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

8 NANCY KNIGHT,

9 Plaintiff,

10 vs.

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

18 Defendants.

NO.: CV-2018-04003

**RESPONSE AND OBJECTION
TO PLAINTIFF’S PLEADING
CAPTIONED MOTION FOR
SUMMARY JUDGMENT TO
FORGIVE SPECIFIC
VIOLATIONS OF DESERT
LAKES GOLF COURSE AND
ESTATES’ COVENANTS,
CONDITIONS AND
RESTRICTIONS**

17 COME NOW, Defendants, by and through their attorney, the undersigned and respond
18 to the Plaintiff’s pleading filed herein captioned “Motion for Summary Judgment to Forgive
19 Specific Violations of Desert Lakes Golf Course and Estates’ Covenants, Condition and
20 Restrictions” that delivers commentary in the prayer regarding a potential issue regarding
21 indispensable parties, their inclusion, proposals on how they might be served with process,
22 orders providing maximum financial obligation of Plaintiff to complete service of process
23 and clarification of non specified questions or issues regarding legal procedure. None of
24 these have anything whatsoever to do with anything remotely close to an appropriate motion
25 for summary judgment.

26 **THE LAW AND RULES OF CIVIL PROCEDURE**

27 Rule 56(b)(3), Arizona Rules of Civil Procedure, reads:

28 “(3) *Filing Deadline.* A summary judgment motion may not

1 be filed later than the dispositive motion deadline set by the
2 court or local rule, or absent such a deadline, 90 days before the
date set for trial.”

3 In accordance with this Court’s Scheduling Order entered December 11, 2018, the last
4 day to file dispositive motions (motion for summary judgment) in this matter was February
5 28, 2020. That time has long since passed.

6 The court is permitted and is in a position to grant summary judgment after the court
7 examines the entire record, including pleadings, depositions, answers to interrogatories,
8 admissions on file, affidavits, prior motions, orders, and rulings presented herein, and only
9 after and if the court has determined there is no genuine dispute as to any of the issues sought
10 to be resolved by summary judgment may a motion be granted. Summary judgment is an
11 appropriate vehicle for resolving arguments and disputes over legal meanings or facts or
12 conduct that are not in dispute. Unied California Bank v. Prudential Insurance Company of
13 America, 140 Ariz. 238, 681 P.2d 390 (App. 1983). Rule 56 of the Arizona Rules of Civil
14 Procedure is specifically designed to avoid useless trials where material facts are not
15 disputed, and the law points directly and succinctly to the conclusion that one of the parties
16 is entitled to judgment as a matter of law. Utility Control v. Prince William Construction,
17 558 F.2d 716 (4th Cir. 1977). The issues discussed in Plaintiff’s pleadings are not properly
18 before this Court, they violate every applicable Rule of Civil Procedure.

19 As is generally referenced above, summary judgment is only available for the Court’s
20 consideration, whether a motion requesting such action from the Court is contested or not
21 contested, only in those instances where there is no reasonable question of fact and no
22 question of law regarding the relief sought.

23 The Plaintiff states: “Forgiveness is requested for setback violations in Tract 4076-B
24 that occurred prior to 2015 and due to no fault of the current or future property owner(s).
25 Forgiveness for Servitude 8 for wrought iron fence color is requested for all alphabetically
26 suffixed tracts for the fence color chosen by the developer of the lot and maintained as built.”
27 See, Plaintiff’s 06/01/2020 Motion for Summary Judgment, p. 1, lines 24-28, p. 2, line 1.

28 Plaintiff goes on to state that the “total number of parcel numbers (hereinafter

1 ‘APNs’) for these affected lots is two hundred ninety (290) that have Assessor’s Property
2 Descriptions as Tract 4076-B, Tract 4076-D, Tract 4163, and Tract 4132.” See, Plaintiff’s
3 06/01/2020 Motion for Summary Judgment, p. 3, lines 23-26. Plaintiff has a community
4 property interest with Plaintiff’s spouse in one of apparently 290 lots owned by non-parties
5 to Plaintiff’s action. There are an unknown number of owners of the remaining 289 ½ lots
6 (Plaintiff’s spouse appears as an interest holder together with the Plaintiff in one lot, hence
7 the reference hereinafter to 289 ½ lots).

8 In theory, then, there is a potential for a total number of parties directly sought to be
9 affected by Plaintiff’s motion covering 289 ½ lots and if, for instance, the 289 ½ lots in the
10 four different and separate subdivisions for which Plaintiff seeks some sort of Court relief
11 via this pending Motion, could bring the total impacted non-party lot owners to as many as
12 500 to 600 individual potential plaintiffs and/or more likely defendants who are not joined
13 but impacted parties by the relief sought by the Plaintiff.

14 There is a single Plaintiff in the case before this Court. Under and pursuant to the
15 Arizona Rules of Civil Procedure, Rule 17 clearly sets forth the mandatory conditions
16 precedent that must be completed before Plaintiff’s current request can even be considered
17 by the Court. More specifically, Rule 17(a) states:

18 **“(a) Real Party in Interest.**

19 (1) *Designation Generally.* An action must be prosecuted in
20 the name of the real party in interest. The following may sue in
21 their own names without joining the person for whose benefit
the action is brought:

- 22 (A) a personal representative or executor;
- 23 (B) an administrator;
- 24 (C) a guardian;
- 25 (D) a bailee;
- 26 (E) a trustee of an express trust;
- 27 (F) a party with whom or in whose name a contract
has been made for another’s benefit; and
- 28 (G) a party authorized by statute.”

1 Plaintiff is the real party in interest. The owners of the alleged 289 ½ lots in multiple
2 different subdivisions in which Plaintiff holds no interest are, however, the subject matter in
3 part or in whole of Plaintiff’s pending June 1, 2020 pleading. These 500-600 or more
4 non-parties have not been joined in this action and are not real parties in interest at the time
5 of Plaintiff’s filing. The Plaintiff is not a personal representative or executor, nor is the
6 Plaintiff the owner of a part interest in more than one of the alleged 289 ½ lots; the Plaintiff
7 is not an administrator for the owners of the alleged 289 ½ lots in question; the Plaintiff is
8 not a guardian, a bailee or a trustee of the owner(s) of the alleged 289 ½ lots that Plaintiff
9 appears to be attempting to affect or impact via Plaintiff’s requested court order; the Plaintiff
10 is not “a party with whom or in whose name a contract has been made for another’s benefit;”
11 and, the Plaintiff is not “a party authorized by statute” to initiate an action seeking relief for,
12 on behalf of, or against the owners of the alleged 289 ½ lots that are the subject matter of
13 Plaintiff’s attempted summary judgment. ARCP Rule 17 prohibits Plaintiff’s requested
14 relief.

15 Rule 19, Arizona Rules of Civil Procedure clearly sets forth the “Required Joinder of
16 Parties” and in pertinent part states:

17 **“(a) Persons Required to Be Joined if Feasible.**

18 (1) *A Person Required to Be Made a Party.* A person who
19 is subject to service of process and whose joinder will not
20 deprive the court of subject-matter jurisdiction must be joined
21 as a party if:

22 (A) in that person’s absence, the court cannot accord
23 complete relief among existing parties; or

24 (B) that person claims an interest relating to the
25 subject of the action and is so situated that disposing of the
26 action in the person’s absence may:

27 (i) as a practical matter impair or impede the
28 person’s ability to protect the interest; or

(ii) leave an existing party subject to a
substantial risk of incurring double, multiple, or otherwise
inconsistent obligations because of the interest.”

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1 The owners of the alleged 289 ½ lots must properly be before this Court for the
2 Plaintiff's request to even be considered and they are not.

3 Plaintiff is practicing law or attempting to do so all in violation of the rules governing
4 the practice of law in the State of Arizona as set forth in the Rules of the Supreme Court and
5 more specifically, the "Regulation of the Practice of Law." Rule 31 is applicable. Rule 31,
6 in pertinent part, reads:

7 **"Rule 31. Regulation of the Practice of Law**

8 **(a) Supreme Court Jurisdiction Over the Practice of Law**

9 1. *Jurisdiction.* Any person or entity engaged in the
10 practice of law or unauthorized practice of law in this state, as
defined by these rules, is subject to this court's jurisdiction.

11 2. *Definitions.*

12 (1) preparing any document in any medium intended
13 to affect or secure legal rights for a specific person or
entity;

14 (2) preparing or expressing legal opinions;

15 (3) representing another in a judicial, quasi-judicial,
16 or administrative proceeding, or other formal dispute
resolution process such as arbitration and mediation;

17 (4) preparing any document through any medium for
18 filing in any court, administrative agency or tribunal for
a specific person or entity; or

19 (5) negotiating legal rights or responsibilities for a
20 specific person or entity.

21 * * *

22 **(b) Authority to Practice.** Except as hereinafter provided in
23 section (d), no person shall practice law in this state or represent
in any way that he or she may practice law in this state unless
the person is an active member of the state bar."

24 This is precisely what Plaintiff is attempting to do, i.e., practice law, preparing
25 documentation and requesting relief from this Court that will affect the legal rights of ±289 ½
26 separate lots and their respective property owners who are not parties to the action. Plaintiff
27 provides Plaintiff's legal opinion that effectively purports to represent 289 ½ or more lot
28 owners having filed the pending June 1, 2020, pleading seeking summary judgment alleging

1 to this Court that Plaintiff has filed the same on behalf of and/or for the benefit or detriment
2 of these non-party lot owners. Plaintiff asks for a determination from this Court of the legal
3 rights or the liabilities of the owners of these subdivision lots and seeks to have the Court
4 separate or distinguish between lot owners whose ownership arose prior to 2015 and lot
5 owners whose ownership arose subsequent to 2015, all in violation of the Rules of the
6 Supreme Court. Plaintiff is attempting to practice law on behalf of lot owners who are not
7 before this Court and imposing on these non-parties Plaintiff's perception of what Plaintiff
8 believes to be in their best interest or to have entered against them orders that will strip them
9 of portions of their respective homes and/or property rights.

10 Plaintiff in her conclusionary two paragraphs would appear to be seeking in the form
11 of summary judgment an order of the Court to abrogate the Arizona Rules of Civil
12 Procedure. Plaintiff asks the Court to enter an order allowing the Plaintiff to "publish an
13 advertisement in the Mohave Daily News or other publication distributed to the said
14 subdivision Tract 4076" (which subdivision does not even exist), and to run Plaintiff's
15 advertisement "at least twice either as a legal notice or a display ad" and that "the Plaintiff's
16 choice of the ad style be limited to a cost of \$300 or less" (see, Plaintiff's 06/01/2020 Motion
17 for Summary Judgment, p. 4), apparently acknowledging the need to join the 289 ½ lot
18 owners as is required under the above-referenced Arizona Rules of Civil Procedure before
19 any action is ripe for consideration of "lot line forgiveness" as requested in Plaintiff's
20 Motion.

21 This, then, is what Plaintiff has captioned as a "Motion for Summary Judgment." It
22 is improper, it is not a motion for summary judgment. It is a request to abrogate the Rules
23 of Civil Procedure and, more specifically, Rules 18 and 19 of the Arizona Rules of Civil
24 Procedure, and specifically violates the above-referenced Rules of the Supreme Court.

25 Plaintiff concludes her purported "summary judgment" request with:


26 "Plaintiff pleads for clarification and direction if any part of this request
27 needs amendment for rules of order, procedure or other matter." See,
06/01/2020 Motion for Summary Judgment, p. 4, lines 8-9.

28 This is not a motion for summary judgment. Even if under some unfathomable

1 reasoning it could be considered a summary judgment motion, it fails to qualify under any
2 standard of rule or law, it must be denied and Plaintiff should be required to fully compensate
3 the Defendants for all fees and costs incurred in the preparation of this Response.

4 RESPECTFULLY SUBMITTED this 8 day of July, 2020.

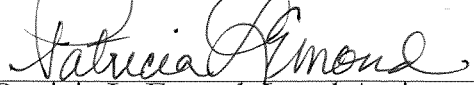
5 LAW OFFICES OF DANIEL J. OEHLER

6 
7 Daniel J. Oehler,
8 Attorney for Defendants

9 **COPY** of the foregoing emailed
10 this 8th day of July, 2020, to:

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