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9 Attorney for Defendants

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

12 NANCY KNIGHT,

13 Plaintiff,

14 vs.

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

22 Defendants.

NO.: CV-2018-04003

**RESPONSE TO UNCLEAN
HANDS MOTION**

23 COME NOW, the Defendants, GLEN LUDWIG and PEARL LUDWIG, Trustees of
24 THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC., and MEHDI
25 AZARMI (hereinafter referred to as "Defendants LFA") by an through their attorney, the
26 undersigned, to Plaintiff's Motion to Dismiss Defendants' abandonment defense regarding
27 the viability and enforceability of the 1989 covenants on Plaintiff's alleged basis that the
28 subject Defendants have "unclean hands" and therefore should/must be denied the right to
defend themselves against the Plaintiff's claims.

Plaintiff's Motion should be denied and Plaintiff should be immediately ordered to
pay these Defendants' reasonable attorney's fees and expenses incurred in preparing this
Response, all in accord with the attached Memorandum of Points and Authorities.

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1 RESPECTFULLY SUBMITTED this 18th day of November, 2022.

2 LAW OFFICES OF DANIEL J. OEHLER

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4 Daniel J. Oehler,
5 Attorney for Defendants

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 Plaintiff's most recent Motion alleges the applicability of the "unclean hands"
8 doctrine. Generally speaking, Plaintiff incorrectly alleges that the theory of "unclean hands"
9 is applicable in this case which is a contract rights claim asserted by Plaintiff and the
10 Defendants' defense that the contract has been extinguished by abandonment of the subject
11 restrictive covenants. In general, the theory of "unclean hands" is used by defendants in
12 appropriate fact situations against an equity claim asserted by a plaintiff. Plaintiff is not
13 seeking equitable relief in the matter before the Court. Plaintiff is seeking the enforcement
14 of contract rights resultant from the recordation of restrictive covenants. Plaintiff alleges that
15 those covenants are enforceable. Defendants' allege that the covenants are unenforceable
16 and have been abandoned.

17 Plaintiff has, of course, filed additional motions alleging fraudulent schemes and
18 artifices and falsely alleging that virtually every potential witness or individual that supports
19 the Defendants' position that the covenants have long ago been abandoned are *ipso facto*
20 fraudulent co-conspirators of/with the Defendants. The basis in general of Plaintiff's fraud
21 claims that Plaintiff now incorporates into the "unclean hands" issues are such things as a
22 scrivener error on a real estate license number. Note that Plaintiff is not challenging the fact
23 that the affiant in Affiant Tracy Weisz' Affidavit was or was not a licensed realtor, but rather
24 that as a result of a numeric transposition error, the Affiant's license number was erroneously
25 entered in Affiant's Affidavit to the Court and thereafter corrected via a scrivener's error
26 notice and the Court was notified of the correct license number. This is fraud per the
27 Plaintiff's faulty thought process.

28 Plaintiff also delivers absurd allegations in Plaintiff's Motion pleading that alleged

1 fraudulent conduct included in affidavits that challenge Plaintiff's position and that multiple
2 professionals such as engineering professionals, general contractor professionals, multiple
3 licensees of the Arizona Registrar of Contractors are all fraudulently delivering under oath
4 statements to this Court in the form of sworn affidavits supporting Defendants' Motion for
5 Summary Judgment. Plaintiff effectively is claiming that because the subject affidavits
6 clearly support the Defendants' claim of abandonment, all of the subject individuals have
7 entered into a fraudulent scheme to damage or harm the Plaintiff. Plaintiff's position in
8 regard to the issue of "unclean hands," and for that matter Plaintiff's fraudulent scheme
9 allegations, are total nonsense. Plaintiff's statements that, in general, suggest that if an
10 attorney gathers the facts from an individual or knowledgeable information source about a
11 fact believed to be relevant in the litigation, then prepares a draft affidavit, submits the draft
12 affidavit to the proposed affiant for review and to confirm the accuracy or amend or correct
13 its content, makes all or any required amendments and resubmits for review and signature,
14 that such conduct represents an equates to conspiratorial fraud on the part of the attorney and
15 the affiants.

16 Plaintiff's factual basis of alleged "unclean hands" that is wrongfully asserted in this
17 Motion is derivative of Plaintiff's totally unfounded and ridiculous allegations of fraudulent
18 conduct of anyone and everyone that opposes Plaintiff's positions.

19 This, the approximate 35th motion filed by the Plaintiff in this litigation, is total
20 nonsense that is being filed by an uninformed party attempting to prosecute a claim while
21 being fully unaware of common pleading practice and procedure.

22 THE LAW

23 The dispositive case regarding what, when and where an argument of "unclean hands"
24 is appropriately before the Court is set forth in the often cited case of Tripati v. State, 199
25 Ariz. 222, 16 P.3d 783 (Ariz. App. 2000). The Tripati court stated:

26 "The doctrine of 'unclean hands' is an equitable *defense* to a
27 claim seeking equitable relief. *Ayer v. Gen. Dynamics Corp.*,
28 128 Ariz. 324, 326, 625 P.2d 913, 915 (App.1980) (rejecting
defense of 'unclean hands' because plaintiff did not seek
equitable relief)." Tripati, supra, at p. 786

1 The Tripati court went on to state:

2 “Tripati and not the State was the party asserting a claim for
3 relief. Thus, the State was not barred by the doctrine of
4 ‘unclean hands’ from seeking dismissal of the second amended
5 complaint pursuant to section 31-201.01(L).” Tripati, supra, at
6 p. 786.

7 Plaintiff is before this Court asserting a claim for relief. The LFA Defendants have
8 not asserted a counterclaim against the Plaintiff nor a defense of “unclean hands,” although
9 perhaps it may well be appropriate. This is not an equity case, it is a contract case and
10 “unclean hands” is potentially available to defeat a plaintiff’s equity claim, not to eliminate
11 a contract defense such as we have before this Court. See also, Neeme Systems Solutions,
12 Inc. v. Spectrum Aeronautical, LLC, 226 Ariz. 577, 250 P.3d 1206 (Ariz. App. 2011),
13 defining the doctrine of “unclean hands” potentially providing a defense to a plaintiff’s claim
14 in equity stating:

15 “The doctrine of unclean hands is an equitable defense to
16 a claim seeking equitable relief. *Ayer v. Gen. Dynamics Corp.*,
17 128 Ariz. 324, 326, 625 P.2d 913, 915 (App.1980). The
18 doctrine does not apply to bar a claim, however, unless ‘the act
19 of unconscionable conduct on the part of the plaintiff relate[s]
20 ... to the very activity that is the basis of [the] claim.’ *Barr v.*
21 *Petzhold*, 77 Ariz. 399, 407., 375 P.2d 161, 166 (1954); *see also*
22 *Phoenix Orthopaedic Surgeons, Ltd. v. Peairs*, 164 Ariz. 54, 59,
23 790 P.2d 752, 757 (App. 1989), *disapproved on other grounds*
24 *by Valley Med. Specialists v. Farber*, 194 Ariz. 363, 982 P.2d
25 1277 (1999).”

26 We conclude that the doctrine is inapplicable here
27 because Spectrum’s alleged unconscionable conduct does not
28 relate to the same activity that is the basis of its claim. To
prevail on a claim of unclean hands, a party must prove that
‘[t]he dirt upon [the opposing party’s] hands [is] his bad conduct
in the transaction complained of. If he is not guilty of
inequitable conduct *toward the* [party asserting unclean hands]
in that transaction, his hands are as clean as the court can
require.’ *Smith v. Neely*, 93 Ariz. 291, 293, 380 P.2d 148, 149
(1963) (citation omitted). Here Spectrum’s alleged inequitable
act of filing a lawsuit in Utah did not cause Neeme to fail to
follow the notice requirement set forth in Rule 55(a)(1)(ii).
Therefore, the doctrine of unclean hands is not an equitable
defense that could be properly asserted by Neeme in this case.”
Neeme, supra, at p. 1213.

The doctrine of “unclean hands” systematically and exclusively is utilized by a
defendant in an equity case and in an action initiated by a plaintiff. Here, Plaintiff is alleging

1 the Defendants in this cause of action, who are not the pursuers of the cause of action, are
2 in fact the “plaintiffs” who purportedly have “unclean hands” and, once again, Plaintiff is
3 attempting to reverse the role of the parties suggesting that the Plaintiff is now the Defendant
4 and the Defendants have somehow transitioned into the Plaintiff. “Unclean hands” is a
5 defense to an action initiated by a plaintiff or claimant against a plaintiff. See, Ezell v. Quon,
6 224 Ariz. 532 (App. 2010) wherein the Ezell, supra, court noted that:

7 “...for the doctrine of unclean hands to apply, there must be
8 evidence that the party seeking relief acted with ‘bad faith’ or
9 ‘unconscionable conduct’ toward the party asserting the
10 defense). Accordingly, the superior court erred in granting
11 summary judgment on this basis. See also *Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 173 (9th Cir. 1989) (“The
application of the unclean hands doctrine raises primarily a
question of fact.’)” Ezell, supra, at p. 538, ¶26.

12 Even if a plaintiff could use an “unclean hands,” allegation as a sword, applied in this
13 litigation, such an allegation is a question of fact that is to be decided at trial, not on a motion
14 basis, just as must be done with the underlying basis for Plaintiff’s “unclean hand” argument,
15 that being the fraud and criminal conspiracy theories tossed so freely about by Plaintiff,
16 without foundation or any legitimate factual basis.

17 Simply stated, under the laws of the State of Arizona as evidenced in the above-
18 referenced cases, the doctrine of “unclean hands” is available to a defendant against the
19 claimant or plaintiff in an equity claim case. It is not available by a contract complainant to
20 be used against a defendant, rather, it is a defendant’s sword against the claimant seeking
21 enforcement of an equitable claim.

22 In summary, we are not dealing with equitable claims or the enforcement of an
23 equitable claim. Rather, we are dealing with contract rights, whether the Plaintiff has a
24 contract right to enforce the contract covenants that were imposed upon Desert Lakes Golf
25 Course & Estate Tract 4076-B in 1989 and whether that contract is enforceable by the
26 Plaintiff or by anyone in 2018, 2019, 2020, 2021 or 2022.

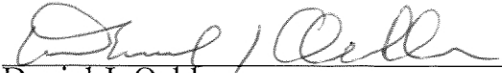
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1 Plaintiff's Motion must be denied and Defendants' attorney's fees are due and
2 appropriate.

3 RESPECTFULLY SUBMITTED this 18th day of November, 2022.

4 LAW OFFICES OF DANIEL J. OEHLER

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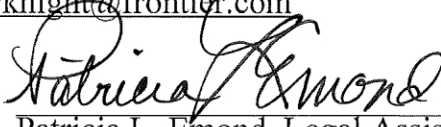
6 Daniel J. Oehler,
7 Attorney for Defendants

8 **COPY** of the foregoing emailed
9 this 18th day of November, 2022, to:

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23 By: 
24 Patricia L. Emond, Legal Assistant