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FILED 20220219 AM 10:40 BY *mm*

Christina Spurlock SupCt/Clerk

5 Plaintiff Pro Per

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

8 NANCY KNIGHT
9
10 Plaintiff,
11
12 v.
13 GLEN LUDWIG and PEARL LUDWIG,
14 Trustees of THE LUDWIG FAMILY TRUST;
15 FAIRWAY CONSTRUCTORS, INC.;
16 MEHDI AZARMI; JAMES B. ROBERTS and
17 DONNA M. ROBERTS, husband and wife;
18 JOHN DOES 1-10; JANE DOES 1-10; ABC
19 CORPORATIONS 1-10; and XYZ
20 PARTNERSHIPS 1-10.
21
22 Defendants.

Case No.: B8015 CV 2018 04003

**MOTION FOR
RECONSIDERATION TO SET ASIDE
PLAINTIFF'S GAG ORDER;
and
RECONSIDERATION OF ORDER
THAT PLAINTIFF KNIGHT MUST
JOIN INDISPENSABLE PARTIES;
and
RECONSIDERATION OF LEAVE TO
AMEND COMPLAINT
and
CONSOLIDATION OF EIGHT
PARTIES FROM
P1300 CV 2022 00177**

Honorable Judge Jantzen

23
24
25 COMES NOW Plaintiff Pro Per, Nancy Knight, requesting the Court set aside his
26 Order demanding that Plaintiff Knight is to have no contact, directly or indirectly, with
27 any of her over 400 neighbors in Tract 4076-B, Tract 4076-D and Tract 4163. Plaintiff
28 did nothing wrong to be punished from discovery in this case or for her ability to convey



B8015CV201804003

1 options for remedy of existing violations as President of the Desert Lakes Subdivision
2 Tract 4076 Unincorporated Association. Plaintiff's Constitutional First Amendment right
3 to free speech is being violated by this Gag Order favoring the Defendants.
4

5 The Court also erred in signing the February 2, 2022 Order assuming the Plaintiff
6 was Nancy Knight in the matter of abandonment of the CC&Rs. Nancy Knight is the
7 defendant in that action. A Plaintiff bears the burden of proof. Mr. Oehler's clients,
8 collectively referred to as LFA, have the burden of proof of abandonment. LFA is the
9 Plaintiff in the language of following Order signed by the Hon. Judge Jantzen.
10

11 **IT IS ORDERED** that the Plaintiff shall join every lot owner in
12 Desert Lakes Golf Course & Estates Tracts 4076-B, 4076-D and 4163
13 as necessary/indispensable parties into this case pursuant to Rule 19(a),
14 A.R.C.P.

15 This is a Final Order on this issue and the Court expressly determines
16 there is no just reason for delay.

17 As such, Knight is to be relieved of the Order to join parties and LFA is Ordered
18 to join parties.

19 The Court also erred in ordering Mr. Oehler to note that the language of Rule
20 54(b) was appropriate in the order he was directed to write where the Court had
21 convinced Knight's attorney that she must join the parties and for which he proceeded to
22 file an Appeal.

23 If not an error, then it was deliberately intended to prevent Plaintiff Knight from
24 an Appeal. The Court knew full well that he had not disposed of any claim or party in the
25 underlying action and therefore the inclusion of Rule 54(b) language was improper and
26 the Court's order would not be appealable. Pursuant to A.R.S. §12-409 and given that the
27 Order for Knight to join parties was a final judgment in error, this is yet another incident
28 of perceived bias favoring Mr. Oehler's clients as already reported during Oral
Arguments on May 11, 2020.

1 Further, in May 2020 when Plaintiff Knight filed a motion to dismiss defendants'
2 dispositive motion for summary judgment for failure to join indispensable parties the
3 Court denied her motion to dismiss with the opinion of this Court that indispensable
4 parties were not necessary in this case. Thirty-seven (37) precedent cases citing *Sheets v.*
5 *Dillon* 221 N.C. 426, 20 S.E.2d 344 (1942) on joining indispensable parties for
6 abrogation of contracts was available to this court in 2020. The Court failed its duty to
7 either dismiss Mr. Oehler's MSJ in 2020 for failure to join parties or Order them to join
8 the indispensable parties pursuant to Rule 19 and *Sheets v. Dillon*.

9 **37 cases citing *Sheets v. Dillon*:**

10 1) *Karner v. Roy White Flowers, Inc.* 2) *Runyon v. Paley* 3) *Lamica v.*
11 *Gerdes* 4) *Tull v. Doctors Building, Inc.* 5) *Karner v. Roy White Flowers,*
12 *Inc.* (appeal) 6) *Chappell v. Winslow* 7) *Sherer v. Steel Creek Prop. Owners*
13 *Ass'n* 8) *Wise v. Harrington Grove Cmty. Ass'n* 9) *Smith v. Butler Mtn.*
14 *Estates Property Owners Assoc.* 10) *Hawthorn v. Realty Syndicate, Inc.* 11)
15 *Stegall v. Housing Authority* 12) *Realty Co. v. Hobbs* 13) *Reed v. Elmore*
16 14) *Schoenith v. Realty Co.* 15) *Mulenburg v. Blevins* 16) *Hege v. Sellers*
17 17) *Malamphy v. Potamac Edison Co.* 18) *Story v. Walcott* 19) *Sedberry v.*
18 *Parsons* 20) *Higdon v. Jaffa* 21) *Vernon v. Realty Co.* 22) *Warrender v.*
19 *Gull Harbor Yacht Club, Inc.* 23) *Fairfield Harbour Prop. Owners Ass'n v.*
20 *Midsouth Golf Llc* 24) *Fairfield Harbour Prop. Owners Ass'n v. Midsouth*
21 *Golf Llc* (appeal) 25) *Bodine v. Harris Village Property Owners* 26)
22 *Harrison v. Lands End of Emerald Isle Assoc* 27) *Wein II, LLC v. Porter*
23 28) *Wein II, LLC v. Porter* (appeal) 29) *Dep't of Transp. v. Fernwood Hill*
24 *Townhome* 30) *Page v. Bald Head Ass'n* 31) *Mills v. Enterprises, Inc.* 32)
25 *Srickland v. Overman* 33) *Quadro Stations v. Gilley* 34) *Building Co. v.*
26 *Peacock* 35) *Land Corp. v. Styron.* 36) *Hale v. Moore* 37) *Church v. Berry.*

27 In *Sheets v. Dillon* 221 N.C. at 432, 20 S.E.2d at 348, it is specifically stated,
28 **"If plaintiff desires to have this covenant invalidated and stricken from
the deed of the original grantee, he *must* bring in the interested parties
and give them a day in court."** (Emphasis added).

29 Knight does not desire to have any of the covenants invalidated. In other words, it
30 is the party who seeks abrogation of the CC&Rs who *must* join indispensable parties. In
31 turn, the Court *must* instruct Mr. Oehler's clients to join the necessary parties. It would
32 not cause delay. The Excel Spreadsheet is available for a substantial number of correct
33 owner names and addresses as used recently by the Plaintiff in her duties as President of

1 the UA for a Ballot to Amend the Tract 4076-B CC&Rs. The proposed language of the
2 Notice has been submitted that would not prejudice LFA in any way. PDFs of the two
3 Declarations are available.

4 LFA has a choice. Drop the abandonment claim that is futile. Or proceed to join
5 the indispensable parties.

6 Futility is demonstrated in the case of *Burke v. Voicestream Wireless Corp.*, 87
7 P.3d 81 (Ariz. Ct. App. 2004) that specifically sets forth terminology and circumstances
8 that are similar to those before the Jantzen Court. The Burke's purchased a home in
9 subdivision in Scottsdale, AZ. The Declarant chose not to form a homeowner association.
10 The CC&Rs included a non-waiver provision. Other violations had occurred in the
11 subdivision and Voicestream claimed abandonment of the Covenants.

12 Pursuant to case study, "Voicestream's evidence failed to establish that the prior
13 violations of the restrictive covenants had 'destroyed the fundamental character of the
14 neighborhood.'" Knight claims LFA's evidence fails to establish that prior violations has
15 destroyed the fundamental character of the combined Subdivision Tract 4076-B, Tract
16 4076-D and Tract 4163.

17 "Even though Voicestream presented evidence that the homeowners acquiesced in
18 prior violations, the Court said 'we have not been presented any persuasive reason why
19 the non-waiver provision of the Restrictions should not be enforced in this instance.'. No
20 evidence was presented, that Burkes' subdivision is no longer a "choice residential
21 district." The violations described by Voicestream have not destroyed the fundamental
22 character of the neighborhood. We conclude, as a matter of law on the record before us,
23 that the non-waiver provision of the Restrictions remains enforceable and the subdivision
24 property owners have not waived or abandoned enforcement even though they or their
25 predecessors have acquiesced in several prior violations of its provisions."

26 Knight points out that she nor her predecessors have acquiesced in prior
27 violations. Frank Passantino of Desert Lakes Development LP did not keep quiet on
28 Parcel VV being zoned multifamily. At CEO Passantino's request on or about 1991, the

1 Board of Supervisors approved abandonment of that 1989 zoning designation that was a
2 violation of the Tract 4076-B CC&Rs. Thomas and Mary Coury of T&M Mohave
3 Properties did not keep quiet on the HOA that was proposed in 1998 for Tract 4163 and it
4 was omitted from Tract 4163 approval in 2002. There has never been an HOA for any
5 parcel in Desert Lakes Golf Course and Estates. Nancy Knight did not keep quiet when
6 Mohave County gave a permit to her adjacent neighbor to trespass on her real property
7 and extended the height of her boundary fence to over six feet that was a violation of the
8 CC&Rs and is a violation of Statute 12-1134 for loss of real property. Even after paying
9 \$1400 for a Survey the County refused to revoke the permit. Plaintiff's law suit cost over
10 \$37,000 for enforcement of not only the violation of fence height but for restoration of
11 the CC&R condition for wrought iron rails on "a portion" of her neighbor's rear yard
12 fence and her own rear yard fence return that was modified by the adjacent neighbor who
13 extended her side yard return to over five feet in height that was a violation of the
14 CC&Rs. Mohave County refused to abide in their own imposed design for this fence
15 condition.

16 Self-serving defendants and many of their affiants either claim they caused
17 setback violations or listed violations on their Affidavits that are fraudulent and now want
18 to use those violations to assist LFA with a claim of abandonment. Specifics on the
19 Fraudulent claims is included in Plaintiff's Motion for Leave to Amend the Complaint for
20 Affidavit Fraud (September 2022).

21 For several years, Plaintiff Knight has sought to hold those responsible for
22 violations to be prosecuted and this court has denied every Motion for Leave to Amend
23 her Complaint for additional Breach of Contract claims. The Court exclaimed, "When
24 will it end?"

25 It ends when the LFA defendants stop stalling this case. It ends with a vivid
26 display of demolition for remedy of violations and proves to the community that taking
27 risks has consequences.

1 In the *Burke v. Voicestream* case, “The trial court concluded that removal of the
2 Voicestream tower would cost approximately \$300,000 and, therefore, the damages to
3 Voicestream from enforcement were disproportionate to the harm that the Burkes would
4 suffer. The Court also agreed that Voicestream was not entitled to claim hardship because
5 they proceeded with construction knowing of the Restrictions. Similarly, LFA should not
6 be entitled to claim hardship.

7 Due to the Court’s denial of Amendments to her 2018 Complaint, Plaintiff had to
8 file a new Breach of Contract Complaint on December 27, 2021 as CV 2021 04003.

9 Plaintiff has not acquiesced on her own setback violations either. She is
10 prosecuting those who caused the violations. She alleges that her rear yard setback
11 violation is the result of multiple levels of fraud that included a fraudulent scheme. The
12 scheme began with an Application for a zoning change from Agricultural to RO. In 1998,
13 no parcel nor lot in Desert Lakes was zoned Agricultural and the County knew it. The
14 300+ acre Subdivision was approved for Special Development Residential zoning since
15 1989. Due to County involvement in the fraud a Change of Venue was approved and the
16 matter was transferred to Yavapai County as P1300 CV 2022 00177.

17 Consolidation of a portion of that case for eight Breach of Contract defendants
18 would be appropriate if this court would finally grant Plaintiff Leave to Amend the
19 Complaint. Count One for Breach of Contract for one home in Tract 4076-A was
20 dismissed in June 2018. Count Two is for Injunctive Relief. Count Three will be for
21 Breach of Contract for eight defendants in P1300 CV 2022 00177 upon consolidation
22 pursuant to Rule 3.1.

23 The balance of six defendants cannot be consolidated into this case. Five are
24 alleged to be participants in the fraud that caused Plaintiff’s damages. Among those five
25 defendants is Mohave County. Plaintiff is not time barred from her setback damage as
26 Noticed on June 15, 2021 after discovery of the fraud on January 21, 2021 (143 days for
27 Notice of Claim). The law suit was timely filed on December 27, 2021.

1 Two other claims against the County involve the Arizona Property Rights
2 Protection Act Statute 12-1134 that is also not time barred.

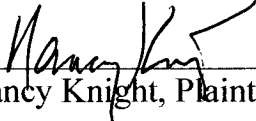
3 The sixth defendant is T&M Mohave Properties for setback damages that does not
4 involve fraud on the part of any principle in that company; however, they did not file an
5 Answer and an Application for Entry of Default has been filed. An Answer is expected
6 before October 20, 2022.

7 Plaintiff pleads with this Court to avoid the perception of bias favoring LFA or
8 favoring Attorney Oehler as occurred in CV 2016 04026 when Mr. Oehler and Ms. Elias
9 had you declare me a vexatious litigant. I was not harassing their clients as you claimed. I
10 was defending myself with a Rule 60 motion due to surprise and fraud regarding a
11 written agreement that did not comply with the binding mediated settlement that all
12 parties agreed to in open court. A written agreement was requested by defense counsel
13 Gregory, Ms. Elias former law office partner, to be circulated for signatures by all parties.
14 Mr. Gregory changed the language of the Agreement that did not comply with the terms
15 of the binding mediated settlement and when I refused to sign he filed a Motion to
16 Compel. The agreement changed the language of the mediated settlement for me to pay
17 for remedy of his client's "entire" rear yard fence violation. I refused to sign or agree to
18 any part of that written agreement that was not discussed or agreed to during mediation.
19 They were awarded attorney fees by the Carlisle Court for the Motion to Compel and you
20 awarded the two law firms more attorney fees for their vexatious litigant claim.

21 Plaintiff pleads for the Court to lift the gag order, rule that the Plaintiff to join
22 indispensable parties is LFA, and consolidate eight Breach of Contract defendants into
23 this case with granting Leave to Amend for Count Three by striking language for the one
24 home in Tract 4076-A as the Carlisle Court had intended and not dismissing Azarmi for
25 his attempted violation pursuant to his Res. 2016-125 amendment to Res. 93-122 and
26 Ludwig for the advertising signs on residential lots in Tract 4076-B that posed a risk of
27 hazard to persons and property.

1 An Order is being submitted with this Motion for the Court's signature.
2 Consolidation of the eight Breach of Contract defendants is appropriate for judicial
3 economy. They are Hogue, Unipan, Miller, Choate and Rovno who were the defendants
4 in the most recent April 12, 2021 Motion for Leave to Amend that was denied. Rovno has
5 since caused additional and egregious violations of a second dwelling unit on their single
6 family lot and with less than 1600 sq. ft of livable space and without a twenty foot garage
7 in violation of the CC&Rs. Three additional defendants are Frey, Hanson/Dube, and
8 Garcia. Frey purchased the home with the rear yard fence violation that Mr. Gregory
9 attempted to extort restoration costs from Plaintiff Knight in CV 2016 04026.

10
11 Dated this 3rd day of October, 2022

12 
13 _____
14 Nancy Knight, Plaintiff Pro Per

15 Copy sent electronically to:

16 djolaw@frontiernet.net
17 Daniel Oehler, Attorney for LFA Defendants
18 Bullhead City, Arizona 86442

19 tshura@lundberg-elias.com
20 Ms. Elias, Attorney for seven Breach of Contract Defendants

21 Courtesy to Divna Unipan - Pending an Application for Entry of Default
22 healthy.life@comcast.net
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EXHIBIT 1

PROPOSED COUNT THREE

Breach of Contract

AND

PROPOSED AMENDED DEMANDS FOR RELIEF

EXHIBIT 1

Defendants to be added:

LARRY AND JUANICE HOGUE, husband and wife; DIVNA IRINA UNIPAN; RONALD AND SHIRLEY MILLER, husband and wife; BENITO AND SARAH GARCIA, husband and wife; MICHAEL AND JUDY ROVNO, husband and wife; PETER AND ANTOINETTE CHOATE, husband and wife; COLE. A. HANSON AND DONNA M. DUBE, husband and wife; TIMOTHY W. AND TAMARI FREY, husband and wife;

BREACH OF CONTRACT

COUNT THREE

1. Defendants, LARRY AND JUANICE HOGUE (“Hogue”), husband and wife, own APN 226-13-008 in Desert Lakes Tract 4076-B with a twelve-foot (12’) rear yard setback as built by Fairway for Glen Ludwig.

2. Defendant, DIVNA IRINA UNIPAN (“Unipan”) owns APN 226-13-098 in Desert Lakes Tract 4076-D with a twelve ft. (12’) rear yard setback as built by Fairway for Jordan and Gina Grice.

3. Defendants, RONALD AND SHIRLEY MILLER (“Miller”), husband and wife, own APN 226-13-168 in Desert Lakes Tract 4076-B with a fifteen (15) foot front yard setback and a ten (10) foot rear yard setback as built by Fairway for Sanaye Siavosh.

1 4. Defendants, MICHAEL AND JUDY ROVNO (“Rovno”), husband and
2 wife, own APN 223-13-002 in Desert Lakes Tract 4076-B with less than a twenty (20)
3 foot rear yard setback (Plot Plan setback not defined - about 12 feet) as built by Fairway
4 for Judy Rovno. The Rovnos subsequently built a second dwelling unit in violation of the
5 Tract 4076-B CC&Rs with approx. 900 Sq. Ft. of livable space as opposed to the required
6 1600 sq. ft. and with an open carport as opposed to the required 20 ft garage.
7

8
9 5. Defendants, PETER AND SHIRLEY CHOATE (“Choate”), husband and
10 wife, own APN 226-13-027 in Desert Lakes Tract 4076-B with a twelve (12) foot rear
11 yard setback as built by Fairway for Parvin Jamnejad.
12

13 6. Defendants, COLE HANSON AND DONNA DUBE (“Hanson”), husband
14 and wife, own APN 226-23-012A in Desert Lakes Tract 4163 Unit E with a ten (10) foot
15 rear yard setback as built by AAA Advanced Homes for T&M Mohave Properties and a
16 side yard fence violation as modified by removing the wrought iron rails and filling the
17 space with cement block, without a permit, by Lewis Chase.
18

19 7. Defendants, TIMOTHY AND TAMARI FREY (“Frey”), husband and
20 wife, own APN 226-23-010A in Desert Lakes Tract 4163 Unit E with less than a twenty
21 foot rear yard setback (Plot Plan setback not defined - about 7 feet) as built by AAA
22 Advanced Homes for T&M Mohave Properties and a rear yard fence violation of cement
23 block with prohibited gate access to the golf course as modified without a permit by
24 Lewis Chase. The Frey’s share the side yard fence return violation with Hanson/Dube.
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1 8. Defendants, BENITO AND SARAH GARCIA, husband and wife, own
2 APN 226-13-017 in Desert Lakes Tract 4076-B with an unclear rear yard setback of 10-
3 11.5 ft. as built by Joe Alestra of CCB Construction.
4

5 9. Defendant, Mehdi Azarmi, VP of Fairway and property owner in Tract
6 4076-B, was the proponent for Res. 2016-125 as an amendment to Res. 93-122 to
7 circumvent twenty (20) foot setbacks in the entire Desert Lakes Golf Course & Estates
8 Subdivision Tract 4076. This action was a threatened and attempted violation of covenant
9 20 of the Tract 4076-B CC&Rs. The final vote before the BOS was scheduled for
10 October 3, 2016. Plaintiff's implied duty to prevent him from so doing led to her
11 travelling to Kingman and speaking before the Board. The offer to opt-in lacked full
12 disclosure that anyone who took advantage of the reduced setback could be sued for
13 breach of contract. The Board voted to deny Azarmi's proposal. Plaintiff expects
14 compensation for her efforts pursuant to covenant 20. As a Taxpayer, Plaintiff expects
15 Azarmi to pay his fees of an estimated \$12,500 for the materials expended for his
16 proposal that was taken from the General Fund.
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21 10. Defendant, GLEN LUDWIG, President of Fairway is charged with
22 violations of Restriction 12. No advertising is allowed on undeveloped lots. Their Build
23 to Suit signs were a hazard to persons and property. They committed Fraud upon the
24 Plaintiff by claiming their signs were for sale signs and allowed pursuant to Statute 33-
25 441.
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27
28

1 **DEMAND FOR RELIEF**

2 WHEREFORE, on the basis of the foregoing all allegations, Plaintiff demands:

3
4 A. That the Court declare that the recorded CC&Rs are valid and
5 enforceable;

6 B. That the Court declare the rights and other legal relations of Plaintiff and
7 Defendants arising from the recorded CC&Rs;

8 C. That the Court declare that the Defendants' conduct constitutes a breach
9 of said CC&Rs;

10 D. That the Court permanently enjoin Defendants from initiating,
11 maintaining or expanding their current activities on their properties or other properties
12 they may acquire, as they violate the CC&Rs pertaining to their real property;

13 E. That the Court order Defendants to remove any and all conditions,
14 structures, projections or activities on said land that violates any restriction or covenant as
15 provided in the recorded CC&Rs;

16 F. That the Court award Plaintiff her reasonable attorneys' fees and costs as
17 provided in the CC&Rs and pursuant to A.R.S. sections 12-341.01 and 12-340 and 12-
18 349;

19 G. That the Court enter judgment for Plaintiff and against
20 specific Defendant's for misdeeds and award such other and further relief as
21 the Court deems just and equitable under the circumstances including but not
22 limited to payment to Mohave County for costs of Res. 2016-125.
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