') back from the front and rear property lines and five feet (5') from side property lines. All buildings and projections thereof on all other lots of Tract 4076-B, being those lots adjacent to the golf course shall be constructed not less than twenty feet (20') from the front and rear property lines and five feet (5') from the side property lines.

7. Lots 75 through 86 inclusive, Block F shall not have direct vehicular driveway access to Mountain View Road or Lippan Boulevard, as the case may be, but rather shall have vehicular access from the twenty-four foot (24') access easement as depicted on the plat. No automobiles, motorcycles, bicycles or other vehicles shall be parked in said access easement.

8. Fences and walls shall not exceed six (6) feet in height and shall not be constructed in the street set back area (being twenty feet (20') from the front property line). Fences and

Lots Not
Adjacent
to the
Golf Course

Block	# of Lots
F	15
G	22
H	16
I	24
J	17
K	7

Tract 4132



Tract 4076-D

F 12

'as built' with
frontage Rd.

all other
lots in
Tract
4076-B



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 2
Excel Worksheet page
Describes the Indispensable Parties subject to Tract 4076-B CC&Rs

Duplicate lots owned by or party highlighted

Three Defendants omitted from the Count



2
3 PGS

Owner

- 1 ABATE DIANE M ETAL
- 2 ABBE CHRISTOPHER & AMANDA
- 3 ABRAMIAN ALFRED
- 4 ADAM LARRY R & JANE B JT
- 5 AGALSOFF RONALD
- 6 AGUILAR BREANNA
- 7 ALESON DOUGLAS A & CAROL A JT
- 8 ALESTRA JOSE
- 9 ALLEN WAYNE L & CAROLE L
- 10 ALVARADO BRYAN
- 11 AMERICAN GOLF CORPORATION
- 12 ANDERSON ANDERS GUNTHER & CINDY CPWRS
- 13 ANDERSON RALPH W & MARIE C
- 14 ARAGON DAVID
- 15 ASQUITH MICHAEL J & LYNDIA S CPWRS
- 16 AZARMI AMIR M & JAMNEJAD AZAR D
AZARMI AMIR M & JAMNEJAD AZAR D
- 17 BAKER ALEXANDRA
- 18 BALDSCHUN DAVE & MARTHA CPWRS
- 19 BALDWIN WILLIAM S
- 20 BANKSON RICHARD & GAIL
- 21 BARTOLONE JOSEPH C & ROSE TRUSTEES
- 22 BELL PAT J & MELINDA D
BELL PAT J & MELINDA D
- 23 BENAVIDEZ CHARLES & BRIDGIT CPWRS
- 24 BERARD DAVID EDWARD & RAGNHILD OLIVIA JT
- 25 BIESSNER BRUCE & JERSETS JOAN
- 26 BLACK JOSEPH M & MARY J
BLACK JOSEPH M & MARY TRS 50
- 27 BORDING-JORGENSEN ERLING & DOREEN JT
- 28 BOSKOVICH WALTER J & BARBARA A TRUSTEES
- 29 BOYETT CRAIG A
- 30 BRAMMER JACK
- 31 BRAZEAL MARGIE
- 32 BRIC INVESTMENTS INC
BRIC INVESTMENTS INC
- 33 BROCKER GLENN H & TERESA L
- 34 BROWN SHARON L
- 35 BRUMMOND RICHARD S & SWEET BRUMMOND DEBR
- 36 BRUSH DAVID C
- 37 BURDEN DENNIS B & ZOSIMA CPWRS
- 38 BURGESS RODNEY C JR
- 39 BURKE MICHAEL M
- 40 BURNELL ANNE
- 41 BURNS JULIA
- 42 CABRERA ARTURO
- 43 CALVILLO ALEJANDRO & AIDE

Owner

- 44 CAMPBELL ROSIE
- 45 CARLSON LARRY E & ANNA
- 46 CARTER JOE E & MARY NANETTE TRUSTEES
- 47 CHAMBERS FRANK & YAWALUCK JT
- 48 CHOATE PETER J & ANTOINETTE M
- 49 COCHRAN DAVID E & MARY E
- 50 COFFEY MARTIN & LAURA
- 51 COKER ELLSWORTH INC
- 52 COLIANNO JODY
- 53 CONKLIN WALTER E ETAL JT
- 54 CONTRERAS ANTHONY ROBERT
- 55 CORDARO MICHAEL A
- 56 COSTA DONALD TRUSTEE
- 57 DANCS LOUIS & ILDIKO K CO-TRUSTEES
- 58 DAVIDE DEWEY D
- 59 DEAN WILLIAM
- 60 DELYRIA DARREL D & MARIA G
- 61 DESERT LAKES & GOLF COURSE
DESERT LAKES AND GOLF COURSE LLC
- 62 DESMIDT DANIEL A & LEE ANNE
- 63 DINKIN ALAN J
- 64 DOIZAKI ERNEST Y & KIYO ETAL JT
- 65 DOYLE GERALD
- 66 DRYG EDWARD J & BARBARA TRUSTEES
- 67 DSCHAAK RONNIE H & DEBORA J
- 68 DURNIL DIONNE
- 69 EDWARDS RICKY D JR & CHELSEE R
- 70 EMERY KENNETH B & MARJORIE CPWRS
- 71 ENRIQUEZ VICTOR M JR
- 72 EPLER GARTH E & CHERYL L CPWRS
- 73 ERNY CECELIA
- 74 EURICH RICHARD K
- 75 FAIRWAY CONSTRUCTORS
- 76 FAROOQI SAM A & LILY W TRUSTEES
- 77 FELAND WADE G JT ETAL
- 78 FELIX IGNACIO CPWRS ETAL
- 79 FERRELL KEVIN & LISA CPWRS
- 80 FIKE RICK
- 81 FILLPOT WILLIAM C & NANCY A
- 82 FIXSEN CARY ETAL
- 83 FLORES RUBEN A & SALVADOR-FLORES LUPE
- 84 FOUST DONALD E & VIRGINIA A
- 85 FUHRMEISTER GARY L & MONICA A
- 86 GAMBRELL JONATHAN R & SARAH N
- 87 GARCIA BEN JR & PATSY CPWRS
- 88 GARCIA ERICK M & CHEE YANELI
- 89 GARCIA MELINA

171 KOCH MICHAEL A & CAROL A JT
172 KOHL DAVID A & CHRISTINE A
173 KRAEMER BOYD
KRAEMER BOYD A & LUANN R
174 KREUITER JAMES S
175 KURT MAXINE J
176 LAIRD LEON & MARYJO CPWRS
177 LAM CONSTRUCTION INC
178 LANDS JAMES T
179 LARUE SCOTT R & THERESA J CPWRS
180 LAWSON DALE A
181 LOW MARILYN TRUSTEE
LOW MARILYN TRUSTEE
182 LUDWIG GLEN & PEARLE TR
LUDWIG GLEN & PEARLE TRS
LUDWIG GLEN L & PEARLE A
183 MAIALE ENRICO M & FRANCENE
184 MANUEL MARIA
185 MARASCO JAMES JOHN & HEATHER MARIE
186 MARCH DAVID TRUSTEE
187 MARTIN BRANDON
188 MARTINEAU GREGORY W & LINDA S
189 MARTINEZ MIN
190 MATA JUAN C
191 MC DONALD JOHN
192 MC HUGH DANIEL J & LAURA M TRUSTEES
MC HUGH DANIEL J & LAURA TRUSTEES
193 MC LAURINE JAMES R & SARAH E CPWRS
194 MCCLELLAND JOHN N JR & SHERRY A JT
195 MCKEAN DONNA
196 MCLERRAN LARRY & KAREN
197 MEADE LARRY & DONNA CPWRS
198 MILLER EDWARD M
199 MILLER KEVIN
200 MILLER RONALD J & SHIRLEY D
201 MILLER WILMA EARNESTINE TRUSTEE
202 MONARREZ MANUEL M
203 MONTTOYA KEITH & DONNA CPWRS
204 MOODY FRED J & KATHRYN L
205 MOSANSKY JEFFREY E & FELIX F
206 NAVARRO REAL ESTATE ENTERPRISES LLC ETAL
207 NDECHE STEPHEN C & GLADYS C
208 NESS MORLEY E & MARY C TRUSTEES
209 OECHSNER ROBERT & SANDRA CO-TRUSTEES
210 OLIPHANT ROBERT B
211 OLIVER CHRISTOPHER S
212 OLIVER ERIC M & KELLY C
213 OLIVER MICHAEL & CHERYL TRS
214 OLSON DIANA L
215 PAGANO NICHOLAS & ANNE M TRUSTEES
216 PALMISANO SUSAN
217 PANASUK ANDREW E TRUSTEE

218 SOLARIO RUBEN & ROSEMARIE JT
219 SPELT HONY W
220 SPINDLER ROBERT D & JANICE L
221 STORTZ KIRBY R JR & CLAIRE L JT
222 STREETER GERALD & JUDITH
223 SUNG KENG & CHANTHOU CPWRS
224 SUNNE DOUGLAS & CHERYL
225 SWEENEY DAWN
226 TAYLOR ROBERT H & BELINDA D
227 THAMES JONATHAN R & GINA
228 THOMAS MICHAEL E & SANDRA JEAN LORD JT
229 THOMAS MICHAEL J AND CHRISTINE K
230 THOMPSON FRANK & CARMEN CPWRS 25
231 THOMPSON LOWELL W JR & JUDITH A
232 TIBERIO RICKY & YOLLANDA JT
233 TONTILLO SHIRLEY
234 TOPPING JED & LISLIE CPWRS
235 TRUONG CAM
236 TSEKO PAUL R JR & AMY L
237 TURNER SCHUYLER C
238 UNITED STATES OF AMERICA TRUSTEE
UNITED STATES OF AMERICA TRUSTEE
UNITED STATES OF AMERICA TRUSTEE
239 VALORE TERRY A & KARIN E
240 VIGNONI JOHN & MONTGOMERY DONNA
241 VIRAMONTES LEA
242 WADE DENNIS L & SHARON J JT
243 WALASZEK DALE
244 WALLING GRANT
245 WARNER LORI TRUSTEE
246 WEE JHYSHAIN
247 WELCH CAROL A
248 WHEATON SCOTT D & CAROL
249 WHITEFORD JOHN D & IKUKO CPWRS
250 WILHELMI FRANK & COLLEEN JT
251 WILKINS KENNETH W
252 WILLIS JAMES W & THERESA N TRS
253 WILSON NICOLLE
254 WOLGAMOTT WALTER D & VALERIE H TR
255 WRIGHT NICHOLAS F

3 Subtract 3 Defendants

252