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Christina Sporlock SupCtClerk

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 REPLY TO
DEFENDANT'S RESPONSE TO
PLAINTIFF'S MARCH 1
MOTION TO STRIKE
THEIR DECEMBER 2019 MSJ
FOR FAILURE TO FOLLOW
RULES OF PROCEDURE**

**Currently pending reassignment of Judge
from Hon. Lee Jantzen
by Hon. Judge Lambert**

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21 Plaintiff Pro Per Nancy Knight ("Knight") believes that she did not misinterpret
22 the purpose and effect of the Defendant's December 2019 MSJ. The purpose was to
23 avoid trial with the effect of having the Court decide the issue of complete abandonment
24 of the CC&Rs. When the Court denied the Defendant's motion, the purpose and effect
25 failed. The biased Court merely Ordered a denial of the MSJ without any opinion entered
into the record.

The Hon. Judge Moss has now attempted to fool Knight on whether the Hon.

Plaintiff's Reply _Motion To Strike Dec. 2018 MSJ for Failure to state a Claim of Complete Abandonment Motion 9 March 2023

1 Judge Lambert is to appoint a new judge. The Hon. Judge Lambert is not expected to
2 decide “whether” Judge Jantzen should be removed from this case. Judge Jantzen Shall
3 be removed and another judge Shall be assigned to the case by the Hon. Judge Lambert
4 who has been temporarily assigned to this matter of reassignment.
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6 In fact and in truth, pursuant to Statute §12-409 (A) “If either party to a civil
7 action in a superior court files an affidavit alleging any of the grounds specified in
8 subsection B, the judge shall at once transfer the action to another division of the court if
9 there is more than one division, or shall request a judge of the superior court of another
10 county to preside at the trial of the action. Knight specified her grounds in her affidavit
11 pursuant to the language in subsection (B) (5) that states, “That the party filing the
12 affidavit has cause to believe and does believe that on account of the bias, prejudice, or
13 interest of the judge he cannot obtain a fair and impartial trial.” Emphasis Supplied.
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17 Knight believes, in the interest of judicial economy, the case should be transferred
18 and consolidated into CV 2022 00177 where two of the three defendants in this case are
19 already parties in that case – on the grounds of Fraud.
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21 The following is intended to assist the Hon. Judge Lambert in understanding why
22 a Mohave County judge is not appropriate for this case. On May 11, 2020 an Oral
23 Argument hearing was held before the Hon. Lee Jantzen. Knight opened her arguments
24 with the following statement. “With all due respect for your honor’s high position, there
25 exists a peremptory challenge under A.R.S. §12-409 that the Plaintiff bring allegations of
26 bias to the forefront before a lower Court enters a final judgment. There exists a real
27 possibility that bias is affecting court rulings. I understand the Court’s close ties to
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1 attorneys and Mohave County Judges.” “Even though you declared me a Vexatious
2 Litigant and awarded attorney fees to the law firm of Gregory and Elias and to the
3 joindered Mr. Oehler, I continued to place trust in the justice system and in the high
4 position you hold.” Attorney Elias’s (“Elias”) law partner, Gregory (now Hon. Judge
5 Gregory), in CV 2016 04026, attempted what Knight perceived as extortion for the
6 Knight’s to suffer costs to remedy the “entire” rear yard fence owned by Gregory’s client
7 when the binding mediated “Settlement” agreed to in Court was for Knight to have rights
8 to remedy “a portion” of her adjacent neighbor’s rear yard fence “because the defendants
9 had no money” and urgency existed because the fence was now leaning where three
10 young children played in the swimming pool next to the leaning fence. The Knights
11 refused to sign the written “Agreement” and the “or else” threat was carried out with a
12 Motion to Compel signing the written Agreement. The Carlisle Court awarded attorney
13 fees to Gregory and Oehler for their joindered motion to Compel. Knight filed a Rule 60
14 motion in hopes of reversing the judgment of fees. Gregory was rewarded a seat on the
15 bench by Mr. Oehler’s real estate business partner, Judge Gurtler, who had presided over
16 the Mediation proceedings. Gregory’s business partner, Elias, joindered with Oehler on a
17 Motion to declare Knight a Vexatious Litigant for filing the Rule 60 motion. Hon. Judge
18 Jantzen awarded Oehler and Elias attorney fees and claimed Knight was harassing their
19 clients. The *Mohave Valley Daily News*, April 7, 2010, published a story on the Hon.
20 Judge Gurtler who admitted that he had been an associate with the Law Offices of Daniel
21 J. Oehler in 1986 for one year before joining the law practice of Leek and Petica and after
22 six months he became a partner in that firm and within a year the law practice became
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1 Leek and Gurtler. Next, he and his wife, Jamie Kelley, had their law practice together
2 until Gurtler left the firm to become a full-time Superior Court judge. His wife, Jamie,
3 together with Steve Moss (now Hon. Judge Moss) and Rick Williams continued the law
4 practice. Jamie Kelley was supposed to be the agent of service for Defendant T&M
5 Mohave Properties when Knight was trying to have T&M served a Summons for his part
6 in the Tract 4163 fiasco and the office staff claimed they did not know Jamie Kelley's
7 whereabouts. Jamie Kelley was found in 2023 to be working for the Mohave County
8 Water Authority as General Counsel. The Hon. Judge Gurtler attempted to enter "no
9 fraud" into the record of the 2016 mediation proceedings. Knight had to file a Complaint
10 to have a Correction made to Gurtler's minute entry to strike "no fraud". That 2016 case
11 was rife with fraud including Mr. Oehler's threat and countersuit against Knight for
12 \$65,000 in medical damages for his clients, Chase, with no basis of fact. It is Knight's
13 understanding that this is a violation of an Attorney's Oath. Knight has good cause to
14 believe she cannot get a fair trial in Mohave County.

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19 In this case, Azarmi's off-premises business advertising signs are not "for sale"
20 signs protected by Statute and their dilapidation posed a risk of harm to persons and
21 property as Knight claimed in the 2018 Complaint. Sheet metal signs blowing in the wind
22 and becoming detached from their support structure was a hazard. Injunctive Relief
23 should have been Granted but instead this biased Court protected the Defendants and
24 allowed them to continue to advertise "build to suit" where those signs attracted business
25 from unsuspecting buyers who signed contracts in violation of Res. 93-122 and the
26 CC&Rs for setbacks, front and rear. Azarmi's profit motives were served from a larger
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1 building footprint while his former clients are now being sued in Yavapai County for
2 Breach of Contract. Injunctive Relief should not have to wait for jury to determine if the
3 Defendants signs are “for sale” signs. The new pending Court has evidence on which to
4 rule now. The Arizona Department of Real Estate has determined that the signs are not
5 for sale signs and the Court has photographs of dilapidation. The defendants would be
6 stopped from any more advertising signs and stopped from violating setbacks or any
7 other provision of the CC&Rs. That is how justice is supposed to work.
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10 In the case of *Burke v. Voicestream Wireless Corp. II* - 207 Ariz. 393, 87 P.3d 81
11 (Ct. App. 2004) on appeal, the Court said, “we recognized at the outset that absent a non-
12 waiver provision, deed restrictions may be considered abandoned or waived "if frequent
13 violations of those restrictions have been permitted." Id. at 398, ¶ 21, 87 P.3d at 86.
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15 But when CCRs contain a non-waiver provision, a restriction remains enforceable,
16 despite prior violations, so long as the violations did not constitute a "complete
17 abandonment" of the CCRs. Id. at 399, ¶ 26, 87 P.3d at 87.
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19 Complete abandonment of deed restrictions occurs when “the restrictions imposed
20 upon the use of lots in [a] subdivision have been so thoroughly disregarded as to result in
21 such a change in the area as to destroy the effectiveness of the restrictions [and] defeat
22 the purposes for which they were imposed;.” Id. (quoting *Condos v. Home Dev. Co.*, 77
23 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954)).
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26 Paragraph 20 of the CC&Rs, also known as the non-waiver clause, sets forth:

27 “No failure of the Trustee or any other person or party to enforce any of the
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1 restrictions, covenants or conditions contained herein shall, in any event, be
2 construed or held to be a waiver thereof or consent to any further or succeeding
3 breach or violation thereof."
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5 The Defendant's fraudulent claims are now expected to be presented to the jury
6 for a decision on "complete abandonment" when not only are the frequency claims in
7 error but the entire proceeding was based on trickery intended to fool Knight. As a pro
8 per Defendant of her CC&Rs in 2018, Knight did not understand the full meaning of
9 "complete abandonment" and defended her position based on frequency data. Knight
10 claimed it could be shown that 25% of the lots in the subdivision remained vacant
11 therefore, she said, "complete abandonment of the CC&Rs was impossible to claim". It is
12 clear that Knight was defending complete abandonment based on the Defense's
13 combined servitudes for a frequency of occurrence and not based on the true requirement
14 for a "complete abandonment" ruling.
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18 The appropriate time to challenge the lack of stating a claim of complete
19 abandonment is before trial. There exists a genuine dispute in the matter of complete
20 abandonment versus the original filing of statistical data based on frequency of violations
21 which is why their MSJ was not granted and why this case is headed for trial. The
22 problem is that Knight cannot defend an unknown. The jury cannot rule on an unknown.
23 The defendants want everyone to think that as a result of a certain percentage of various
24 violations, the CC&Rs have been abandoned. This is simply not true.
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27 There exists no evidence in the record of the defendant's claim of Complete
28 Abandonment. The entire December 2019 MSJ needs to be stricken from the record since
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1 the purpose of a Motion for Summary Judgment to avoid trial was defeated. The court
2 could not rule on the evidence presented because the evidence failed in its attempt to fool
3 the court into believing the data proved complete abandonment. You do not go to trial
4 based on a Motion for Summary Judgment. You go to trial based on a Complaint.
5

6 It is time for the defendants to claim complete abandonment based on actual
7 evidentiary data or end this charade now. The Defendants have not followed Rule
8 12(b)(6) in stating a claim of “complete abandonment”. Their defect can be remedied by
9 filing a properly executed Motion for Summary Judgment after this MSJ is stricken from
10 the record.
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13 Discovery, in the concurrent case that was transferred to Yavapai County, found
14 that the defendants in this case are parties to the Tract 4163 claims of setback violations
15 where Azarmi and Ludwig created the Final Plat for Tract 4163 in violation of SD/R
16 zoning and setback resolutions and therefore they have unclean hands in using that data
17 of 24 homes with rear yard setback violations. The jury will be confused by the Weisz
18 spreadsheet and Fact Sheet Synopsis based on frequency of violations in separate areas of
19 the subdivision. If a claim of complete abandonment is to be ruled upon for servitude 6
20 for setbacks, the defendants cannot parse out one part of the 244 APNs nor parse out a
21 portion of servitude 6 for just the rear yards as Weisz had done. Neither Knight nor a jury
22 can determine if complete abandonment has occurred with respect to servitude 6 among
23 244 Lots based on the Defendant’s frequency data of 24 lots in Tract 4163 that have
24 100% rear yard setback violations, no front yard setback violations and possibly only one
25 side yard setback with a shortfall of 7 to 9 inches along about a 30 ft. length of the home.
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1 For servitude 8 on fences, block walls over six feet in height can be cut away as
2 Knight had to do in CV 2016 04026, none were found to be in the street setback area of
3 twenty feet from the front property line, no fences visible from the street were found to
4 be non-decorative or made of wire, wood, chain link or topped with barbed wire (except
5 that chain link golf ball barriers for safety could be seen but those structures, that are over
6 six feet in height, are not boundary fences as Azarmi has attempted to claim), all fences
7 adjacent to the golf course are made of wrought iron of no more than five feet in height
8 from inside the property line as well as the side yard return where the intent is for views
9 and light. Knight found this intent when her views and light were “taken” by the County
10 and her adjacent neighbor Chase in CV 2016 04026. Paint color other than black can be
11 easily remedied and a jury may rule that limiting the paint color to black was arbitrary
12 and even white wrought iron does not defeat the purpose of a decorative fence. Access to
13 the golf course has been acquiesced and the county imposed free use of the golf course
14 after hours to satisfy the subdivision open space regulation for Tract 4163 with less than
15 5,000 sq. ft. lot sizes. The golf course has no fencing which allows usage after hours even
16 without direct gate access from homes. The golf course has become an after-hours public
17 park. Knight’s view of the westerly corridor has been partially restored and she is seeking
18 complete restoration of her views in the Yavapai County case number CV 2022 00177.
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25 For the most part, no one could see if any homes had been built with less than
26 1400 -1600 sq. ft of livable space therefore complete abandonment had not occurred for a
27 visible change in the area for the intent of servitude 4. Mr. and Mrs. Rovno’s second
28 dwelling unit next to the kiosk of mail boxes in Desert Lakes is an example of livable

1 space that can be visibly determined to be in violation of the CC&Rs and is also a
2 violation of not having a 20 foot garage and is also in violation of a restriction for one
3 single residential unit per lot. This violation was caused in 2022 and therefore it can be
4 claimed by the defendants in a newly filed MSJ. Knight then could demand Leave to
5 Amend to have the Rovno's remove the offending second dwelling unit. And they would
6 have no financial hardship as recourse to removing the dwelling because they were aware
7 of the CC&Rs when they built it. They are already Defendants in the Yavapai County
8 case and are Real Estate Professionals with knowledge of the value of CC&Rs to protect
9 the interests of their neighbors. Other criteria in servitude 4 would also have to be
10 claimed. The Defendants did not find any of those other conditions or restrictions to have
11 been violated in 2019.

12
13 Dish antennas are to be construed as if they had never been inserted in the CC&Rs
14 because the FCC made antennas legal after 1989. Nothing in servitude 5 has been
15 violated.

16
17 Knight believes this case needs an unbiased Judge with no ties to Mohave County
18 judges or attorneys for review of the issue of the Defendant's requirement to follow Rule
19 12(b)(6) before the Indispensable Parties are served with a Summons and Service Packet.

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21 An unbiased judge needs to rule on the Gag Order imposed on Knight. An
22 unbiased Judge needs to rule on whether the movant in a Motion for Summary Judgment
23 on abandonment is to serve the Indispensable parties and if that movant is Mr. Oehler's
24 clients. An unbiased Judge needs to compare Knight's November 14, 2022 proposed
25 language for the Summons and Service Packet that may need Judge Jantzen's February
26 Plaintiff's Reply _Motion To Strike Dec. 2018 MSJ for Failure to state a Claim of Complete Abandonment Motion 9 March 2023

1 17, 2023 Order to be reversed and remanded to a new judge.

2 If the movants cannot refile an MSJ with a claim of complete abandonment with
3 particularity of specific servitudes, then the issue of abandonment is over.
4

5 The defendants raised the case of *United Bank of Arizona v. Allyn*, 167 Ariz. 191,
6 196 (Ariz. Ct. App. 1991). Knight agrees that a Summary Judgment is appropriate when
7 the record shows that there is no real dispute as to any material facts and the moving
8 party is entitled to judgment as a matter of law. Knight points out that this case does have
9 a real dispute on many material facts and the moving party is not entitled to summary
10 judgment until those disputed material facts are claimed pursuant to Rule 12 (b)(6).
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13 That case stated that the central purpose of Rule 56 is to avoid unnecessary trials.
14 The defendant's MSJ did not result in trial avoidance and in fact has made the pending
15 trial complicated and unclear as to what material fact the jury is to determine has resulted
16 is complete abandonment of a servitude or servitudes. Where is the evidentiary record?
17

18 If the defendants would follow Rule 12(b)(6), a trial court would be able to avoid
19 trial in this matter. Avoiding trial should be the goal of the Court and therefore, this MSJ
20 needs to be stricken and the Defendants either need to file a new MSJ based on real
21 evidence of particularity of detail that has caused such a change in the area that has
22 defeated the purpose for which it was intended and has no remedy. A trial court can view
23 the real evidence and avoid a jury trial for each servitude proven to be completely
24 abandoned. The entire Declaration is not subject to abandonment just because these
25 defendants want to keep violating setbacks and posting their development services
26 advertising signs on lots in Desert Lakes.
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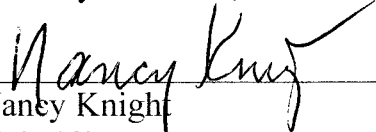
1 In *United Bank of Arizona*, it is stated that, "Summary judgment is improper
2 whenever the record reflects a conflict of the evidence or reasonable inferences relating
3 to a material issue. Rule 56(c) allows summary judgment only " *if* the pleadings,
4 deposition, answers to interrogatories, and admissions on file, together with the
5 affidavits, if any, show that there is no genuine issue as to any material fact and that the
6 moving party is entitled to a judgment as a matter of law." (Emphasis added by the
7 Appeal Court).
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9
10 Allowing the MSJ to proceed to trial by jury in the absence of a claim of
11 "complete abandonment" is an injustice to the Indispensable Parties' protections and
12 language of the Tract 4076-B CC&Rs.
13

14 **CONCLUSION**

15
16 Plaintiff pleads for this case to be reassigned to a Court in another County and for
17 the new Court to Strike the Defendant's MSJ for misinterpreting what a Motion for
18 Summary Judgment based on "complete abandonment" evidence was supposed to
19 provide for trial avoidance. In this case, with a new MSJ, the new Court needs
20 particularity of what servitude or servitudes the movants are claiming as having been so
21 completely abandoned that they caused a change in the area and have no remedy.
22

23 **RESPECTFULLY SUBMITTED** this 9th day of March, 2023.

24
25 
26 Nancy Knight
Plaintiff Pro Per

27 Copy of the foregoing was emailed on March 9, 2023 to:
28 Daniel Oehler, Attorney for the Defendants
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