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

**NANCY KNIGHT,**  
**Plaintiff,**

**Case No. B8015CV2018 04003**

**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.**

**PLAINTIFF’S REPLY IN**  
**SUPPORT OF HER MOTION FOR**  
**LEAVE TO AMEND COMPLAINT**

**Defendants.**

Plaintiff, by and through her attorney undersigned, hereby submits her Reply to this Court in support of her motion to amend her complaint in this matter. The proposed First Amended Complaint was attached to her Motion for Leave to Amend as Exhibit A and complied with ARCP Rule 15(a)(4) by showing the respects in which the Proposed

1 Amended Complaint differed from the existing Complaint by striking through the text to  
2 be deleted and underlining the text to be added.

3 Plaintiff's motion was simple. She retained counsel after having handled the  
4 matter herself for two and a half years. Undersigned counsel submitted a proposed  
5 amended complaint which eliminated defendants which this court had determined did not  
6 belong in the case. Undersigned counsel added as new defendants the owners of six  
7 parcels in Plaintiff's tract all for the reason that they violated the CC&Rs' setback  
8 restrictions. Undersigned counsel deleted a substantial portion of the allegations  
9 contained in Plaintiff's original complaint, added the necessary allegations in support of  
10 her claims against the additional defendants and simplified the allegations against  
11 existing defendants.  
12  
13

14 Defendants have objected to Plaintiff's motion, citing a violation or potential  
15 violation of ARCP Rule 9. These arguments are misplaced. First, Plaintiff has not alleged  
16 fraud against any defendants or proposed defendants. Second, it is premature for  
17 Defendants to object to what they perceive to be a future claim against existing or  
18 potential defendants. The only issue before this Court is the present Motion for Leave to  
19 Amend.  
20

21 Defendants assert that if this Court grants the motion for leave to amend, hundreds  
22 of additional defendants will have to be brought in by Plaintiff under ARCP Rule 19.  
23 Adding all owners as parties is a possibility but only if Defendants are going to argue that  
24 the CC&Rs have been abandoned. That is a defense to Plaintiff's claims which means it  
25 would be Defendants who would bear the burden of bringing in the hundreds of

1 additional parties. Of course, if Defendants wish to avoid having to bear that burden, they  
2 can withdraw any claim that the CC&Rs have been abandoned. Furthermore, whether this  
3 Court grants or denies Plaintiff's motion to amend, the potential for adding all the owners  
4 as parties still exists if the issue of abandonment is litigated. Regardless, this also is a  
5 potential future issue which is not currently before this Court.  
6

7 Defendants address the four counts contained in Plaintiff's proposed amended  
8 complaint. Defendants do not object to Count 1. Defendants do not object to Count 2.  
9 Defendants correctly state that in Count 3 Plaintiff has alleged that the CC&Rs are  
10 enforceable. Defendants then leap to the legal conclusion that because Defendants believe  
11 there have been multiple violations of the CC&Rs for thirty-two years, such activity  
12 renders the CC&Rs abandoned. Again, if abandonment is Defendants' defense, they will  
13 potentially bear the burden of bringing in all the necessary parties and establishing the  
14 requirements of abandonment. This potential future issue is not presently before this  
15 Court.  
16

17 Defendants address Count 4 of Plaintiff's proposed amended complaint with the  
18 same speculation that Plaintiff's claims may in the future require all owners to be added  
19 to the case. This Court can certainly address Defendants' assertion if it arises in the  
20 future, but for now Plaintiff's Motion for Leave to Amend the Complaint is what is  
21 before the Court. Plaintiff could prosecute her claims against the proposed additional  
22 defendants in a separate lawsuit and perhaps ask for that case to be consolidated with this  
23 case, but it does not seem judicially economical to have to do so when the identical issues  
24 are present in this case.  
25

1 Finally, Defendants state the following in the “Summary” portion of their  
2 objection: “[T]he enforceability of these CC&R provisions have long since been waived  
3 and fully abandoned”. Defendants overlook the non-waiver clause in the CC&Rs. Article  
4 II, paragraph 20 states, in pertinent part:

5  
6 No failure of the Trustee or any other person or party  
7 to enforce any of the restrictions, covenants or conditions  
8 contained herein shall, in any event, be construed or held to  
9 be a waiver thereof or consent to any further or succeeding  
10 breach or violation thereof.

11 This Court has not declared that paragraph 20 is invalid. The CC&Rs clearly state  
12 that the restrictions cannot be waived. This Court has not declared that the CC&Rs have  
13 been abandoned. Such issues are not presently before this Court. If Defendants keep  
14 insisting that the CC&Rs have been abandoned, then they need to carry their burden of  
15 proof on the defense of abandonment. Their objection to a Plaintiff’s motion to amend  
16 the complaint is not the vehicle for doing so.

17 For the above reasons and those stated in Plaintiff’s Motion for Leave to Amend  
18 the Complaint, Plaintiff respectfully requests the Court grant her leave to amend her  
19 Complaint as set forth in her proposed First Amended Complaint attached to her motion  
20 as Exhibit A.

21  
22 DATED this 6<sup>th</sup> day of May, 2021.

23 **J. JEFFREY COUGHLIN PLLC**

24 By: /s/ J. Jeffrey Coughlin  
25 *Attorney for Plaintiff*

1 ORIGINAL of the foregoing efiled via eFileAZ  
2 this 6<sup>th</sup> day of May, 2021 to:

3 Clerk  
4 MOHAVE COUNTY SUPERIOR COURT

5 Copy emailed this 6th day of  
6 May, 2021 to:

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By: /s/ Judy Jurecki