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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.

OBJECTION TO DEFENDANTS’
ORAL MOTION TO DISMISS
MADE AT AUGUST 1, 2022
STATUS CONFERENCE

Defendants.

Plaintiff, Nancy Knight (“Knight”) by and through her attorney, objects to Defendants’ Oral Motion to Dismiss made at July 27, 2022 Status Conference, for reasons more particularly set forth in the accompanying Memorandum of Points and Authorities.

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. Factual Background**

4 **A. Nancy Knight's Communication with Desert Lakes Subdivision Tract**
5 **4076-B property owners**

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7 Defendants claim in their request for a status conference on June 10, 2022 and at
8 the status conference on July 27, 2022 that Plaintiff had improperly notified property
9 owners of issues related to Rule 23 (class action). In addition, Defendants claim that
10 Plaintiff has somehow poisoned the community regarding issues related to this lawsuit.
11 Defendants did not seek a dismissal of this case in their request for status conference on
12 June 10, 2022, but they did at the status conference that occurred on July 27, 2022. This
13 Court ordered Plaintiff, through her counsel, to respond to Defendants' oral motion to
14 dismiss.
15

16 Attached hereto as Exhibit 1 is an explanation of the purposes Plaintiff states for
17 sending a variety of materials to members of her community. Exhibit 1, in part, sets forth
18 the purposes as follows:
19

20 Nancy Knight's June 2022 Packet was mailed on June 2, June
21 3, and June 4 to 221 Property Owners in Tract 4076-B. . . .

22 The packet was seven pages.

23 Purpose of Ballot and Pending Summons letter was 1 page, 2-
24 sided. Attached below.

25 First Amended Declaration was 4 pages, (3 were 2-sided plus
a potential notarized page if needed). Also attached below.

Ballot Signature Exhibit was 1 page, 2-sided. Attached below.

Request for Physical Address was 1 page for Judge Jantzen's
Court Ordered Process Service of Summons

1 **Three Main Purposes:**

- 2 1. **Urgency** - Rebut P1300 CV 2022 0177 Defendant
3 Hanson/Dube malicious letter as mailed on or about March
4 2022 as follows:

5 “To the Owner,
6 Do you want to pay a Home Owners Association
7 (HOA) Fee, or be subject to lawsuits for not abiding by the
8 developers Covenants, Conditions, & Restrictions (CC&Rs)?
9 If not keep reading.

10 If 75%of the owners in Tract 4076-B of Desert Lakes
11 Golf Course & Estates do not revoke the CC&Rs filed by the
12 developer in 1989, a HOA may be formed for our
13 community. Currently, a Member of this community has
14 filed for an unincorporated association and is soliciting
15 volunteers for the Board of Directors; this is one step towards
16 our paying future fees. See www.desertlakes.net

17 There are homes adjacent to the Golf Course that
18 belong to a HOA formed under the same developer which
19 pay a monthly HOA fee of a few hundred a month. Revoking
20 the CC&Rs will make it that much harder for anyone in the
21 future to form a HOA.

22 The owners have the power to revoke the developers
23 CC&Rs by signing the letter attached.

24 These letters will be filed with the Mohave County
25 Recorder. The developer is claiming abandonment in court
26 which essentially means they no longer have a vested interest
27 in enforcing the CC&Rs but the courts may not agree. The
28 case was heard by Mohave Superior Court, Judge Jantzen on
29 10 January. The judge ruled that the Plaintiff brings all
30 homeowners in as defendants as a ruling will impact us all.

31 Additionally, a revocation of the CC&Rs will
32 eliminate controversy with the county Board for Planning and
33 Zoning Ordinances which have changed over the past 32
34 years in our favor.

35 *An original physical signature must be provided to
36 the recorder

1
2 Send the signed letter to

3 Owners
4 1787 E Lipan Cir, Fort Mohave, AZ 86426”

5 **Declaration language to Alleviate controversy from the**
6 **Hanson/Dube’s letter**

7 a. Article I, ~~Declarant~~ Desert Lakes Subdivision Tract
8 4076 Unincorporated Association (hereinafter “UA”) that
9 was recorded on January 25, 2001 (2021 SIC) at Fee
10 No. 2021004595 shall appoint a Committee of Architecture,
11 hereinafter sometimes called “Committee”, consisting
12 of three (3) persons.

- 13 a. Article I, paragraph 4, Rebuts the Hanson/Dube claims.
14 The Owners expressly prohibit the Committee or the UA
15 from forming a Home Owners Association (HOA). The
16 Owners expressly prohibit the Committee or the UA from
17 assessing annual dues from owners for any purpose
18 whatsoever.

19 **2. Needs were recognized for potential other areas of the**
20 **CC&Rs**

- 21 a. Article II – Land Use
22 b. See modified Declaration as stricken and underscored that
23 includes:

24 Language clarification on trailers, corrected spelling
25 errors, strike FCC approved devices, consistency between
Tract 4076-A livable space, strike inappropriate Tract 4076-
B for eventual consolidated CC&Rs, eliminate the arbitrary
paint color of black on wrought iron to white or earth tone as
are current paint colors, strike gate access as this is not a
concern for property owners but rather for enforcement of
trespass by the golf course owners.

- 26 c. Potential to eliminate Declaratory Judgments for railings, lot
27 81, and chain
28 link on golf ball barriers. Hon. Judge Napper in the 2022 case
29 is expecting Nancy Knight to file motions for Declaratory
30 Judgments that safety railings are not intended as fences in
31 the CC&Rs; that lot 81 is subject to Tract 4076-B CC&Rs
32 where it was relocated to not be adjacent to the golf course,
33 that golf ball barriers are not boundary fences and that chain
34 link may be used on golf ball barriers for safety purposes.
35 Chain link is not allowed on fences.

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**3. Need for current owner’s physical address for
Indispensable Party Process Service as Ordered by Hon
Judge Jantzen in the 2018 case.**

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The first purpose Plaintiff had for sending the materials was to address a fellow homeowner’s efforts to persuade members of the community to avoid having to pay HOA fees and revoke the CC&Rs at issue in this case. Plaintiff’s motivation for responding to that letter was not improper in any way. In fact, it resulted in the fellow homeowner retracting his letter – a benefit to the community.

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The second purpose Plaintiff had for sending the materials had to do with her recognition that there were potentially other areas of the CC&Rs that needed to be modified, clarified or addressed. She notes items such as language clarification on trailers, correcting spelling errors, FCC approved devices, consistency between Tract 4076-A livable space, elimination of the arbitrary paint color of black on wrought iron to white or earth tone as are current paint colors. These are essentially housekeeping details concerning a planned area development. Every property owner has the right to raise these issues, especially when there is no HOA or POA to do so on owners’ behalf. Plaintiff’s motivation for sending this information to members of her community was not improper in any way. She was informing her community of information that could improve the CC&Rs – also a benefit to the community.

The third purpose Plaintiff had for sending the materials was to obtain the current physical addresses for all property owners that will have to be joined in this case. This is an essential step in complying with this Court’s order regarding the joinder of parties in

1 this case. It doesn't mean the information Plaintiff receives from her request is thorough,
2 but it is a start. Plaintiff's effort to save some legal expense and gather important
3 information is not improper in any way.

4 **B. Notice and proposed joinder procedure**

5 Plaintiff, through her counsel, has submitted a proposed notice to all the
6 prospective landowners. Defendants have objected to that notice and propose additional
7 information. What remains to be done among counsel and this Court is to develop the
8 process for joining all of the indispensable parties. Plaintiff suggests the following:
9

- 10 • Plaintiff must serve those necessary and indispensable parties with a
11 summons, a copy of the Complaint filed with this Court on January 22,
12 2018, a copy of the and a notice approved by the court.
- 13 • Plaintiff must file with the court in electronic form the list of Desert Lakes
14 Subdivision Tract 4076 – B property owners and receive confirmation from
15 Defendants' counsel and this Court that the list is currently accurate.
16
17

18 Rule 4.1(c) of the Arizona Rules of Civil Procedure provides:

19 **(c) Waiving Service.**

20 (1) *Requesting a Waiver.* An individual, corporation, or
21 association that is subject to service under Rule 4.1(d), (h)(1)-
22 (3), (h)(4)(A), or (i) has a duty to avoid unnecessary expense
23 in serving the summons. To avoid costs, the plaintiff may
24 notify the defendant that an action has been commenced and
25 request that the defendant waive service of a summons. The
notice and request must:

(A) be in writing and be addressed to the defendant and any
other person required in this rule to be served with the
summons and the pleading being served;

(B) name the court where the pleading being served was filed;

1 (C) be accompanied by a copy of the pleading being served,
2 two copies of a waiver form prescribed in Rule 84, Form 2,
3 and a prepaid means for returning the completed form;
4 (D) inform the defendant, using text provided in Rule 84,
5 Form 1, of the consequences of waiving and not waiving
6 service;
7 (E) state the date when the request is sent;
8 (F) give the defendant a reasonable time to return the waiver,
9 which must be at least 30 days after the request was sent; and
10 (G) be sent by first-class mail or other reliable means.

11 Plaintiff suggests the following in view of Rule 4.1(c):

- 12 • Plaintiff serve those necessary and indispensable
13 parties with a summons, a copy of the Complaint filed
14 with this Court on January 22, 2018, a copy of the
15 Declaration of Covenants, Conditions and Restrictions
16 For Desert Lakes Golf Course and Estates Tract 4076-
17 B (recorded in Official Records of Mohave County on
18 December 18, 1989 at Book 1641, Page 895) and a
19 notice approved by the court.
- 20 • Plaintiff file all acceptances received with the court.
- 21 • Plaintiff identifies to the Court all of the property
22 owners who did not accept service of the documents
23 by signing an acceptance of service as provided in
24 Rule 4(c)(1)(C) using the waiver form prescribed in
25 Rule 84, Form 2.

1 • Plaintiff requests permission from this Court to send
2 all of the property owners who did not accept service
3 the court-ordered documents by certified mail as is
4 permissible for service upon owners whose residence
5 is outside the State of Arizona pursuant to Rule 4.2(c).

6 • Plaintiff to file all certified mail receipts with this
7 Court.

8
9 • Plaintiff requests permission to identify to this Court the
10 names of any owners who had both refused to sign the
11 acceptance of service and refused to claim or sign their
12 certified receipts.

13
14 • Plaintiff to deliver the service packets to a process server for
15 personal service on the owners who had both refused to sign
16 the acceptance of service and refused to claim or sign their
17 certified receipts.

18
19 • Plaintiff to file with the court the certificates of service for
20 those property owners the process server was able to serve.

21 • After exhausting all of these methods of service, if there are
22 any remaining property owners who have not been served,
23 Plaintiff requests the opportunity to identify those owners to
24 this Court and seek permission to serve them by publication.
25

1 Plaintiff proposes this Court utilize the information in Exhibit 2 as a
2 guide for proceeding with the joinder procedure.

3 **C. Conclusion**

4 Plaintiff Nancy Knight had proper purposes for communicating with
5 her community due to another property owner sending out a letter to
6 encourage all other owners to support eradicating the CC&Rs and to avoid
7 forming a governing body such as a homeowners' or property owners'
8 association. The second purpose Plaintiff had for sending the materials was
9 her recognition that there were potentially other areas of the CC&Rs that
10 needed to be modified, clarified or addressed. The third purpose Plaintiff
11 had for sending the materials was to obtain the current physical addresses
12 for all property owners that will have to be joined in this case. For these
13 reasons, Defendants' oral Motion to Dismiss should be denied.
14

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16 Additionally, Plaintiff has submitted a comprehensive description of
17 a procedure for joining necessary and indispensable parties which could
18 assist this Court and the parties. For this reason, Defendants' oral Motion to
19 Dismiss should be denied.
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21 DATED this 29th day of August, 2022.

22 **J. JEFFREY COUGHLIN PLLC**

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

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ORIGINAL of the foregoing efiled via eFileAZ
This 29th day of August, 2022, to:

Clerk
MOHAVE COUNTY SUPERIOR COURT

Copy emailed this 29th day of
August, 2022, to:

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