

*Handwritten initials*

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Plaintiff Pro Per

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

NANCY KNIGHT,

Plaintiff,

and

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

Defendants.

Case No.: CV 2018-04003

**PLAINTIFF'S MOTION TO STRIKE  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

**Under Current Reassignment Request  
for a Change of Judge**

Pursuant to Rule 7.1, Ariz. R. Civ. Proc., Plaintiff Pro Per Nancy Knight ("Plaintiff") moves this Court to strike the entirety of Defendant's Motion for Summary Judgment ("MSJ") filed by the Defendants on or about December 6, 2019 which in effect dismisses their abandonment claim.

The MSJ was not granted in 2019 and in May 2020, Plaintiff filed for dismissal of the MSJ for failure of the Defendants to serve Indispensable Parties. The Hon. Judge Jantzen determined Rule 19 did not apply in this matter.



1 As trial approached, Plaintiff retained attorney Coughlin. Events in this case have  
2 since delayed trial. Attorney Coughlin found Fraud Upon the Court had stalled the case  
3 when Attorney Oehler claimed the “build to suit” adverting signs were “for sale” signs  
4 protected by Statute §33-441. Attorney Coughlin said that no statute would allow  
5 dilapidated signs that posed a risk of harm to be protected. The Arizona Department of  
6 Real Estate determined the signs were the developer’s signs and not “for sale” nor “for  
7 lease” signs and is a part of the record. As stated in the Complaint the signs posed a risk  
8 of hazard to persons and property due to their long-term exposure to the elements and the  
9 sheet metal and supporting structures had become deteriorated and wind bent to the point  
10 of being separated from the supporting structure. Photographic evidence is a part of the  
11 record.  
12

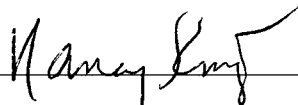
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14  
15 Attorney Coughlin also believed Hon. Judge Jantzen’s 2020 determination that  
16 Rule 19 did not apply to this case was in error and that the Defendants who sought  
17 abandonment were the parties who must serve the Indispensable Parties in accordance  
18 with multiple precedent cases. At the request of attorney Coughlin, Plaintiff took a video  
19 recording of the entire said tract and sent it to attorney Coughlin. As an experienced  
20 CC&R attorney, he determined that a claim of complete abandonment did not exist  
21 among the seventeen servitudes in the CC&Rs and within the 244 lots subject to the Tract  
22 4076-B Declaration CC&Rs.  
23  
24  
25

26 With the withdrawal of attorney Coughlin in October 2022, Plaintiff attempted to  
27 file her own MSJ and did not follow rules therefore attorney Oehler has filed a Motion to  
28 Strike Plaintiff’s Motion. Plaintiff’s reply is pending the time allowed based on the date

1 of February 27 when she received his motion by email.

2 This Motion is more urgent. Plaintiff will provide a Statement of Facts, Issues, and  
3 Standard of Review for ease of the new Court's understanding for requested decisions.  
4

5 **RESPECTFULLY SUBMITTED** this 1st day of March, 2023

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8 Nancy Knight, Plaintiff Pro Per

9 **STATEMENT OF FACTS**

10 Count One of the Plaintiff's Complaint was dismissed with prejudice due to that  
11 one home being situated in Tract 4076-A Phase I and Plaintiff's property is situated on  
12 land identified as Parcel VV in Phase II of the 1988 approved Preliminary Plat that  
13 created Desert Lakes Golf Course & Estates Subdivision Tract 4076. This land is subject  
14 to the Tract 4076-B CC&Rs as was adjudicated by the Hon. Judge Carlisle in 2018. His  
15 determination was in conformance with Paragraph 18 of the Covenants, Conditions and  
16 Restrictions ("CC&Rs") that states, "These Covenants, Conditions and Restrictions shall  
17 run with the land...". As such, no separate Declaration of CC&Rs was required when  
18 Parcel VV became Plaintiff's Tract 4163 as created by Azarmi's and Ludwig's business  
19 entity, Ludwig Engineering Associates.  
20  
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22

23 Count 2 was the single count before the Court in early 2018 for Injunctive Relief  
24 of the Defendant's advertising signs and to stop them from violating any other provisions  
25 of the CC&Rs. Their misdeeds had caused multiple victims to be in violation of setbacks.  
26

27 Two of their prior attempts at dismissal failed and in December 2019, the  
28 Defendants filed their Motion for Summary Judgment ("MSJ") to dismiss Injunctive

1 Relief based on a claim of abandonment of the CC&Rs.

2           The specific motive for the MSJ was to be granted rights to continue misdeeds in  
3 Desert Lakes Golf Course & Estates where a preponderance of evidence exists that profit  
4 motives served their continuing violation of the advertising sign restriction and violating  
5 the setbacks created a larger building footprint and hence more profit from larger homes.  
6

7           Numerous Affidavits were submitted with their MSJ that have since been proven  
8 to not only be in error but failed to support “complete abandonment” as is required when  
9 CC&Rs have a non-waiver clause; therefore, their MSJ even failed to state a claim,  
10 pursuant to Rule 12. That failure is the situation in this case at this point in time.  
11

12           Plaintiff, nor any of the potential Indispensable Parties, can defend an unknown.  
13 We do not know what particular condition or restriction we are defending as having been  
14 completely abandoned. Frequency of acquiesced violations does not apply.  
15

16           The movants in an MSJ are Plaintiffs with a burden of proof. They have not  
17 provided proof of Complete Abandonment nor have they stated a claim for any servitude  
18 that qualifies as such.  
19

20           Based on evidence in the record by Defendant’s affiant Pettit, Desert Lakes is  
21 more valuable in the marketplace due to no HOA. Hence, another motive for Azarmi’s  
22 abandonment claim where his subdivision has over \$400 per year in HOA fees. Desert  
23 Lakes is a formidable competitor without an HOA. A ruling of abandonment would  
24 remove protections and make his fees appear more valuable, especially if, over time, the  
25 subdivision falls into a state of blight.  
26

27           No other business advertising signs for home development existed on residential  
28

1 lots when this case was filed nor has Plaintiff witnessed any after it was filed. In other  
2 words, their “build to suit” signs caused unfair competition to exist for years.

3  
4 The Injunctive Relief sought by the Plaintiff involved preliminary and permanent  
5 removal of business advertising signage on residential lots that is a violation of Tract  
6 4076-B CC&Rs at paragraph 12. Plaintiff also sought preliminary and permanent  
7 injunctions enjoining Defendants from any existing or future violations of the CC&Rs  
8 including but not limited to setback reductions and signage on unimproved lots. The  
9 Defendants had been found to be violating the setback restrictions, Paragraph 6, and  
10 passing the violations off on allegedly unsuspecting buyers of their homes who then  
11 became victims of continuing violations of CC&Rs. The home dismissed in Count One is  
12 a case in point that was built and later sold to Mr. and Mrs. Roberts with front and rear  
13 setback violations. Four additional homes were attempted to be prosecuted in this case by  
14 Plaintiff’s Attorney Coughlin in July 2022 but the Court denied Leave to Amend.

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18 Details of Fraudulent claims on Affidavits was submitted to the Court with  
19 Plaintiff’s September 29, 2022 Motion for Leave to Amend for Affidavit Fraud as was  
20 directed by the local police department to do as a civil matter. The Court denied the  
21 Motion and has not considered his discretionary authority to consider the Affidavits as  
22 Fraud Upon the Court.

23  
24  
25 None of the Affidavits had real evidence of any other home construction company  
26 with current advertising signs on residential lots. Acquiescence in the past is irrelevant.  
27 Pursuant to Paragraph 20 of the CC&Rs, property owners are not required to sue but have  
28 authority to sue. Acquiescence, if it had occurred at all, had not destroyed the

1 fundamental character of the subdivision nor adversely affected property values. Desert  
2 Lakes is a choice subdivision and property values continue to rise even with increasing  
3 interest rates. One home on Lipan Blvd. was recently reported by Zillow as having a  
4 pending offer of \$515, 000 that sold for under \$380,000 a few years ago with no added  
5 improvements.  
6

7  
8 No property owner association ever existed in Subdivision Tract 4076. When the  
9 term of service of the Architectural Committee expired, any variance or exception was to  
10 be determined by the property owners. Mohave County is not an authority for relieving  
11 the Defendants of their obligation to follow the CC&Rs. Failure to obtain approval from  
12 the lot owners for a variance causes a violation of the CC&Rs.  
13

14 Defendants were property owners in Tract 4076-B and therefore they had a duty to  
15 follow their Contract. Following Mohave County ordinances that violate Res. 93-122 for  
16 20 foot setbacks is a violation of the CC&Rs and any ordinance that violates Res. 93-122,  
17 as Defendant Azarmi and his fellow Planning Commissioner's did for Res. 2016-04, is a  
18 prosecutable offence with no Qualified Immunity. Defendant Azarmi's Res. 2016-125 is  
19 his alone and was cited in paragraph 36 of the Complaint as the "BOS Resolution  
20 Amendment". Azarmi intended to amend Res. 93-122 and thereby protect himself and his  
21 fellow planning commissioners from prosecution for Res. 2016-04 that became  
22 Ordinance 37.C.4. The BOS denied Res. 2016-125; therefore, all approvals for ten foot  
23 setbacks are prosecutable against the County and against collusion in fraud defendants.  
24 Hence, this case led to CV 2021 04003 that was taken from the Court and from this venue  
25 in 2022.  
26  
27  
28

1 It is time for whomever becomes the presiding Judge for this case to bring closure  
2 and that closure requires dismissal of the Defendant's December 2019 MSJ, granting  
3 Injunctive Relief as stated in the Complaint (paragraph 61 and 62) as it applies to the  
4 adjudicated Subdivision Tract 4076-B lots, reasonable compensation (paragraph 63) not  
5 limited to filing fees, punitive damages, and attorney fees incurred after the case was filed  
6

7  
8 Additional pleading is to declare that the movant in the December 2019 MSJ was  
9 Mr. Oehler's clients and as such they are the Plaintiffs who would be responsible for Rule  
10 19 if they intend to proceed with a properly executed MSJ with particularity of "complete  
11 abandonment". The Court has the discretion of ruling Fraud Upon the Court occurred and  
12 caused Injunctive Relief to be delayed with a claim that the signs were "for sale" signs  
13 protected by Statute §33-441.  
14

15  
16 Azarmi has false statements on his Affidavit as follows: In paragraph 5 he claims  
17 the subdivision was exclusively being regulated by building codes. Not true - In fact,  
18 development had been governed by Res. 89-116 for twenty foot setbacks, front and rear,  
19 and that Resolution was "clarified" in 1993 with approval of Res. 93-122 that governed  
20 all permits. In fact, the home Azarmi built and sold to the Roberts in 2016 was denied a  
21 permit for failure to abide in Res. 93-122. Azarmi circumvented that denial and went to  
22 the volunteer Board of Adjustment ("BOA") for a variance. Details of alleged fraud upon  
23 the BOA are a part of the record.  
24  
25

26 In fact, resolutions 89-116 and 93-122 were applied for and approved as a failsafe  
27 measure for conformance with the CC&Rs. Builders did not need a copy of the CC&Rs  
28

1 because the County controlled setbacks in accordance with the SD/R zoning and  
2 associated setback resolutions for the entire Subdivision Tract 4076.

3  
4 Azarmi is well aware of the 1998 Tract 4163 Final Plat as he is VP of Ludwig  
5 Engineering Associates who created the Plat and he submitted the Plat as evidence in this  
6 case where it states on the Plat that the County imposed fences and the fence design in  
7 Tract 4163. In fact, Azarmi profited from the cost estimates for the fences. The CC&Rs  
8 control fence heights and materials. The CC&Rs do not restrict fences to being 100%  
9 wrought iron and the cement block wall base that the County imposed is attractive and  
10 long lasting. Also, when Tract 4163 was approved for the small lot sizes created by  
11 Azarmi's company, an open space regulation applied. The privately owned golf course  
12 satisfied that open space requirement. See the P&Z Commission hearing minutes in  
13 August 1998 that is a part of the evidence attached to the Complaint as Exhibit E filed in  
14 Mohave County on December 27, 2021 before the change of venue.

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16  
17  
18 Plaintiff believes Azarmi's statement in paragraph 9 has no basis of fact. With the  
19 exception of the fraud in the zoning application that created Tract 4163, the County was  
20 conscientious in following Res. 93-122 for setbacks when Applications for New Home  
21 Construction were submitted for engineering review. All home lots prior to Azarmi's  
22 influence on Tract 4163 in 1998 had 6,000 sq. ft. minimum lot sizes and all homes could  
23 be built in compliance with the livable space condition in the CC&Rs and Res. 93-122  
24 setbacks.

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27 The above is a synopsis of the facts.  
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## **II. ISSUES**

Did the MSJ movants follow Rule 12(b)(6) in stating a claim with particularity of what servitude or servitudes have been “completely abandoned” in Tract 4076-B among the 244 residential lots subject to Tract 4076-B CC&Rs?

Given the non-waiver clause in paragraph 20 of the CC&Rs, did the movants demonstrate sufficient evidence that complete abandonment had occurred in 2019?

Is the movant in an MSJ, the responsible Plaintiff for Rule 19 service upon Indispensable Parties?

Does Statute §33-441 protect the Defendant’s “build to suit” signs as “for sale” signs?

Does Plaintiff Knight have a right to preliminary and permanent Injunctive Relief sought at paragraph 61 and 62 of the Complaint?

Should the December 2019 MSJ that is intended to cause a ruling of abandonment of the CC&Rs be stricken/dismissed?

Does Plaintiff Knight have a right to costs sought in paragraph 63 of the Complaint?

## **III. STANDARD OF REVIEW**

Paragraph 20 in the Tract 4076-B CC&Rs provides that, “No failure of the Trustee or any other person or party to enforce any of the restrictions, covenants or conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any future or succeeding breach or violation thereof.”

Paragraph 12 in the Tract 4076-B CC&Rs, states in pertinent part to this case, “No

1 sign, advertisement, ...or advertising structure of any kind shall be erected or allowed on  
2 any of the unimproved lots, and no signs shall be allowed to remain on any lots,..”

3  
4 The court has photographic evidence of the signs in which to judge if they are “for  
5 sale” signs or if Fraud was committed upon the plaintiff and the Court. If they are not  
6 “for sale” signs, then permanent Injunctive Relief is a valid remedy unless Azarmi can  
7 prove complete abandonment of this restriction.  
8

9 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) “When deciding a motion to  
10 dismiss, the court must accept all allegations in the complaint as true.”  
11

12 In this case, plaintiff (Knight) believes she has proven that the signs are not “for  
13 sale” signs and the Court has evidence that allegations of the Defendants building homes  
14 with setback violations is true. The Complaint could not be dismissed in 2018.  
15

16 In contrast, Plaintiff (Knight) now asks this court to rule on whether the MSJ  
17 Plaintiff (movant Azarmi) violated Rule 12(b)(6) and if yes, she asks that Azarmi’s MSJ  
18 be dismissed/stricken from the record.  
19

20 From *Bell*, “The court will not dismiss any claims pursuant to Rule 12(b)(6) unless  
21 the plaintiff (movant Azarmi) has failed to plead sufficient facts to state a facially  
22 plausible claim for relief (Complete Abandonment).  
23

24 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To state a plausible claim, plaintiff  
25 (movant Azarmi) must provide “factual content that allows the court to draw the  
26 reasonable inference that the defendant (Knight) is liable for the misconduct alleged”.  
27

28 The alleged misconduct of Knight is that she filed this case against Azarmi when  
no CC&Rs existed that were valid and enforceable.

1 In the case of *Burke v. Voicestream Wireless Corp. II* - 207 Ariz. 393, 87 P.3d 81  
2 (Ct. App. 2004) on appeal, the Court said, “we recognized at the outset that absent a non-  
3 waiver provision, deed restrictions may be considered abandoned or waived "if frequent  
4 violations of those restrictions have been permitted." *Id.* at 398, ¶ 21, 87 P.3d at 86.

5  
6 But when CCRs contain a non-waiver provision, a restriction remains enforceable,  
7 despite prior violations, so long as the violations did not constitute a "complete  
8 abandonment" of the CCRs. *Id.* at 399, ¶ 26, 87 P.3d at 87.

9  
10 Complete abandonment of deed restrictions occurs when “the restrictions imposed  
11 upon the use of lots in [a] subdivision have been so thoroughly disregarded as to result in  
12 such a change in the area as to destroy the effectiveness of the restrictions [and] defeat  
13 the purposes for which they were imposed;.” *Id.* (quoting *Condos v. Home Dev. Co.*, 77  
14 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954)).

15  
16  
17 In context of this case, does the Court have evidence of Complete Abandonment  
18 or even complete abandonment of one particular restriction that has been so thoroughly  
19 disregarded as to result in such a change in the area as to destroy the effectiveness of the  
20 restriction(s) and defeated the purpose(s) for which it or they were imposed? To defeat  
21 the purpose for which it was imposed means there is no remedy.

22  
23 Take Plaintiff’s fence for example in the 2016 case that was raised again in the  
24 2021 case. Exhibit A provided details of the cost to bring her fence into compliance with  
25 the CC&Rs after her adjacent neighbor modified it for his self-serving purposes. The  
26 cutting away remedy prevented defeating the purpose (light) for which the fence  
27 conditions and restrictions were imposed. But for the cutting away remedy, the purpose  
28

1 of light through wrought iron rails and the five foot height restriction would have been  
2 defeated.

3  
4 Knight argues that there is no covenant, condition or restriction that cannot be  
5 remedied and a financial hardship is no excuse; therefore, her CC&Rs were valid and  
6 enforceable when this case was filed and they remain valid and enforceable today.

7  
8 The Appeal Court said, "The *Burkes* have requested an award of attorneys' fees  
9 incurred on appeal under Arizona Revised Statutes ("A.R.S.") section 12-341.01  
10 (Supp.2003). In our discretion, we grant this request. See *Pinetop Lakes Ass'n. v. Hatch*,  
11 135 Ariz. 196, 198, 659 P.2d 1341, 1343 (App.1983) (holding that action to enforce deed  
12 restriction arose out of contract for purpose of fee award under § 12-341.01). After the  
13 *Burkes* have complied with Arizona Rule of Civil Appellate Procedure 21, we will  
14 determine the amount of the fees to be awarded."

15  
16 Knight will also seek her fees and costs in this matter.

17  
18 If the Court wishes Azarmi's claim to proceed to trial and the Court desires that  
19 Rule 19 will first be necessary, the Court now needs to reconsider Hon. Judge Jantzen's  
20 Order that Knight is the Plaintiff that must join parties.

21  
22 Multiple precedents cite the case of *Sheets v. Dillon* and it is well established in  
23 law that a movant in a Motion for Summary Judgment is a Plaintiff in that action.

24  
25 *Sheets v. Dillon*, 221 N.C. at 432, 20 S.E.2d at 348 - 1942 "If plaintiff desires to  
26 have this covenant invalidated and stricken from the deed of the original grantee, he *must*  
27 bring in the interested parties and give them a day in court." (emphasis added).  
28

1           *National City Bank v. Harbin Electric Joint-Stock Co.*, at 472 “E. The party who  
2 seeks to invalidate restrictions must bring in the interested parties and give them a day in  
3 court.” (Emphasis Supplied)  
4

5           *Karner v. Roy White Flowers, Inc.*, 527 SE 2d 40 - NC: Supreme Court 2000  
6 citing *Sheets v Dillon*: “If plaintiff desires to have this covenant invalidated and stricken  
7 from the deed of the original grantee, he must bring in the interested parties and give  
8 them a day in court.” (Emphasis Supplied).  
9

10           This court has the authority to reverse an error in claiming Knight must serve the  
11 parties and Order Azarmi to join the Indispensable Parties as the movant/plaintiff.  
12

### 13   ARGUMENTS

14           Frequency is the premise of the Defendant’s 2019 MSJ claim of abandonment.  
15 However, frequency is not a factor when a non-waiver clause exists in the Declaration.  
16 The frequency data provided by the defendants does not follow Rule 12 for stating a  
17 claim of Complete Abandonment. Plaintiff’s Motion to Strike the Defendant’s December  
18 2019 Motion for Summary Judgment based on their frequency claims should be granted  
19 and the abandonment claim dismissed.  
20  
21

22           Plaintiff requests that the Court rule that the movant in a Motion for Summary  
23 Judgment is the Plaintiff and based on precedent cases any party who seeks abandonment  
24 of CC&Rs is the party responsible for joining the Indispensable Parties, therefore, Mr.  
25 Oehler’s clients must bring in the Indispensable parties.  
26

27           Plaintiff’s paragraphs 61 and 62 for Injunctive Relief should be granted based on  
28 the evidence that these defendants have violated setbacks and that their signs are not “for

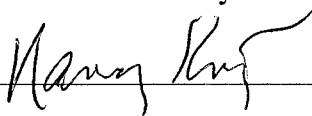
1 sale” signs.

2 Plaintiff’s paragraph 62 for fees and costs should be granted with a determination  
3  
4 by the Court in the amount of the award after Plaintiff submits an Affidavit of costs and  
5 fees and the Court may consider punitive damages.

6 **CONCLUSION**

7  
8 Plaintiff pleads for a speedy decision in this matter. The claims are simple. The  
9 law is clear. The CC&Rs remain valid and enforceable. The defendants violated the  
10 CC&Rs. The defendants are movants in the MSJ and therefore are plaintiffs in the  
11 context of Rule 19 responsibility to join parties.  
12

13 **RESPECTFULLY SUBMITTED** this 1st day of March, 2023

14   
15 \_\_\_\_\_

16 Nancy Knight, Plaintiff Pro Per

17 Copy of the foregoing was emailed on March 1, 2023 to:

18 Djolaw10@gmail.com  
19 Attorney for the Defendants  
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27  
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