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SUPERIOR COURT CLERK

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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, Trustees of
13 THE LUDWIG FAMILY TRUST; FAIRWAY
14 CONSTRUCTORS, INC.; MEHDI AZARMI; JAMES B.
15 ROBERTS and DONNA M. ROBERTS, husband and
16 wife; JOHN DOES 1-10; JANE DOES 1-10; ABC
17 CORPORATIONS 1-10; and XYZ PARTNERSHIPS 1-
18 10.

19 Defendants

Case No.: CV 2018 04003

**OBJECTIONS TO DEFENDANT'S
FINDINGS AND ORDER
DISMISSING COUNT 1**

20 The Defendants having filed a Motion to Dismiss alleging Plaintiff had no authority
21 whatsoever to bring any claim for CC&R enforcement as her Tract 4163 had no CC&Rs
22 and her home's builder, T&M Ranching and Development, was not imposed with any
23 CC&R restrictions. The Court, having considered all of the evidence submitted by both
24 sides including the Plaintiff's Response, The Defendant's Reply, and the Plaintiff's
25 Objections to the Defendant's Reply. Due to the evidence presented by both sides, the
Court scheduled Oral Arguments in a Motion for Summary Judgment for April 2, 2018 and
looked at the narrow issue of does the Plaintiff have the authority to bring a claim.;



1 The Plaintiff appeared in person and the Defendants Ludwig, Azarmi, and Fairway
2 Constructors appeared through their attorney, Daniel J. Oehler. Defendants, James Roberts
3 and Donna Roberts, represented by Daniel Oehler as well, were present at the time of the
4 hearing;

6 **OBJECTIONS**

7 **MEMORANDUM AND POINTS OF AUTHORITY**

8 The Court did not make any reference to “with prejudice” in this matter of dismissal
9 of Count 1 for the subject lot, cited by the Court as “apparently the lot owned by the Roberts
10 at this point in time” (Transcript of Judge’s ruling only - page 7, lines 15-16).

11 Dismissal with prejudice places the Roberts in a position of a long-term threat of
12 anyone in their Tract from filing an action against them in the future, whether for the other
13 party’s loss of views, or for jealousy for not being allowed the same 10 foot setback
14 privilege for their rear yard setback, or for any number of other reasons as the Plaintiff
15 clearly pointed out in her Oral Arguments stating this matter “could go on for years”. In
16 the best interest of justice and concern for the Robert’s, a dismissal without prejudice has
17 the possibility of a short-term closure of this matter for the Roberts.
18

19 Dismissal with prejudice also raises a serious concern for the undue harm placed on
20 an unsuspecting future owner of the home currently owned by the Roberts who would
21 acquire the threat of prosecution for the violation of the CC&Rs if this matter is not
22 resolved expediently and without prejudice at this time.
23
24
25

1 It was inappropriate for the defense attorney to cause the Plaintiff to defend her
2 CC&Rs as being in Book 1641 again since he had already been given the Plaintiff's Title
3 Insurance Policy (the gold standard in real estate law) as proof of her CC&R standing in
4 case number CV 2016 04026 (Knight v Chase) before this same Court. The Plaintiff had
5 pointed out (Plaintiff's Response to Motion to Dismiss, page 3) that the email from Chicago
6 Title regarding no CC&Rs for Tract 4163 submitted as Exhibit D in the Defendants'
7 Motion to Dismiss was a carryover from that former case as was credible given the 2016
8 date of the email. Mr. Oehler was also already aware that Parcel VV ran with the land as
9 cited in 4076B and its zoning for apartments was a violation of the CC&Rs. The Plaintiff
10 pointed out Parcel VV was subdivided for single family homes by Sterling Varner. Varner
11 was a principle authority of the CC&Rs as a member of the Architectural Committee.
12

13
14 Mr. Oehler had a duty to assure his allegations of no CC&Rs for the Plaintiff's Tract
15 were not frivolous. *What is required of lawyers, in accordance with ER 3.1 (2), is that they*
16 *inform themselves about the facts of their clients' cases and the applicable law and*
17 *determine that they can make good faith and nonfrivolous arguments in support of their*
18 *clients' positions.*
19

20 After Mr. Oehler refreshed his memory of his former client's case with this Plaintiff
21 that closed approximately six months ago, and in accordance with Rule 3.2 to expedite
22 litigation, he should have moved for a Declaratory Judgment for a ruling on enforcement
23 rights for persons in Tracts rather than keep taking up the Court's time with voluminous
24 exhibits and arguments for the narrow issue of whether the Plaintiff had authority to bring
25

1 the claim with reference to the two subject Declarations of CC&Rs for Tract 4076 A and
2 4076B which the Defendants submitted as Exhibits E and F on February 20, 2018.
3 (Professional Code of Conduct - ER 3.2 "Expedite Litigation").

4 The claimed 90% of the Defendant's "Affidavit of Fees" are not to be
5 disproportionately allocated to Count 1 as the Defendants did not single out Tract 4076A
6 in their Motion to Dismiss but rather alleged that the Plaintiff had "no standing to attempt
7 to enforce alleged contract violations" in the Complaint's entirety.

8 The Plaintiff's Oral Argument for the "attempt and/or threat to violate" is found in
9 the Plaintiff's numerous references to the BOS Resolutions cited in the Complaint under
10 "Allegations Common To All Counts" in Paragraphs 35-37 whereby the Plaintiff
11 references the BOS Resolutions for reduced setbacks "revealed an attack specifically
12 directed on Desert Lakes CC&Rs"; the bundling (joinder as the legal term the Plaintiff
13 used in her Oral Arguments) for all lot owners offered the setback reductions; and as cited
14 in Paragraph 37, with "180 parcel numbers" qualifying for the signage and vote before the
15 Mohave County Planning Commission and later before the Board of Supervisors on
16 October 3, 2016.

17 The "Affidavit of Fees" incurred in processing the Defendants' Motion to Dismiss
18 is a matter of entirety of the Plaintiff's Complaint for both Count 1 and Count 2 and
19 Paragraphs cited in the Plaintiff's "Allegations Common To All Counts".

20 The "Affidavit of Fees" is proportionately a liability for all six Defendants in their
21 Motion To Dismiss the Plaintiff's "Allegations Common To All Counts", including Count
22


1 1 and Count 2 as defined by the Court. (“Motion To Dismiss On Behalf of All Named
2 Defendants”).

3 The attorney fees of \$8,321.63 requested is exorbitant and disproportional to the
4 Plaintiff’s “Allegations Common To All Counts and to the total number of defendants in
5 the matter.
6

7 A Declaratory Judgment should have been filed to expedite litigation in this matter
8 at a cost of approximately 30 minutes time with the same outcome and no waste of the
9 Court’s time or the attorney’s time for the Oral Arguments.

10 The matter of CC&R enforcement rights through a Declaratory Judgment would
11 have expedited litigation in this Breach of Contract case.
12

13 **RESPECTFULLY SUBMITTED** this 13 day of April, 2018.

14
15 
16 _____
Nancy Knight
Plaintiff Pro Per

17
18 **COPY** of the foregoing hand delivered
this 13 day of April, 2018 to:

19 Attorney for Defendants
20 Daniel J. Oehler, Esq.
21 Law Offices of Daniel J. Oehler
22 2001 Highway 95, Suite 15
23 Bullhead City, Arizona 86442
24
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