

1 Nancy Knight
2 1803 E. Lipan Cir.
3 Fort Mohave, AZ 86426
4 Telephone: (951) 837-1617
5 nancyknight@frontier.com

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Christina Spurlock SupCrtClerk

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 and

12 GLEN LUDWIG Trustee of THE LUDWIG
13 FAMILY TRUST; FAIRWAY
14 CONSTRUCTORS, INC.; MEHDI AZARMI;
15 JOHN DOES 1-10; JANE DOES 1-10; ABC
16 CORPORATIONS 1-10; and XYZ
17 PARTNERSHIPS 1-10.

18 Defendants.

Case No.: CV 2018-04003

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Honorable Lee Jantzen

19 Plaintiff Pro Per Nancy Knight ("Plaintiff") moves this Court to grant Summary
20 Judgment in favor of the Plaintiff on the basis that the Defendants have not followed Rule
21 12(b)(6) in stating a claim of "complete abandonment". Their December 6, 2019
22 dispositive motion for Summary Judgment was based on a statistical summary for a claim
23 of abandonment that violated the rule of law when a Declaration includes a non-waiver
24 provision. Their claim could not have been granted in 2019 and cannot be granted at this
25 time. A claim of "complete abandonment" is futile, dilatory, and an injustice to the
26 Indispensable Parties' protections afforded by the Tract 4076-B CC&Rs.
27
28

1 In 2019 Defendants' were relying on statistical data for their claim of
 2 abandonment; however, that data is irrelevant when a non-waiver clause is a part of the
 3 Declaration. Their Supra Exhibit D is pasted below.
 4

5
 6
 7 FACT SHEET SYNOPSIS

8 Exhibit A to the Affidavit of Tracy L. Weisz represents the statistical data delineating the
 9 status of homes in place today in each of the three subdivisions that are in conflict with the
 10 CC&Rs recorded for Tract 4076-B and its derivatives.

11 Tract 4163

12	Number of total lots:	32	(Weisz Affidavit Exhibit C, Map)
13	Number of total lots combined:	7	
14	Number of lots with homes:	31	(Weisz Affidavit Exhibit D, GIS Map)
15	Number of vacant lots:	1	
16	Percent built out:	96.90%	
17	Percent <u>violating</u> one or more of the covenants including setback, fencing, gate, antenna minimum square footage	100.00%	
18	Percent violating rear yard setback (on and off golf course)	100.00%	(Stephan Affidavit)

19 Tract 4076-D

20	Number of total lots:	12	(Motion for Summary Judgment Exhibit B, Plat Map)
21	Number of total lots combined:	0	
22	Number of lots with homes:	10	(Stephan Affidavit Exhibit A, GIS Map)
23	Number of vacant lots:	2	
24	Percent built out:	83.30%	
25	Percent <u>violating</u> one or more of the covenants including setback, fencing, gate, antenna minimum square footage	100.00%	
26	Percent violating rear yard setback (on and off golf course)	80.00%	(Stephan Affidavit)

27 Tract 4076-B

28	Number of total lots:	225	(Statement of Facts Exhibit A, State Report)
29	Number of total lots combined:	14	(Affidavit of Tracy Weisz)
30	Number of lots with homes:	152	(Affidavit of Tracy Weisz)
31	Number of vacant lots:	57	
32	Percent built out:	72.00%	
33	Percent <u>violating</u> one or more of the covenants some of the 139 golf course homes that could be reviewed via public access, all but 3 had one or more CC&R violations of setback, fencing, gate, antenna, minimum square footage	97.84%	
34	Percent violating rear yard setback (on and off golf course)	55.00%	(Stephan Affidavit)

1 This motion is intended to expedite decisions of this Court in the pending Status
2 Conference scheduled for February 17, 2023. Decisions of this Court affects the Appeal
3 currently pending in Division Two for errors in a Yavapai County Superior Court
4 Judgment.
5

6 The Yavapai Court is confused as to how matters in that case can be resolved in
7 this case. Given that Breach of Contract has been denied by this Court with consolidation
8 into this case, the other matter is the abandonment claim in this case that requires Rule 20
9 disclosure for Indispensable Parties. If this Court agrees with the Plaintiff and finds that
10 “complete abandonment” cannot be granted for even one of the Defendant’s claims, then
11 the Yavapai Court assumptions will be put to rest about any claims being able to be
12 resolved in this Court’s case.
13
14

15 Pursuant to the Arizona Court of Appeal, Division 1, Department B in the case of
16 *College Book Centers, Inc. v Carefree Foothills Homeowners’ Association* 225 Ariz. 553,
17 241 P.3d 897 (App. 2010) at Paragraph 18 it stated that: On appeal, we recognized at the
18 outset that absent a non-waiver provision, deed restrictions may be considered abandoned
19 or waived “if frequent violations of those restrictions have been permitted” Id. at 398
20 para. 21, 87 P.3d at 86. **But** when CC&Rs contain a non-waiver provision, a restriction
21 remains enforceable, despite prior violations, so long as the violations did not constitute a
22 “complete abandonment” of the CC&Rs. (Emphasis in Bold Supplied).
23
24
25

26 In *Condos v. Home Dev. Co.*, 77 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954)
27 “complete abandonment” was defined as follows: Complete abandonment of deed
28 restrictions occurs when “the restrictions imposed upon the use of lots in [a] subdivision

1 have been so thoroughly disregarded as to result in such a change in the area as to destroy
2 the effectiveness of the restrictions [and] defeat the purposes for which they were
3 imposed”.
4

5 Defendant’s Supra Exhibit D created by Affiant Weisz and submitted with
6 Defendant’s December 2019 claim of abandonment violates the rule of law for the
7 definition of “complete abandonment” given that the Tract 4076-B CC&Rs contain a
8 non-waiver provision at paragraph 20 and is an existing part of the record. 100% of the
9 lots having a violation have remedy available and remedy has already been a part of the
10 Desert Lakes Subdivision enforcements by Plaintiff beginning in 2016 that continues to
11 this day and by CEO Passantino in 1991 and by Thomas Coury in 2002. It was fraudulent
12 for Azarmi to claim no enforcement has occurred in the past.
13
14

15 As taken from Ms. Weisz’s “Fact Sheet Synopsis”, the defendants are claiming
16 abandonment of the servitudes for setbacks, fence, gates, TV antennas, and minimum
17 square footage of livable space. The Court has a copy of the Tract 4076-B CC&Rs.
18

19 Considering that Azarmi is the perpetrator of setback violations on multiple levels
20 from deliberately building homes in violation of setbacks to attempting to pass a
21 resolution for fifteen foot setbacks in Desert Lakes to passing Ordinance 37.C.4. that is
22 being tried in CV 2022 00177 for Fraud. Unclean Hands necessarily prevents any ruling
23 of setback violations; however, Plaintiff has provided the Court with McKees Fraudulent
24 Affidavit that claimed all of the homes he built had setbacks generally to a distance of ten
25 feet and the plot plans for McKees two homes built in 2015 had greater than a twenty
26 foot setback. Those two homes proved Affiant Stephan’s photo of a GIS map was
27
28

1 deceiving where McKees two homes were among those Stephan claimed had less than a
2 twenty foot setback.

3
4 There exists no servitude in Tract 4076-B that restricts fences to 100% wrought
5 iron. Mohave County imposed the short block wall topped with wrought iron as a
6 subdivision regulation. The intent of views of the golf course is maintained regardless of
7 the short block wall base topped with the wrought iron rails.

8
9 There exists no servitude in Tract 4076-B that imposes a six foot high solid block
10 wall privacy fence. The imposition is that fences may not exceed six feet in height. Any
11 five foot high privacy fences, if true, would not be a violation of the fence provision.
12 Rear yard and side yard fence returns have a five foot high restriction as measured from
13 inside the boundary fence. Defendants have not provided evidence of a violation of this
14 provision; however, if they were to find erosion inside a property owner's fence that has
15 resulted in over five feet of fence height, fill dirt would be an easy and inexpensive
16 remedy.
17

18
19 Paint color does not change the character of the subdivision and has a simple
20 inexpensive remedy for black spray paint. Further, Desert Lakes Development LP may
21 have had an exclusion or variance approved by the Architectural Committee prior to
22 expiration of their term of service in 1999 for paint color. Black color appears to be
23 arbitrary and no adverse aesthetics have been the result of fences painted white or brown
24 in color. This Court has photos of white rails in which to judge what the intent for black
25 color could have been and if that intent has been so thoroughly violated that resulted in
26 such a change in the area that has defeated that intent and has no remedy. A futile claim.
27
28

1 The intent for fences has not been so thoroughly disregarded as to result in such a
2 change in the area as to destroy the effectiveness of the restrictions [and] defeated the
3 purposes for which paint color, fence height or wrought iron rail views were imposed.
4

5 There exists no evidence that livable space could cause a ruling of “complete
6 abandonment” since no one can see livable space inside a home and therefore the intent
7 for livable space at 1400 square feet for homes not adjacent to the golf course has not
8 been so thoroughly disregarded as to result in such a change in the area as to destroy the
9 effectiveness of the restrictions [and] defeated the purposes for which livable space was
10 imposed. McKees two homes have livable space of about 1350 Sq. Ft. In fact, it is
11 possible that the livable space condition may have been a typographical error in the Tract
12 4076-B Declaration since the livable space in Tract 4076-A, the first Declaration to be
13 recorded, had a livable space condition of only 1200 sq. ft. and the difference of 200 sq.
14 ft. is arbitrary and had no reasonable basis.
15
16
17

18 Antennas on roofs are legal pursuant to the FCC. The CC&Rs are clear that any
19 conflict with law is to be construed as if it had never been inserted.
20

21 New to the case since 2019 is the finding by the Plaintiff that gate access to the
22 golf course was imposed by the County in 1998 when Tract 4163 Unit E was
23 recommended to the BOS for approval and the small lot size required open space
24 pursuant to county regulations. The finding was found on January 21, 2021 when the
25 minutes of the Planning & Zoning hearing was retrieved from archives and emailed to the
26 Plaintiff. The County and Kukreja’s developer representative claimed the golf course
27 would be used for the open space provision and County Director Ballard claimed this
28

1 case was to be used for an amendment to golf course Ordinances.

2 Further, this covenant was imposed by Desert Lakes Development L.P. to protect
3 their golf course investment; however, since that time in 1989, the golf course was sold
4 several times and new owners have acquiesced to a point that trespass through a property
5 owner's gate is now a matter of right as acquired possession for every lot that is adjacent
6 to the golf course. Trespass has not been imposed by any golf course owner upon any
7 person using the golf course after hours for their personal recreation or for walking their
8 dogs.
9
10

11 Mohave County is passing off Res. 2016-04 as having an approved amendment to
12 Res. 93-122 for twenty foot setbacks. Azarmi's companion resolution was denied by the
13 Board on October 3, 2016. Plaintiff enforced the attempted violation of paragraph 20 of
14 the CC&Rs by preventing Azarmi from so doing. Plaintiff is enforcing Res. 93-122 in
15 CV 2022 00711 by seeking Injunctive Relief for Ord. 37.C.4.
16
17

18 In 1991, Frank Passantino of Desert Lakes Development L. P. was approved for
19 abandonment of Parcel VV having been erroneously proposed for multifamily housing
20 when no application for multifamily housing had ever been approved for this parcel.
21 Multifamily housing, including the 32 patio homes proposed by Kukreja for Plaintiff's
22 Tract 4163, is expressly forbidden in the CC&Rs.
23
24

25 In 1998, a proposal for the formation or annexation of an existing HOA for Parcel
26 VV in Tract 4076-B was rescinded by the County in 2002 for the property owner,
27 Thomas Coury. The CC&Rs for the entire Tract 4076 Subdivision never had an HOA.
28

Fence height and wrought iron panel violations were remedied in CV 2016 04026.

1 Plaintiff is currently attempting to remedy her side and rear yard setback violations in CV
2 2022 00177 with compensation imposed upon those who caused the violations.
3

4 The Court has ordered that a high-profile website will display all documents in
5 this case. It is important that full disclosure is available to the Indispensable Parties and
6 readers of these documents.
7

8 On September 16, 2022 this Court prohibited the Plaintiff from any contact,
9 directly or indirectly, with the Parties. This Court has failed to state a claim on which he
10 bases his Gag Order. All matters associated with the Ballot mailed to property owners in
11 June 2022 have resulted in no violation of law. The Plaintiff is left to defend herself
12 against the information provided to the lot owners that if they needed information on a
13 Class Action Law Suit to contact the President of the Unincorporated Association. The
14 potential Class Action was due to the Defendant's claim that 116 homes had setback
15 violations. If that were true, property owners had a right to full disclosure on who caused
16 their setback violations. For the most part, it was Defendant Azarmi who was a proponent
17 of Res. 2016-04 that created Ordinance 37.C.4. and Azarmi was the proponent for his
18 companion Res. 2106-125 that would have made Ordinance 37.C.4. legally binding on
19 over 750 lots in the 300+acre Desert Lakes Subdivision. This is a matter being tried in the
20 CV 2022 00711.
21
22
23
24

25 Nine Affiants submitted Affidavits that the Defendants emailed to the Plaintiff on
26 December 6, 2019 with misinformation and/or deliberate fraudulent claims. This Court
27 has been motioned to declare their December 2019 MSJ denied for those Fraudulent
28 Affidavits and Unclean Hands. This Motion for Summary Judgment is an additional

1 reason for dismissal of Defendant’s claim of abandonment.

2 This Court has also been motioned to grant Injunctive Relief for the violation of
3 advertising signs that have been proven to be the Developer’s signs and are not protected
4 by Statute 33-441. They are not “for sale” nor “for lease” signs by the Arizona
5 Department of Real Estate. Photos have been submitted to this Court that proves
6 dilapidation that posed a risk of harm to persons and property as claimed. Mohave
7 County wishes to interpret the sign ordinance as other than off-premises business
8 advertising that is only allowed on Commercial lots. Ballard is the source of the fraud
9 claim on multiple levels in CV 2022 00177. A County attorney wished Plaintiff to
10 believe the signs were protected by Free Speech. Plaintiff wishes this Court to follow the
11 rule of law as defined by the Arizona Department of Real Estate and not by Defendants,
12 Mohave County, Azarmi, Fairway or any of the Affiants who have been proven to have
13 committed Affidavit Fraud – not an opinion or belief - but with a preponderance of
14 evidence as supplied by the Plaintiff.
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18

19 **CONCLUSION**
20

21 The Defendants’ multiple dilatory motions have protected the Defendants and
22 served their profit motives for larger building footprints in violation of the CC&Rs and
23 Res. 93-122 for over four years. Those homes are then sold to unsuspecting buyers who
24 are now subject to a Breach of Contract law suit that this Court refused to allow to be
25 consolidated into this case. The Court in CV 2022 00177 has erroneously ruled that those
26 Defendant’s violations would be remedied in your CV 2018 04003 case. The only way
27 that could be true is if the Yavapai Court has predetermined a “complete abandonment”
28

1 ruling will occur in this case. Plaintiff has provided this Court with evidence to the
2 contrary. Plaintiff's motion for Summary Judgment should be granted due to the non-
3 waiver clause in the Tract 4076-B CC&Rs and the fact that Defendants have not stated a
4 claim sufficient to prove complete abandonment that has defeated the purpose for which
5 the restrictions and conditions were imposed. (Emphasis added).
6

7
8 Granting Plaintiff's Motion for Summary Judgment will alleviate all indispensable
9 parties from a Summons and Service Packet so that the matter of Breach of Contract can
10 proceed unencumbered by an assumption by the Yavapai Superior Court of "complete
11 abandonment" of the CC&Rs.
12

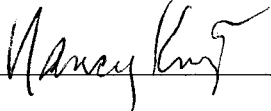
13 Else, this Court must rule on specifics as to what servitude has been so completely
14 abandoned that has defeated the purpose for which the restrictions and conditions were
15 imposed and which have no remedy. Plaintiff has already provided this court with the
16 example case of *Burke v. Voicestream* that closely parallels this case and cost Defendant
17 Voicestream a reported \$300,000 for their remedy.
18

19 This Court has a duty to follow Rule 16 for the pertinent paragraphs below for
20 managing this civil action as follows: **(1)** expediting a just disposition of the action; **(2)**
21 establishing early and continuing control so that the action will not be protracted because
22 of lack of management; **(3)** ensuring that discovery is proportional to the needs of the
23 action, considering the importance of the issues at stake in the action, the amount in
24 controversy, the parties' relative access to relevant information, the parties' resources, the
25 importance of the discovery in resolving the issues, and whether the burden or expense of
26 proposed discovery outweighs its likely benefit; **(4)** discouraging wasteful, expensive,
27
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1 and duplicative pretrial activities; (5) improving the quality of case resolution through
2 more thorough and timely preparation; (7) conserving parties' resources; and (9) adhering
3 to applicable standards for timely resolution of civil actions.
4

5 Plaintiff pleads for a ruling with complete rationale used by this Court for his
6 decisions. Plaintiff has been researching law for over six years and is confident that any
7 of Defendant's arguments against the Court's ruling can be refuted in her Reply to the
8 Court's Order and Response by the Defendants.
9

10 **RESPECTFULLY SUBMITTED** this 2nd day of February, 2023

11 
12 _____

13 Nancy Knight, Plaintiff Pro Per
14

15 Copy of the foregoing was emailed on February 2, 2023 to:
16

17 djolaw10@gmail.com
18 Attorney for the Defendants
19 The Law Office of Daniel Oehler
20 2001 Highway 95, Suite 15
21 Bullhead City, Arizona 86442
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25
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27
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