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

MAR 22 2020 11:52 AM
Christina Spurlock Sup Ct Clerk

NANCY KNIGHT,)
)
Plaintiff,)
)
vs.)
)
GLEN LUDWIG and PEARLE)
LUDWIG, Trustees of the)
Ludwig Family Trust;)
FAIRWAY CONSTRUCTORS, INC.,)
MEHDI AZARMI.)
)
Defendants.)
_____)

ORIGINAL

Cause No. CV-2018-4003
ORAL ARGUMENT

BEFORE THE HONORABLE LEE F. JANTZEN, JUDGE

May 11, 2020
1:31 p.m.
Kingman, Arizona

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the PLAINTIFF: (In Pro Per)
For the DEFENDANTS: DANIEL J. OEHLER, Esq.

Reported by: Kimberly M. Faehn
Official Court Reporter
Mohave County Superior Court, Div. 3
2225 Trane Road
Bullhead City, Arizona 86442



1 P R O C E E D I N G S

2 THE COURT: Good afternoon.

3 This is CV-2018-04003; in the matter of Nancy Knight,
4 plaintiff, versus Glen Ludwig and Pearle Ludwig, et
5 cetera, defendants.

6 Show the presence in the courtroom of
7 Ms. Knight, representing herself.

8 Show the presence of Mr. Ludwig; is that
9 correct?

10 MEHDI AZARMI: Azarmi.

11 MR. OEHLER: Mr. Azarmi.

12 THE COURT: Mr. Azarmi.

13 MR. OEHLER: Is one of the defendants.

14 THE COURT: One the defendants, sorry.

15 Mr. Azarmi?

16 MEHDI AZARMI: Correct.

17 THE COURT: Azarmi, A-z-a-r-m-i.

18 MEHDI AZARMI: Correct.

19 THE COURT: Show the presence of Mr. Oehler,
20 representing the defendants in this matter.

21 This is the time set for oral argument on two
22 pending summary judgment motions; one is from Ms. Knight,
23 which is a motion -- a partial motion for summary
24 judgment on the issue of signage.

25 The other is from Mr. Oehler, which is a motion for

1 summary judgment of the remaining issues in this case.

2 As I told you on the phone the other day, we
3 have three hours set aside for this hearing. I have
4 never once used three hours to do oral arguments in a
5 motion for summary judgment, but I've allowed that in
6 this case.

7 The way I anticipate this going is Mr. Oehler
8 gets to go first and last on his motion for partial
9 summary judgment; and Ms. Knight gets to go first and
10 last on her motion for partial summary judgment on
11 signage.

12 So, Mr. Oehler will go first. Ms. Knight will
13 go second in responding and arguing her motion; and then
14 Mr. Oehler will go third; and Ms. Knight will go fourth.

15 You have a combined hour and-a-half each. I will
16 keep track of that to hopefully -- you don't have to use
17 it. I'll go on the record now; if you don't to use the
18 whole time, do not use it.

19 But you have a combined hour and-a-half each.

20 I will let you know when you're down to half an
21 hour, in case you want to stop then and save it for the
22 remainder of your budget; but if you're using your time
23 wisely hopefully we'll get beyond that portion.

24 Since the last time we talked I've received
25 three more pleadings from Ms. Knight. One is a motion

1 for clarification of plaintiff's right to be argued in
2 today's hearing; and then two motions today were filed --
3 I'm not sure they've been filed, but -- yeah, one was
4 filed this morning at 8:32; the other is unfiled. I'm
5 assuming it has been filed.

6 And they are motions to dismiss defendants' motion
7 for summary judgment for failure to join indispensable
8 parties.

9 First of all, on the motion for clarification,
10 Ms. Knight, you can argue the issues that relate to the
11 pending motion for summary judgment.

12 You understand what has been dismissed already in
13 this case; I hope you do.

14 And we're going to go forward today; in your time
15 allotted you can argue those motions, and I'm sure you
16 will.

17 With regard to the motions to dismiss, there's
18 usually time to respond to these. I don't think time is
19 necessary.

20 It is ordered denying both of the motions to
21 dismiss defendants' motion for summary judgment for
22 failure to join indispensable parties.

23 This is an issue -- you know, we can deal with that
24 issue in a different forum if we get beyond today's
25 hearings; but I'm not going to wait and -- wait for a

1 response from Mr. Oehler and then argue today whether or
2 not we're dismissing the motions for summary judgment on
3 some technical issue or some belief that the defendant
4 had to join indispensable parties.

5 So, Mr. Oehler, are we ready to proceed on
6 the motion for summary judgment?

7 MR. OEHLER: We are, your Honor.

8 THE COURT: All right. Go ahead; starting now.

9 MR. OEHLER: Thank you, your Honor.

10 Simply to be, I think, ultra-cautious, based on the
11 history of this file, um, your Honor, I believe your
12 Honor misspoke in regard to the defendants' pending
13 motion for summary judgment.

14 It is -- it was filed, and it is being argued as a
15 dispositive motion as opposed to a partial motion for
16 summary judgment.

17 THE COURT: Well, I -- if I did misspeak, I think
18 Ms. -- I thought I said Ms. Knight's motion was partial,
19 and your's is --

20 MR. OEHLER: You did for Ms. Knight, but you did
21 -- I understood you to say the same for defendants'; and
22 again, you know, based on the history, I think the record
23 needs to be absolutely clear that the defendants' motion
24 is a dispositive motion for summary judgment on all
25 issues.

1 THE COURT: That's absolutely clear to me; so if I
2 misspoke, I apologize.

3 MR. OEHLER: Thank you.

4 THE COURT: But go ahead.

5 MR. OEHLER: Thank you, your Honor.

6 It seems to me that the best way to handle a file
7 like this, and I can avow to the Court that we're
8 probably at something in the range of 50,000-plus pages
9 of documentation; cases, allegations, statements and
10 items that have been generated in this file.

11 I think, you know, this -- as is the case in
12 most pieces of litigation, whether they're civil or
13 criminal, is to attempt to sort-of peel back the onion
14 to its core, and deal with what otherwise could be
15 considered incredibly complex matters, as really fairly
16 simple matters.

17 And I can appreciate the fact, your Honor, -- if I
18 might go to the podium here.

19 I can appreciate the fact that your Honor is, I
20 believe, the third -- third of the fourth judge that has
21 been involved in this proceeding, which obviously makes
22 it difficult for the Court, for a multitude of reasons.

23 But, you know, in today's -- in today's matter we
24 have a set of circumstances that are really intended to
25 dismiss and to discuss, followed by a dismissal of

1 plaintiff's remaining count 2 of her complaint.

2 So, the first thing, I think, that a little bit
3 of time needs to be spent on is indeed the plaintiff's
4 complaint; and although there have been allegations
5 submitted to the Court, historically and more recently,
6 Plaintiff has alleged on numerous occasions that count 1
7 of her complaint was not dismissed by Judge Carlisle.

8 On several occasions she has alleged that -- well,
9 just the Roberts, who were owners of a lot and a
10 residence in Tract 4076-A were dismissed.

11 However, your Honor, as I'm sure the Court is
12 aware and as I'm sure your Honor has reviewed the file,
13 um, Judge Carlisle's order was very succinct, very clear;
14 it dismissed count 1 of Ms. Knight's complaint.

15 That order, your Honor, was formally entered; the
16 finding -- the finding occurred on June 11th of 2018, and
17 the order, excuse me, was also entered with the June 18th
18 minute order on the 11th day of June in 2018; almost two
19 years ago.

20 What that order did is it left intact, at least
21 portions, of count 2.

22 So, the first thing I believe we need to do this
23 afternoon is examine what count 2 says.

24 First of all, it is captioned as an injunctive
25 relief. Starting with paragraph 59 of the complaint.

1 Plaintiff alleges that she has a strong likelihood of
2 success on the merits of the violations of the CC&Rs as
3 were set forth in the complaint.

4 Plaintiff alleges she is entitled to a preliminary
5 and permanent injunction enjoining the defendants from
6 all current signage violations on unimproved lots.

7 She indicates that she's entitled to a preliminary
8 and permanent injunction from any existing or future
9 violations of CC&Rs, including but not limited to setback
10 reductions and signage on unimproved lots.

11 She alleges that she's entitled to compensatory
12 damages that do not exceed the jurisdictional limitation
13 of this Court, plus filing fees, compensation for hours
14 of research, emails, letters, postage, physical and
15 emotional distress.

16 In other words, we're starting the case on a
17 contract basis, and we're somehow morphing to damages for
18 emotional distress. All flowing out of alleged
19 violations of various CC&Rs.

20 That is the second count that exists today as a
21 result of the Carlisle ruling.

22 Throughout my presentation today, your
23 Honor, I'll be referring to the Carlisle findings. The
24 Carlisle, in effect, statement of law that allowed us to
25 get here before this Court today; and in that respect

1 it's the law of the file, at least up until today.

2 Originally we filed a motion to dismiss; fairly
3 simple motion, a motion alleging that Ms. Knight, who
4 along with her husband, who's here in court today, lived
5 in a subdivision called Desert Lakes Golf Course &
6 Estates, Tract 4163; and as such, she was not allowed to
7 or did not have standing to argue alleged violations in
8 two different tracts; namely 4076-A where the Roberts
9 defendants, former defendants, used to reside or where
10 they owned a home, nor did she have authority to argue
11 any issues that occurred in 4076-B.

12 Only, only was she or should she be allowed to argue
13 violations in 4163, a subdivision which had no
14 independent separate CC&Rs recorded against them.

15 I was unsuccessful in that argument, your Honor.
16 We alleged that the lands which were the subject matter
17 of the Knight residence, and that were originally in
18 Tract 4076-B, had been abandoned.

19 They had been abandoned from that tract, from that
20 subdivision; that subdivision no longer existed.

21 Judge Carlisle thought differently, and has
22 allowed, as a result of that finding, this matter to
23 proceed exclusively in regard to count 2.

24 Now, because of the -- because of the
25 wording, because of the form of the complaint in count 2,

1 we have one paragraph in count 2 that discusses anything
2 germane to this matter, other than signage; and that
3 particular paragraph alleged setback violations.

4 So, what we will be presenting to, your Honor,
5 today is despite the fact we believe there was an
6 abandonment, the law of the case is there wasn't, as it
7 now stands; and how do we address the signage, which was
8 the paramount interest of Ms. Knight in regard to her
9 complaint.

10 THE COURT: Let me interrupt. You're saying
11 you're -- you're not abandoning -- abandoning the
12 argument of abandonment, just --

13 MR. OEHLER: No, I'm not, your Honor.

14 THE COURT: Okay.

15 MR. OEHLER: I'm not arguing it today. I'm just
16 trying to give some history to your Honor as to -- as to
17 how we got Tract 4163 involved in 4076-B.

18 THE COURT: No, let me finish. My question is
19 4163 did not have the CC&Rs. 4076-B had the original
20 CC&Rs.

21 MR. OEHLER: Correct.

22 THE COURT: Your position is, even if Judge
23 Carlisle is right and it carried to 4163, those
24 particular CC&Rs have been abandoned through lack of
25 enforcement; so, it's a different argument.

1 MR. OEHLER: That's correct.

2 When I talk about abandonment in my -- in my
3 preamble here, I'm talking about the lands that were the
4 subject matter of 4163 had been abandoned from the 4076-B
5 subdivision; and as such, the fact that any CC&Rs were
6 recorded didn't apply.

7 I lost that argument, your Honor.

8 So, we're here dealing with the Carlisle law, if
9 you would; it is the law of the case as we are here
10 before the Court today.

11 So, our position and the defendants'
12 position is, your Honor, that even though -- even though
13 the Tract 4076-B CC&Rs are, for today's argument, to be
14 considered binding on Tract 4163, they are unenforceable
15 as to Ms. Knight.

16 They are unenforceable as a result of their having
17 been abandoned, practically speaking, 30 years ago.

18 How were they abandoned?

19 I think first, your Honor, we need to look at the law
20 dealing with restrictive covenants; and then apply that
21 law to the facts, and I think the reasonable way to
22 proceed on that basis is to first discuss, albeit
23 briefly, the law here in the state of Arizona and how it
24 has transitioned from the 1940s, 50s, 60s into this
25 century.

1 I think it is fair to say, your Honor, that when
2 we're dealing with a set of CC&Rs, such as those that
3 were recorded in Tract 4076-B, they included a non-waiver
4 paragraph.

5 That, your Honor, to some extent changes the game
6 plan when one is dealing with those CC&Rs.

7 The general law in Arizona -- and I think it is
8 pretty clear; I don't think there's a lot of fuzzy gray
9 areas -- is that if there is a non-waiver clause, which
10 means that despite the fact there may have been one or
11 two violations of one the covenants or two of the
12 covenants or three of the covenants, that is not enough
13 to push aside the non-waiver provision, which is involved
14 in the 4076-B CC&Rs if they, in fact, applied to Tract
15 4163; and for today's argument we are considering the
16 fact that they do based on the law of the case.

17 Your Honor, in my dispositive motion, I
18 cited what I believed to be virtually every one of the
19 current cases dealing with non-waiver issues.

20 In other words, where restrictive covenants included
21 non-waiver provisions.

22 Those cases, your Honor, include I think
23 most-importantly several court of appeals cases; and
24 actually, a case that was argued up in this neck of the
25 woods, Powell versus Washburn, which ultimately was a

1 supreme court case.

2 But they include -- and, I think, most-importantly,
3 consist of pretty-much in decade-order, Whitaker versus
4 Holmes, 1952 case. The Whitaker case dealt with what is
5 described as four sections of ground.

6 There were, in that litigation, 7 violations. That
7 was a 1952 case.

8 In 1954, your Honor, the court of appeals dealt with
9 Condos versus Home Development Company. That was a case
10 dealing with a liquor store that was attempted to be
11 built in a residential subdivision.

12 In that particular case, -- let's take a look at the
13 number of violations that were involved.

14 There were 5 minor violations. Those minor
15 violations consisted of -- there was a prohibition
16 against raising animals in the subdivision.

17 The proponent of the liquor store alleged, and I
18 guess successfully proved, that there was a chicken farm;
19 the Court drilled-down on that a little bit and found
20 that the chicken farm consisted -- and I quote -- of 6
21 roosters that were for sale.

22 The proponent of the liquor store alleged that, um,
23 there was a second-hand store. Well, the second-hand
24 store, according to the reported outcome, was that
25 somebody in a house was selling a few chairs and a stove.

1 This is an early 50s case, your Honor.

2 The set of CC&Rs, just like the CC&Rs for Tract
3 4076-B, prohibited the use of outhouses; so did the 1989
4 4076-B CC&Rs.

5 Anyway, the liquor store proponent appears to
6 have successfully shown that there were a total of nine
7 outside toilets in this subdivision.

8 So, that represented the potpourri, if you would, of
9 restriction violations. Certainly very, very, very minor
10 violations.

11 Then, perhaps, the sentinel case, Powell versus
12 Washburn. That was a case where the CC&Rs restricted the
13 property to manufactured homes.

14 The issue was whether or not a recreational vehicle
15 would fit that criteria. There weren't prior violations
16 there. It was purely a does-a-recreational-vehicle fit
17 the norm of a manufactured home.

18 So, it is really not a case, although important, it
19 is really not a case that is similar to this one nor that
20 certainly deals with waiver, non-waiver matters.

21 A 1948 case, O'Malley versus Central Methodist
22 Church; a home-only subdivision. Issue there was not
23 prior violations; it was whether or not the proponent,
24 the plaintiff, could build a church.

25 The Court found that a church fit within the purview

1 of that particular subdivision; despite the fact that it
2 was homes-only.

3 But then we get to the, really, two important and
4 almost on all-fours with the case that is before your
5 Honor today.

6 Burt versus Voice Stream, a 2004 court of
7 appeals case. The issue in the Burt case was whether or
8 not -- whether or not the homeowner's association could
9 stop the construction of a 50-foot cell tower that was
10 being proposed by Voice Stream.

11 Voice Stream's defense in that matter consisted of
12 allegations -- and I believe factual allegations, at
13 least to some extent, of prior restrictions being
14 violated; attempting, again, to avoid the non-waiver
15 clause or to offset it, if you would.

16 When we drill-down on that particular case, your
17 Honor, we find out what the prior violations were. They
18 were one home had a 30-foot flag -- it was a homes-only
19 subdivision, your Honor; a 30-foot flag pole.

20 There were two bell towers; and there was a 38-foot
21 cross. Those were the violations; not set-back
22 violations, not fencing violations, not color scheme
23 violations, not gate access to open areas.

24 The Court found that those violations, your Honor,
25 did not, in fact, throw out, if you would, the entire set

1 of CC&Rs because of the major change in the subdivision;
2 and the Court found for the homeowners.

3 The next case, your Honor, was on a -- on a
4 waiver issue was College Book Centers, and these were all
5 cited, your Honor, in my memorandum.

6 THE COURT: I have three or four of them up here
7 with me.

8 MR. OEHLER: Pardon me?

9 THE COURT: I have three or four of them up here
10 with me.

11 MR. OEHLER: Oh, okay.

12 THE COURT: Okay, go ahead.

13 MR. OEHLER: College Book Centers is a 2010 case;
14 probably the most recent and, really, technically-similar
15 case; at least on the basis of non-waiver in this
16 jurisdiction.

17 In College Book Centers, your Honor, we were dealing
18 with the proponent, the defendant, wanted to build a road
19 to access from one lot to another lot in the subdivision.

20 His basis for getting around the non-waiver clause
21 was the fact that there had been two other roads that had
22 been built within the subdivision previously.

23 So, the question was whether or not the non-waiver
24 clause was no longer effective because two -- two similar
25 violations had occurred.

1 The Court said that it was not adequate to pitch the
2 non-waiver clause.

3 In College Book Centers, your Honor, the Court
4 goes into pretty-graphic detail; and I think it's worth
5 actually repeating live today.

6 The two roads in question that had previously been
7 built were Thiele and Applegate Roads, but the Court said
8 at the bottom -- and I quote, Thiele and Applegate
9 roadways do not constitute frequent violations such that
10 a jury might reasonably infer waiver.

11 And it quoted Sterling Cotton Mills, a case out of
12 North Carolina, where finding 4 violations out of 62 lots
13 in the subdivision was insufficient to constitute waiver.

14 4 out of 62. Here we're dealing with roughly 225
15 lots in the matter before your Honor, and we're dealing
16 with hundreds, perhaps thousands, of restrictive covenant
17 violations.

18 But let's go on and talk a little bit more about
19 College Book Centers. The next case that our court of
20 appeals quoted was Pebble Beach Property Owners
21 Association, a case out of Texas, that prohibited mobile
22 homes.

23 Here there were 14 similar violations in an 800-lot
24 subdivision. 14 out of 800 lots.

25 I'll point out to the Court that in the case

1 before your Honor today we have a plaintiff whose own
2 home has at least 7 covenant violations; just her home,
3 to say nothing of the hundreds of other violations that
4 we'll discuss further.

5 The next case that the Arizona court quoted was
6 another Texas case; holding that five violations in a
7 56-lot subdivision was insufficient, as a matter of law,
8 in number, nature and severity to bar enforcement of a
9 waiver clause; and that was despite the fact that on one
10 street there were several setback violations.

11 Actually, the jury determined that there were 15
12 setback violations involving a subdivision in Virginia;
13 and found that -- excuse me; that was another Texas case;
14 that it did not constitute adequate basis in severity to
15 eliminate the non-waiver clause.

16 THE COURT: So, all these cases so-far are keeping
17 the waiver clause intact?

18 MR. OEHLER: Pardon?

19 THE COURT: These cases are keeping the waiver
20 clause intact?

21 MR. OEHLER: That's correct.

22 THE COURT: All right.

23 MR. OEHLER: The point that's important, your
24 Honor, is the number of violations and the severity of
25 the violations.

1 4 out of 62; 14 out of 800. Figure out the ratio.
2 5 out of 56. The Vir -- I guess it was the Wyoming case.
3 Keller versus Brayton.

4 Again, quoted by our court here in Arizona; declining
5 to find waiver of right to enforce, prohibiting
6 front-yard fence where there were 20 fence violations
7 out of a 157 lots. 20 out of 157.

8 The Court went on, you know, looking -- looking for
9 the definition of a frequent happening because that was
10 important in College Book Station; is this something that
11 frequently has occurred. Frequently or continuously.

12 Quoted Webster's II New College Dictionary, defining
13 frequent as happening or appearing often or at close
14 intervals, habitual, or regular.

15 Indeed, your Honor, that's precisely what we
16 have in the matter that is before the Court when we apply
17 the facts to the law.

18 The College Book Centers court, your Honor, I think
19 did the best that it could do as far as trying to set
20 some non-fuzzy gray parameters for what it was dealing
21 with; stated that so long as the violations did not
22 constitute a complete abandonment of the CC&Rs.

23 And what is a complete abandonment; a complete
24 abandonment of deed restrictions occurs when the
25 restrictions imposed upon the use of the lot, in a

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

5 Quoting *Condos versus Home Development*; case that I
6 earlier referred your Honor to.

7 So, we know then, your Honor, what -- under the
8 law of the case, the burden is on an individual, such as
9 my client, who is building within a 225 -- and because of
10 joining together of multiple lots, perhaps originally 250
11 or 60 lot subdivisions.

12 It is a heavy burden to show, based on what I believe
13 Arizona's case law to represent today, when we're dealing
14 with a non-waiver clause, I think we have to meet the
15 standard set forth that I just read to you in *College*
16 *Book Stations* as quoted in *Condos versus Home*
17 *Development*.

18 So, let's -- let's take a look then, your Honor,
19 at -- assuming this is the law, and I'm sure Ms. Knight
20 is sitting there saying wow, Mr. Oehler is making my
21 case. Just like you observed, your Honor. That was --
22 that was my point. Just like you did, Judge.

23 These were all cases that the court, the appellate
24 court level -- at the appellate court level, didn't feel
25 there were adequate in-number, severity from a time

1 standpoint, standpoint to toss the complete set of
2 restrictions that were originally placed against the
3 property.

4 So, the question before you, your Honor, I think
5 is a fairly simple one; we have submitted to the Court
6 multiple affidavits; affidavits under oath, surveyor,
7 engineer, other general contractor, two general
8 contractors; the defendant and one other general
9 contractor, a realtor, a specialty contract -- two
10 specialty contractors that have been very close to this
11 subdivision, literally since its birth in 1989; quite
12 unlike Ms. Knight.

13 First of all, your Honor, this chart, which
14 is really a blow-up, if you would, in slightly-different
15 format from what's in -- what's in my -- directly in my
16 motion. This is a starting point, your Honor.

17 This chart does not deal with the two items that are
18 in count 2 of Plaintiff's complaint; but what it does
19 deal with, your Honor, is we believe it meets the
20 standard, if you would, of the fact that there are
21 multiple, continuous, existing and significant covenant
22 violations.

23 The set of CC&Rs in question, your Honor, 4076-B,
24 have multiple paragraphs in the restrictions that really
25 aren't applicable any longer.

1 They -- they restrict things that are restricted
2 under county zoning requirements; like you can't raise
3 pigs in the single-family subdivision. You can't have
4 slaughter houses in the single-family homes-only
5 subdivision.

6 So, you know, we have not delved into that aspect of
7 this particular subdivision, your Honor.

8 What we do have is these are major covenant
9 violations, and there's a couple of stars here; um, these
10 -- these asterisks, if you would, are intended to say
11 that this chart excludes rear-yard setback violations.

12 That's -- that's a violation that's set forth, along
13 with the signs, in Ms. Knight's complaint.

14 They also don't involve existing violations regarding
15 minimum size. There are minimum-size restrictions in
16 these covenants, your Honor; and the affidavits that we
17 have filed clearly show multiple violations in regard to
18 minimum-size homes; where the homes that have been
19 constructed do not reach the square-footage requirements
20 of the CC&Rs.

21 So, this chart doesn't include those; but what it
22 does include is here is the material used for side and
23 rear wall. By side and rear wall, most graphic example
24 is golf course.

25 There are 19.6 -- and these are all of the homes in

1 all three tracts that are involved.

2 4076-B; 4163 and 4076-D, as in delta. 19.6
3 percent of the homes, 19.6, are compliant. 91.4 percent
4 don't comply.

5 Is that material?

6 Is that significant?

7 We believe it is.

8 The CC&Rs in this next category, paint
9 color, requires black wrought iron fence on the golf
10 course.

11 Where -- where does Ms. Knight's fence fall?

12 Right here in this 43 percent that aren't painted
13 black.

14 The most successful category of these covenants is
15 this one; the color of paint that was used on the wrought
16 iron fence. 57 percent compliant, your Honor.

17 Next we go to gate access to the golf course.

18 The CC&Rs specifically, specifically indicate that
19 there shall be no gate access to the golf course.

20 What has developed between 1989 and today?

21 42 percent don't have golf course access.

22 57.7 percent of the homes have golf course access.

23 Next category, your Honor. Lack of fence or
24 height violation.

25 Now, the CC&Rs specifically indicate the maximum

1 height that this rear-yard fence on the golf course can
2 be; and they indicate that there is no access to the golf
3 course, which means, obviously, they got to have a fence.

4 How many do? 49 and-a-half percent. Not quite half,
5 in fact, have vertical height-compliant fences.

6 50.5 percent, over half of the subdivision, is
7 non-compliant.

8 Antennas on the roof. They were a covenant that
9 was included.

10 I can hear Mrs. Knight chortle over there.

11 This particular covenant, your Honor, is very similar
12 to the sign covenant that she's arguing about.

13 Now, Mrs. Knight has a dish antenna on her
14 house. She's amongst the 71 percent of other homes in
15 the subdivision that violate that covenant.

16 Can she do that? Well, yeah, she probably can
17 because a governmental agency has indicated that that
18 type of covenant is improper and is not going to be
19 enforced; just like the signage issue that we will hear
20 about in a few minutes.

21 Next, your Honor, this -- how does this data fit
22 into College Book Station criteria. Total homes with one
23 or more violations; 2.8 percent. 97.1 percent have one
24 or more violation.

25 Your Honor, without -- without expending

1 upwards to an additional 30 or \$40,000, it was im --
2 practically impossible for us to go home by home and
3 inspect each home to determine the actual livable square
4 footage; so, we don't have a percentage data chart for
5 that, but you will note that the McKee affidavit, the
6 Kukreja affidavit, and the defendant's affidavit would
7 indicate that there are a multitude of homes that do not
8 meet minimum square-footage requirements.

9 Indeed, in plaintiff's Tract 4153, 8 -- 8 of the
10 homes in 4163 do not meet minimum square-footage
11 requirements. 8.

12 And, of course, Ms. Knight, I'm sure, will have her
13 neighbors, on lots that are too small to do it, build
14 additional square footage on their homes if she is
15 successful.

16 But 8 in her own small subdivision that I think have,
17 what, 25 homes in it.

18 So, let's take a look at the first area that is
19 complained of in Ms. Knight's complaint. There are two;
20 once again, signage and rear-yard setback violations.

21 We were -- we weren't able to determine, your Honor,
22 not a hundred percent of the rear-yard setbacks because
23 without getting court orders allowing, you know, actual
24 measurements, it's virtually impossible to determine on
25 interior lots; but with Tract 4163 I would advise the

1 Court that 100 percent, Ms. Knight's subdivision, 100
2 percent violate the rear-yard setback requirements of
3 Tract 4076-B. 100 percent.

4 And I'll show you in few moments, your Honor;
5 Ms. Knight's own residence that she openly admits is 9
6 feet 9 inches from the rear property line; not -- not
7 even 10 feet. 9 feet, 9. Let alone 20 feet, which is
8 required in the CC&Rs.

9 So, here, your Honor, the first column, the first bar
10 graph, deals with the plaintiff's tract; 4163. Zero
11 percent compliance with the set-back requirements.

12 100 percent violation.

13 How does that fit College Bookstore's program?
14 Question that the Court must ask itself.

15 Tract 4076-D, 20 percent. 20 percent are compliant
16 with a 20-foot setback. 80 percent violated.

17 How does that fit the program?

18 Overall, Tract 4076-B, 43 percent, 43.1 comply. 56.9
19 percent do not.

20 When you combine all of the three tracts together,
21 you have 64.1 percent that have constructed into the
22 rear-yard setback. 64 percent. 35.9 do not.

23 What is the plaintiff's?

24 What's the plaintiff's resolution about those
25 numbers? About these numbers?

1 Well, very simple. I'll have those people cut down
2 the portion of their house, these 64.1 percent; the
3 hundred-percent, which of course, would have to include
4 her own house. They'll cut down the encroachment, or
5 she's actually come with a remarkable idea that she has
6 espoused to the Court; the golf course a few years ago
7 was purchased by the Fort Mohave Indian Tribe.

8 So, to cure these violations, to cure these
9 violations, she is proposing that the owners go to the
10 Fort Mohave Indian Tribe and buy a 10-foot chunk of the
11 golf course.

12 So, their house, then, would be 20 feet back from the
13 golf course, and compliant.

14 And I suppose she believes that that will cure what
15 she argues about the violation of her view corridor.

16 Obviously, your Honor, it will have no impact
17 whatsoever on her view corridor.

18 One of the items that all of the cases talk
19 about, your Honor, is amongst other things the Court has
20 to be aware and apply, as it should in literally every
21 case to some extent, the equitableness of what's being
22 proposed, and the cleanness of the hand of the proponent.

23 This is a record of survey, your Honor; a record of
24 survey prepared by Mr. and Mrs. Knight. It shows her
25 house. Here's the golf course. This is her covered

1 patio, the dotted line. The distance between .5, this
2 corner, and that corner of her house, by her own
3 admission and by her own document that has been submitted
4 to this Court, is 9 feet, 9 inches.

5 So, she's got a 9 foot, 9-inch setback in a 20-foot
6 setback-required residence.

7 Then it goes -- it goes further than that, your
8 Honor. How clean are this -- this plaintiff's hands.

9 Here, your Honor, this is called a side setback that
10 I'm sure your Honor is familiar with.

11 How close can you build to a side property line?
12 Under the CC&Rs, your Honor, the answer to that question
13 is 5 feet.

14 What is Mrs. Knight's side setback at this
15 point? 4.25 feet according to her surveyor.

16 At this location, 4.6 feet for a side setback.

17 So, let's see what the -- let's see what these
18 translate to.

19 When we take it from a survey -- if I can get that
20 off. A survey to vertical depiction.

21 Here's some photographs that were attached to
22 the motion of Plaintiff and Mr. Knight's residence.

23 Remember, the covenants require wrought iron fencing
24 on the golf course.

25 THE COURT: You can just lay it down there.

1 I can see it.

2 MR. OEHLER: Okay. Require wrought iron fencing
3 on the golf course. This is not the plaintiff's home.
4 The plaintiff's home is over here behind the chain-link
5 fence. But what do we have; this is her property.

6 So, they require wrought iron fencing, and what we
7 have is some wrought iron, some concrete block. The
8 CC&Rs require black. Ms. Knight painted it white.

9 And here, your Honor, the lower photograph, this
10 -- this is a photograph from her neighbor's home; and I
11 think --

12 THE COURT: I can see.

13 MR. OEHLER: -- it's very important, your Honor;
14 and I think it's very telling, and I'll try this one more
15 time because I think it's difficult to see when it's on
16 the floor.

17 NANCY KNIGHT: Mr. Oehler, would you like me to
18 hold it up for you?

19 THE COURT: Just put it out here would be fine.
20 I can see it.

21 MR. OEHLER: I'm sorry. Where do you want it?

22 THE COURT: That's fine. That's just right.
23 That's fine.

24 MR. OEHLER: Okay. This is the all-important view
25 corridor that she complains of.

1 She doesn't want a house closer than 20 feet
2 because that's what the CC&Rs say; because if there is a
3 house, I don't know, half-mile away, a quarter-mile away,
4 it's going to block her view corridor.

5 Yet, here is what she has done in violation of the
6 CC&Rs, in regard to her next-door neighbor's view
7 corridor.

8 Chain-link fence, 15 feet high. You can see well
9 above the top of her roof the view corridor that is of
10 such great import to the plaintiff.

11 So, after all is that work getting that to
12 stick there, I got to take it down one more time.

13 This one I don't think I have to put up on the easel.

14 Here is a close-up of her neighbor's view
15 corridor; standard chain-link fence tubing, chain-link
16 fence. But this is an issue within the CC&Rs that the
17 plaintiff likes. She likes it because she calls it
18 chain-link cloth or fabric. She likes it because she has
19 decided that it is a safety factor, and her safety is
20 more important than the CC&Rs.

21 So, the CC&Rs clearly are important to her when she
22 likes them. They're pretty irrelevant to her; in fact,
23 they don't even require discussion, when she doesn't like
24 them.

25 And finally, I have one more, your Honor.

1 This is a chart that specifically addresses the
2 quantity of Ms. Knight's violations.

3 Now, you know, what she's going to tell you is gosh,
4 I bought this house, and somebody else created all these
5 violations.

6 Well, somebody else didn't create the white fence.
7 She built it. Somebody else didn't create the partial
8 block that included some wrought iron. She built it,
9 your Honor; and she built it knowing specifically what
10 the CC&Rs required.

11 So, here we are; these are Plaintiff's residence
12 violations. Rear-yard setback, 20-feet required. We
13 believe, at least in the Morris affidavit, his estimate
14 was 8.5 feet.

15 Ms. Knight's estimate is 9.1 feet. We'll go --
16 because we did, we did not have -- we did not have a
17 court order allowing us to go on her property to make
18 these measurements; we'll go with her 9.1 feet. 5 feet
19 required. 4.2 feet actual. This is side yard.

20 Okay. I showed you her own surveyors' data. Wrought
21 iron only required for rear-yard fence. Block used.
22 Admittedly, there was some wrought iron. Chain-link fence
23 is prohibited in the CC&Rs.

24 We don't call this chain-link fence. We call it
25 chain-link fabric for protection; and so, therefore, it's

1 okay, according to the plaintiff.

2 Rear-yard fence color, black required. White
3 installed. There it is right there.

4 Exposed antenna, prohibited. She installed it.

5 That data, your Honor, is specifically set forth
6 in the memorandum that was originally filed back in
7 December.

8 So, let's talk about the second item in the
9 second cause of action; signage. Signage really consists
10 of two totally-separate items.

11 First of all, there is a covenant restriction that's
12 in many of these types of subdivisions where the original
13 developer is selling the bare lots.

14 The reason that they install a prohibition against
15 for-sale signs on those lots is because they don't want
16 people who purchased the lot to be reselling it in
17 competition with them.

18 But it's really irrelevant as far as -- for purposes
19 of this discussion, what the underlying reason for that
20 very common paragraph is.

21 In this instance, your Honor, you will find
22 affidavits of the defendant stating, beginning in the
23 mid-1990s and consistently thereafter a significant
24 number of realtors, owners, owner-builders installed
25 for-sale signs, will-build and other marketing signage

1 throughout tract 4076-B, and tract 4076-D.

2 The practice continues today, without objection,
3 until the present litigation. This practice has occurred
4 continuously for at least 25 to, perhaps, 29 years.

5 Statement under oath.

6 Statement under oath. Douglas McKee. A licensed
7 general residential contractor holding a B general
8 license.

9 To whom, I might add, Ms. Knight sent a letter of
10 caution advising him that effectively he was going to be
11 getting in trouble because he knows what the CC&Rs say,
12 and as a general contractor when he's building for
13 somebody and they order this house and the County issues
14 a permit, and there is nobody to review the permit, the
15 house is built; but he's going to be in trouble now.

16 In any event, Mr. McKee, in regard to the
17 signage issue, under oath -- and he's got no skin in this
18 game, in reality, your Honor, because we're talking about
19 signs now.

20 By the way, Mr. McKee also testified in his,
21 under-oath statement, that for multiple clients he has
22 built homes that are less than 1400 square feet of living
23 area in the B tract.

24 Anyway, he said in regard to signs -- and I
25 apologize for getting off-track. Your affiant

1 consistently recalls, since at least 1994, that there
2 have been many signs from both contractors and single-lot
3 owners throughout all of the various Desert Lakes Golf
4 Course & Estates subdivisions, including 4076-B, offering
5 to build custom homes or simply for-sale offerings on
6 unimproved lots they either owned or for which they
7 represented the owners.

8 THE COURT: Mr. Oehler,

9 MR. OEHLER: Gentlemen --

10 THE COURT: Mr. Oehler, I just want to point out
11 you have now passed one hour on your argument.

12 MR. OEHLER: I have one?

13 THE COURT: You've gone one hour. You have 30
14 minutes left. Okay.

15 MR. OEHLER: Thank you, your Honor.

16 THE COURT: You're welcome.

17 MR. OEHLER: We were ultimately able to contact a
18 gentleman by the name of Kukreja, I think, is how he
19 pronounces his name.

20 His company bought approximately 183 lots from the
21 original subdividers in 1998, including multiple lots in
22 Tract 4076.

23 What does he say, your Honor?

24 What does he say about the signage issue?

25 Under oath, your Honor, I mean he now, I

1 believe, resides someplace in Florida or New York. The
2 availability of unimproved lots with for-sale signs or
3 construction of a future home was used not-only by our
4 home building company, but by many of the local builders
5 and lot owners through Tract 4076-B, marketing via
6 signage of this type was the marketing custom used by
7 all.

8 Under-oath statement, of which I would point out to
9 your Honor there is not a single under-oath statement in
10 any motion in favor of an action of this Court, or in
11 opposition to those that we have presented.

12 So, Ann Pettit, a realtor; a realtor against whom Ms.
13 Knight would appear as a result -- um, as a result of her
14 involvement on a very-marginal basis in this matter,
15 filed a complaint with the Arizona Board of Realtors.

16 In any event, Ann Pettit, a long-timer realtor
17 in Bullhead, a broker since 1988, a realtor since 1984;
18 so, even before the creation of this subdivision, has 50
19 current licensees in her office.

20 She states, in regard to signage, that from at least
21 the early 1990s your affiant, and your affiant's licensed
22 realtors have advertised their clients unimproved lots
23 and -- unimproved and listed lots in all Desert Lakes
24 Golf Course & Estates tracts, including 4076-B.

25 They've consistently used standardized real estate

1 sales signs, with and without riders, and posted the
2 subject signs on our customers' clients lots all in
3 conformity with other real estate office listings in the
4 Desert Lakes Golf Course & Estates areas.

5 She goes on; that your affiant and your affiant's
6 office has, for not-less-than 20 years, last/past,
7 utilized signs in many residential projects, including
8 most, if-not-all, of the various Desert Lakes Golf Course
9 & Estates tracts, including Tract 4076-B.

10 The subject signage were the -- where the lot owner
11 is the builder, and/or developer, who provides their
12 will-build-to-suit sign of appropriate size, and your
13 affiant's real estate firm provides a rider for
14 additional contact information.

15 Such signs, including riders, are within the standard
16 regarding signage measurements allowed by applicable
17 Mohave County or Bullhead City code ordinances.

18 And it says see Exhibit B.

19 Letter to plaintiff from ADRE regarding signage
20 issue, being a Mohave County sign ordinance issue.
21 They've referenced see Mohave County interpretation of
22 Mohave County's ordinance; Exhibit C to Ann's affidavit.

23 And why do I believe Exhibit C is worth
24 spending a couple more moments of my fast-going time is
25 because Ms. Knight filed a complaint with the State Board

1 of Real Estate; and then alleged -- alleged to Mohave
2 County that the sign in-question that says will build to
3 suit violates county sign ordinances because it's
4 off-site advertising; and indicates that the County is
5 corrupt; the planning director is corrupt; the inspectors
6 are corrupt; everybody is corrupt.

7 That the Department of Justice is investigating me.
8 That the Department of Justice is investigating my
9 client. That the Attorney General's Office is
10 investigating my clients as a result of their egregious
11 -- I think that's her word, her favorite word, perhaps,
12 -- conduct; and that County had better do something about
13 these sign violations.

14 So, we have two issues here, your Honor. We've
15 got multiple past -- literally since the birth of the
16 subdivision, continuous signage issues that have been
17 established in contradiction of the restrictions.

18 Then, your Honor, the legislature here in Arizona,
19 under Title 33, outlawed the prohibition of property
20 owners from advertising for sale, for lease indications,
21 inappropriate-sign signs on their properties.

22 In other words, they've basically gutted the
23 restriction.

24 So, now what the plaintiff is alleging is that
25 because Title 33, just like this antenna situation that

1 she likes, you know; the feds said you can't do this, so
2 she did it, even though the restrictions say she can't;
3 she likes it, and she's not complaining; but the signs,
4 she doesn't like it, and she has, as the documents
5 indicate, has filed several requests with the state
6 legislature, filed complaints with the legislative body
7 about her constitutional right to be protected from these
8 signs; and that is the basis for the signs have to go
9 away.

10 So, number one, the restrictions, your Honor,
11 are not enforceable; and number two, we believe and
12 obviously the County believed that the signs of my
13 client, and there are not a multitude of them, but the
14 couple of signs that are out there that say will build to
15 suit are not off-site advertising; they are allowed under
16 the ordinance; and the state real estate department told
17 the plaintiff that, you know, if you have an issue you
18 have to deal with the County; this case is closed, and it
19 is not appealable. Quote/unquote.

20 Your Honor, just on the happenstance that
21 Ms. Knight might say something that I would like to speak
22 about at the conclusion, I will end my initial
23 presentation at that point.

24 Thank you very much.

25 THE COURT: All right. Just for the record,

1 you've used an hour and 9 minutes. You have 21 minutes
2 left.

3 MR. OEHLER: Thank you.

4 THE COURT: All right. What I'm going to do, for
5 the court reporter's sake, Ms. Knight, is let you go
6 until about 5 of 3:00; then we're going to take a
7 10-minute recess. All right?

8 NANCY KNIGHT: About 5 till 3:00?

9 THE COURT: So, you're going to go 12 minutes
10 right now.

11 NANCY KNIGHT: 12 minutes.

12 THE COURT: I just don't want to -- if I take too
13 early, she's going to be back in here for --

14 NANCY KNIGHT: Do you think I can go 24?

15 THE COURT: Just -- just go.

16 NANCY KNIGHT: I've scripted this.

17 THE COURT: Okay.

18 NANCY KNIGHT: It's about -- I'm going to speak
19 quickly, and -- but I've got a script, so that if you get
20 behind.

21 THE COURT: Well, so, you're just going to read?

22 NANCY KNIGHT: My opening statement.

23 THE COURT: Okay.

24 NANCY KNIGHT: With all due respect --

25 THE COURT: All right. Go ahead.

1 NANCY KNIGHT: Your high -- I mean, your Honor's
2 high position, there exists a peremptory challenge under
3 A.R.S. 12-409; that the plaintiff bring allegations of
4 bias to the forefront before a lower court enters a final
5 judgment.

6 There exists a real possibility that bias is a
7 affecting court rulings. I understand the Court's close
8 ties to attorneys and Mohave County judges.

9 In the case of State versus Ellis, I quote:
10 Judges are by no means free from the infirmities of human
11 nature; and therefore, it seems to us that a proper
12 respect for the high positions they are called upon to
13 fill should induce them to avoid even a cause for
14 suspicion of bias or prejudice in the discharge of their
15 judicial duties, end quote.

16 As you may recall, you declared me a
17 vexatious litigant on August 16, 2018, with your failure
18 to understand the difference between the settlement and
19 the agreement in case number CV-2016-04026 that Mr.
20 Oehler and his cohorts Mr. Gregory, now Judge Gregory,
21 and Mr. Gregory's former law partner Ms. Elias, kept
22 mixing up as if they were one-and-the-same.

23 Even though you declared me a vexatious litigant and
24 awarded attorney fees to the law firm of Gregory and
25 Elias, and to the joindered Mr. Oehler, I continued to

1 place trust in the justice system and in the high
2 position you hold.

3 I believed at the time that you were just confused.
4 You even admitted so in court.

5 Because Mr. Oehler and Mr. Gregory kept clouding the
6 Court's view by calling the agreement the settlement, I
7 opened my oral argument in that vexatious litigant
8 hearing by attempting to clear up the confusion between
9 the settlement and the agreement, but you and the
10 defense attorneys continued to consider them
11 one-and-the-same.

12 You admitted you were confused as to why I didn't
13 file an appeal for the settlement; and I told you I was
14 not opposed to the settlement. Again, I am telling you
15 the settlement was the binding mediated settlement that
16 was reached on May 17, 2017, and on page 9 --

17 THE COURT: Ms. --

18 NANCY KNIGHT: -- Line 22 of the transcript, --

19 THE COURT: Ms. Knight, --

20 NANCY KNIGHT: -- Judge Gurtler states --

21 THE COURT: Ms. Knight, I don't mean to interrupt
22 you; but are you really going to spend the limited time
23 that you have in this case to relitigate --

24 NANCY KNIGHT: I need to get it into the record.
25 I'm sorry, your Honor.

1 THE COURT: To relitigate, and you haven't filed
2 anything.

3 NANCY KNIGHT: We're not relitigate -- no, I'm
4 just getting it into the record for -- in case there's an
5 appeal.

6 THE COURT: Okay.

7 NANCY KNIGHT: Anyway, Judge Gurtler states: It
8 is ordered adopting the settlement of the case.

9 The agreement was a surprise. Brought up, as we see
10 on page 10 of the transcript, with attorney Moyer and
11 attorney Gregory deciding to extend the case with a
12 formal written agreement.

13 Worse, the agreement was revised at the request of
14 attorney Gregory for terms that did not conform to the
15 adoptive settlement.

16 Terms, in my eyes, that attempted extortion and
17 fraud. There is a huge difference between the adopted
18 mediated settlement and the written agreement.

19 Due to my own attorney Moyer being complicit in
20 accommodating Mr. Gregory's request to have me pegged for
21 restoration of Mr. Gregory's clients entire rear-yard
22 fence, Mr. Moyer was asked to withdraw.

23 As a pro per plaintiff I asked both Mr. Oehler and
24 Mr. Gregory what they did not like about the language in
25 the original written agreement for paragraph 2 that

1 conformed to the binding mediated settlement, and they
2 both ignored me.

3 Instead, Mr. Gregory and Mr. Oehler set a course to
4 force me into signing an agreement against the terms of
5 the settlement with a joindered motion to compel that was
6 filed on July 20th.

7 Judge Carlisle agreed that Mr. Gregory's written
8 agreement revision to paragraph 2 did not conform to the
9 binding settlement, and stated that the language of
10 restoring the entire fence needed to be changed to a
11 portion of the fence.

12 But nonetheless, ruled that I pay attorney fees to
13 the two attorneys.

14 Apparently pro per plaintiffs do not get fair
15 rulings.

16 There were elements of surprise and fraud defined as
17 a clear misrepresentation -- misrepresentation of the
18 opposing party in that agreement; and plaintiff attempted
19 to correct the injustice of attorney feeds by filing a
20 rule 60 motion to set aside the judgment for attorney
21 fees.

22 Judge Carlisle awarded more attorney fees to the
23 two attorneys. Adding salt to the wound, the two defense
24 attorneys filed a motion to declare the plaintiff a
25 vexatious litigant.

1 Judge Carlisle was promoted to criminal court;
2 you became the judge, and you claimed my rule 60 motion
3 was harassment. It is not harassment when a party
4 attempts to protect themselves from the injustice.

5 I should not have been subjected to attorney fees for
6 a motion for compel me to sign an agreement that did not
7 conform to the parties mutually-agreed upon binding
8 mediated settlement, so that all three attorneys in the
9 case could bilk me for more money. My own attorney
10 billed me \$1200 for his complicit authoring of the
11 agreement.

12 Nonetheless, you declared me a vexatious litigant and
13 awarded the two attorneys more attorney fees. Your
14 warning that if I appealed I could end up with more
15 attorney fees awarded to the defense attorneys was taken
16 seriously. I had to accept your orders to pay the full
17 amount that the two attorneys requested.

18 The mediated settlement had been heard by Judge
19 Gurtler. Mr. Oehler's business partner and former
20 associate in his law practice. Judge Gurtler's court
21 order had serious -- had serious error that had to be
22 corrected to remove the words no fraud. That entire case
23 was rife with fraud.

24 It is unknown why Judge Gurtler attempted to enter
25 the words no fraud in the record when it was never raised

1 by the judge. The correction to remove the words no
2 fraud was finally done after numerous requests and
3 complaints to the clerk of the court.

4 You have apologized for your errors on your
5 documents, but refuse to correct the errors and omissions
6 on two documents that are part of the court record.

7 I did not file a fifth motion to amend the complaint,
8 as Mr. Oehler led to you believe. This disingenuous and
9 deceptive claim is not only reflective in his response
10 header, but throughout his memorandum, in an apparent
11 intent to make me look vexatious again; and it apparently
12 worked.

13 You attributed his inflammable header and the date of
14 his response to me; and then you refused to correct the
15 error in your court order claiming that if someone reads
16 my motion for corrections they will have the information.
17 That is a big if.

18 If they, being an appeals court, reads the court
19 orders first and never reads minute entries, they will
20 never know you agreed with the language I rewrote in the
21 -- to set the record straight. They will be inclined to
22 deny to even hear the appeal. Your refusal is wrong.
23 The language is inflammable, and it reflects badly on on
24 me.

25 Now, I have a impression of bias, and this time it's

1 not because you are confused. I do not take the
2 perception of being perceived a vexatious -- vexatious
3 litigant lightly.

4 The third incident of bias is not yet final. I'm
5 going to give you an opportunity to reconsider this
6 incident of bias in order to prevent you from making a
7 grave error that affects 673 indispensable parties in my
8 subdivision.

9 All of the confusion in this case and the thick file
10 was avoidable; but for Mr. Oehler and his clients'
11 repeated deception upon the Court that the
12 alphabetically suffixed tract names created separate
13 subdivisions. They do not.

14 And I given -- I've given you that documentation
15 from the County about final plats what those
16 alphabetically suffixed tract names mean.

17 The county land division regulations have now been
18 made a part of the record, and you still refuse to give
19 me full rights to prosecution in the subdivision, and
20 want to limit me and every other property owner, to
21 limited right to prosecution, and alphabetically suffixed
22 said tract.

23 An alphabetically-suffixed said tract is for a final
24 plat for a phase of development. Subdivision Tract 4076,
25 as a whole, was created by the approved preliminary plat

1 in 1988 for 300-plus acres to be built in phases.

2 I do not know why the Court refuses to address my
3 real and compelling preponderance of evidence that proves
4 a purposeful and deliberate language differentiation in
5 the CC&Rs between the restrictions for said tract lots
6 and the prosecution rights for property owners in the
7 entire subdivision.

8 Courts are not endowed with the high position they
9 hold to rule on assumptions. Court are supposed to rule
10 on law.

11 In the 1961 case of David Lillard and -- versus
12 Jet Homes it is cited, I quote: Where restrictive
13 covenants are imposed upon an area included within a --
14 within a single subdivision or plan of development the
15 restrictions are characterized as real rights running
16 with the land. The inure to the benefit of, and are
17 subsequently enforceable by, all grantees of property in
18 the subdivision which come under the same plan of
19 development.

20 The single subdivision Tract 4076 was created by
21 Desert Lakes Development, L.P. The intent on the part of
22 Desert Lakes Development is found in both the language in
23 the CC&Rs that differentiates covenants for lots in a
24 said tract and covenants for the subdivision as a whole,
25 and in the conduct that established special development

1 zoning for 20-foot setbacks, front and rear, and 5 feet
2 on the sides in 1989, and clarified again in 1993.

3 The single developer did not have to go back to the
4 County for special development zoning for each said
5 tract. The CEO was approved for special development
6 zoning setbacks for the entire subdivision Tract 4076,
7 from inception and before approval, for the Final Plat
8 for Phase I, Tract 4076-A.

9 And I would like to point out that Mr.
10 Oehler is deceiving the Court because that's what
11 happened to my tract; CEO of Desert Lakes Development had
12 nothing to do with that. The CEO of Desert Lakes
13 Development had planned Parcel VV for 22 lots.

14 They would have had plenty of space for 22 lots to
15 have front and back setbacks, according to the special
16 development zoning, but somebody got greedy and decided
17 they were going to squeeze 32 lots into the 5 acres, and
18 that's what happened; and that's what caused most of this
19 problem.

20 Five-foot setbacks were consistent; not only in the
21 subdivision Tract 4076, but throughout Mohave County. In
22 contrast, the 20-foot setbacks in subdivision Tract 4076
23 was not consistent throughout Mohave County.

24 In 1989, the county-wide front-and-rear setback was
25 25 feet. In 1989 and '93, resolutions were a part of the

1 existing court record.

2 Ignoring all of the evidence creates a
3 perception of bias on the Court.

4 The architectural committee guidelines in the
5 declaration provides evidence of intent to provide for
6 protections that assured development did not, in any way,
7 detract from the appearance of the premises, and are not
8 in any way detrimental to the public welfare or to the
9 property of other persons located within the tract.

10 That's on page 8 of Tract 4076-B CC&Rs.

11 The intent is for each said tract to be protected.
12 The intent was for any person in the subdivision to
13 prosecute violations. The intent was not for any person
14 in a said tract to prosecute violations.

15 The differentiated language is clear for prosecution
16 rights.

17 The defendants' deteriorated sheet metal
18 advertising signs is a clear conflict of the intent
19 for public welfare. Their signs -- their signs are
20 everywhere; not just in my alphabetically suffixed
21 Tract-B.

22 The defendants setback violations, front and rear, is
23 a clear conflict with the intent for the rights of other
24 property owners on adjacent lots in a said tract to have
25 unobstructed golf course views; not views of my patio.

1 He is clouding the Court's view by showing you
2 my patio. This is not the corridor. The golf course
3 corridor is from the back yard fences, and you can see up
4 and down the fairways

5 On adjacent lots in said tract to have unobstructed
6 golf course views; and also for the public welfare of
7 travelling our streets with unobstructed views.

8 The intent for the minimum 20-foot long driveways
9 back in 1989 was sufficient for standard automobiles and
10 pickup trucks. Today pickup trucks can be 19 feet long
11 according to GMC.com. The 20-foot driveway not
12 sufficient -- not as sufficient as it was 30 years ago.

13 The 15-foot driveway that Defendant Azarmi attempted
14 to get passed by the Board was clearly insufficient for
15 unobstructed views, as is the 18-foot setback in the
16 subject home in Tract-A that the plaintiff wishes
17 remedied by the jury in this lawsuit.

18 A taking of my right to prosecute violations in said
19 Tract-A amounts to a Court taking the rights of all
20 property owners against the intent of the developers who
21 created the language in the CC&Rs.

22 This is a grave error and reflects badly as a
23 perception of bias.

24 The original developers purpose for wrought iron
25 fencing, front and rear, is also for views.

1 Regarding the defendants' attorney arguing that
2 setbacks are not intended for use, and argues for the
3 Court to disregard Supervisor Johnson's statement on
4 protected views as stated during the hearing on Defendant
5 Azarmi's attempted violation of Desert Lakes front/rear
6 setbacks, Mr. Oehler would also have to argue for the
7 Court to disregard entire Judge Langford's successful
8 mediation to protect my views of the golf course and
9 surrounding area in case number CV-2016-04026.

10 Further, views are part of the pertinent language in
11 a 1995 California Supreme Court case.

12 Citizens for Colorado Covenant Compliance is an
13 unincorporated association that appealed their case for
14 rights to prosecution all the way to the California
15 Supreme Court, who reversed the appeals court decision in
16 favor of Citizens.

17 The Supreme Court discussion on restrictions is
18 relevant to our case both for commercial advertising
19 signs and for views. I quote: These subdivision
20 restrictions are used to limit the type of buildings that
21 can be constructed upon the property or the type of
22 activity permitted on the property, prohibiting such
23 things as commercial use or development within the tract,
24 limiting the height of buildings, imposing setback
25 restrictions, protecting views, or imposing similar

1 restrictions.

2 County Development Services has proven to do
3 their best to ensure their employees follow the special
4 development zoning for 20-foot front/rear setbacks.

5 Mohave County Development Services' efforts were
6 proven in the denial of a permit for the subject home
7 currently owned by the Roberts in Tract A.

8 That permit denial was circumvented, by Misters
9 Azarmi and Roberts, with a variance.

10 Mr. Azarmi's attempted violation of the CC&R setbacks
11 was in-progress at the time of the permit denial. He
12 convinced the volunteer Board of Adjustment members to
13 give him a variance on May 16, 2016, for the setbacks,
14 front and rear, claiming in words and by inference that
15 his attempted Board of Supervisors resolutions 2016-125
16 and 2016-126 would soon be approved.

17 He stated, according to the minutes of the meeting,
18 and I quote: These setbacks would be in full compliance
19 based on the new 15-foot setbacks, end quote.

20 Little did anyone know at the time that in less than
21 5 months his reduced setback attempt would be denied by
22 the duly-elected honorable Board of Supervisors.

23 Denying plaintiff's right to prosecute the attempted
24 violation as a count 1 violation in her complaint is
25 further perceived as bias favoring the defendants.

1 In Powell versus Washburn, it is stated that the
2 Arizona Supreme Court adopted the Restatement approach
3 for interpreting restrictive covenants holding that a
4 restrictive covenant must be interpreted to give the
5 effect to the intention of the parties and to carry out
6 the purpose for which it was created.

7 The Supreme Court noted that the Restatement approach
8 reinforces a contemporary judicial trend of recognizing
9 the benefits of restrictive covenants. The overriding
10 aim of the Restatement is to keep the original parties'
11 bargain in place.

12 It is not the job of the Court to misinterpret the
13 covenant that grants prosecution rights to all property
14 owners in the subdivision.

15 The Court has done just that. The Court wants to
16 interpret the covenant on prosecution rights as limited
17 to a property owner in a said tract. That isn't how the
18 declaration is written; nor does it conform to the county
19 land division regulations that assigns an alphabetical
20 suffix to subdivision tract number for the final recorded
21 plat for a phase of development in the whole subdivision.

22 Ignoring all of the evidence is perceived as bias
23 favoring a powerful and influential developer who refuses
24 to follow the rules in a self-serving interest for
25 profits.

1 Unfair competition profits from the development
2 services advertising; and profits from a larger building
3 footprint when setbacks are violated.

4 Interpretation of a contract is a question of
5 law. The plain and ordinary meaning of the word
6 subdivision is synonymous with tract. Whether we look to
7 Arizona Title 9 for municipality definitions, or statutes
8 section 11-806.01 for rules the county must use in
9 regulating approved preliminary plat that creates a
10 subdivision with a subdivision tract number, as a
11 precedent to submitting a final plat that is assigned an
12 alphabetical suffix to the subdivision tract number.

13 The State even has language that allows the Board
14 of Supervisors a waiver from procedure. Section
15 11-806.01(f) states, I quote: For any subdivision that
16 consists of lots, tracts or parcels, each of which is of
17 a size as prescribed by the Board of Supervisors, the
18 Board may waive the requirement to prepare, submit and
19 receive approval of a preliminary plat as a condition
20 precedent to submitting a final plat.

21 The Court -- end quote.

22 The Court -- the Court has a copy of my
23 subdivision's approved preliminary plat. You have copies
24 of final plats. You have the County's certificate signed
25 by three county officials certifying that they checked

1 the approved preliminary plat before the Final Plat was
2 sent to the Board for approval.

3 You have the County Land Division Regulations, page
4 37, section 3.8, that defined how the Final Plat would be
5 named with an alphabetically suffixed tract number
6 associated with the subdivision tract number. That is
7 what a said tract number is.

8 Tract 4076-A, Tract 4076-B, Tract 4076-C, et cetera,
9 are the recorded Final Plats in subdivision Tract 4076
10 that are referred to in the CC&Rs as said tracts.

11 Prosecution rights are granted to property
12 owners in the subdivision; not to property owners in a
13 said tract, as this Court wishes to claim. It is wrong
14 and it is unjust. It is a taking of rights from 673
15 current property owners, excluding the three primary
16 defendants in this case, and potentially a taking of
17 rights of a total of 759 lot owners when all the parcel
18 numbers are sold to separate individuals.

19 The burdens are benefits to the entire
20 subdivision; but only if every property owner has a right
21 to protect his investment, regardless of his said tract
22 designation.

23 The intent of the developers was protection of their
24 entire project into perpetuity. The Court suggested that
25 if I didn't like his decision I could file a special

1 action appeal for this matter. That is a very expensive
2 action for me to do. Even if I could find any evidence
3 that supports the suggestion.

4 In the interest of public policy for the contract,
5 as written in explicit language and in the public
6 interest, I need you to focus on the evidence without
7 prejudicial view favoring the defendants or their
8 attorney.

9 I intend to file one last attempt for reconsideration
10 of the dismissal of count 1. The new evidence is the
11 entrance sign to my street. My expectations are clear.
12 I bought a home in a subdivision named Desert Lakes Golf
13 Course & Estates; and the expectation was that a golf
14 course master planned community has rules established
15 that are to be followed.

16 Courts have no right to abandon those rules with an
17 improper interpretation of the contract. Judge Carlisle
18 erred. You do not have to follow suit. I plead with the
19 Court to set aside any clouding of the Court's view on
20 this case and follow law, precedent, and intent of the
21 original developer for all property owners to have
22 prosecution rights in the entire subdivision.

23 Defendant Roberts should not be dismissed. His
24 actions were just as egregious as the other principal
25 defendants in this case.

1 Prosecution serves justice only when the Court is not
2 biased.

3 Regarding the advertising signs, all three
4 judges on this case to date had an opportunity to
5 evaluate real evidence in support of declaring these
6 signs off-premises advertising.

7 On August 24, I believe it was, Judge Carlisle wrote
8 in his court order that he could have ruled on the
9 controversy over statute 33-441 if he had a photo of the
10 sign. I did provide a photo, as Exhibit 1, on July 31.

11 Is someone now tampering with evidence?

12 This is the sign. Wind-rusted, wind-blown, and
13 now these signs are coming apart and off the rider; who
14 knows where they ended up.

15 The two subsequent judges in this matter read the
16 complete file to know they could rule with photographic
17 evidence, and the plaintiff submitted a preponderance of
18 additional real evidence that included more photos
19 including dilapidation, a determination from the
20 Department of Real Estate's investigation and the County
21 ordinance on signage.

22 It has been shown that the County definition of an
23 unlawful sign is if it becomes dangerous to public safety
24 by reason of dilapidation.

25 There exists no real evidence to support a claim that

1 the signs are for sale signs. We now know, based on the
2 March 21, 2018 building permit, on land owned by Jordan
3 and Gina Grice in Tract 4076-B, that setback violations
4 continued and build-to-suit advertising signage results
5 in jobs on land not owned by the Ludwigs.

6 This fact is evidence that the advertising signs in
7 subdivision Tract 4076 provides a competitive advantage
8 to Fairway Constructors, Inc. An unfair competitive
9 advantage since they are the only developing company with
10 development services signs on lots in the subdivision.

11 The Court does have constitutional authority to
12 correct the ambiguity in the language of statute -- sign
13 Statutes 33-441, 33-1808 and others. I think there's
14 four altogether.

15 The ambiguity is that the statute does not specify if
16 for sale signs on improved lots are prohibited from
17 restrictions. All statutes related to for sale, for rent
18 and for lease signs are easily interpreted for an intent
19 on developed lots. You can't have an indoor sign on an
20 undeveloped lot. You can't have an open house on an
21 undeveloped lot. There would be no purpose for renting
22 or leasing an undeveloped lot.

23 Plaintiff understands the Court may prefer
24 avoidance of a political controversy in correcting a
25 legislative action.

1 Whatever the reason, for not attempting to correct
2 this ambiguity, it has no impact on the subject case.
3 The defendants signs are not for sale signs.

4 Any interpretation that the defendants' signs are for
5 sale signs is refuted by Plaintiff's real evidence that
6 includes documents and photographs. The county
7 regulations on signage proved these signs are
8 off-premises advertising, county regulations.

9 The photographs proved dilapidation and risk of harm
10 to persons or property. The County ordinance defined
11 illegal signs as dilapidated signs.

12 All of the plaintiff's foundational real evidence is
13 relevant, material and competent in accordance with the
14 state codes and federal rules of evidence.

15 The defendants provided no real evidence to support
16 the claim that their signs are for sale signs. Any
17 ruling favoring the defendants on signage is a biased
18 view considering all of the evidence in the record to the
19 contrary.

20 These are my closing arguments on my motion for
21 summary judgment on signs.

22 Now we can take a break, your Honor. I've
23 got to get some water.

24 THE COURT: Well, let's just make a record before
25 we do that.

1 You used, I think -- 1:42; so, you used 30 minutes of
2 your hour and a half.

3 NANCY KNIGHT: Okay, good.

4 THE COURT: Okay. So, Mr. -- so, you're sitting
5 down now and letting Mr. Oehler do his response; and then
6 you'll respond to him? Is that what -- when we come
7 back? Is that what your plan is?

8 NANCY KNIGHT: As far as signs, I'm done. You
9 know, I'm -- my motion for the thing on signs, that was
10 it. That was encapsulated.

11 THE COURT: Okay. I've got -- I've got your
12 motion. I've got that part.

13 NANCY KNIGHT: Okay.

14 THE COURT: But you weren't done arguing the
15 motion for summary judgment?

16 NANCY KNIGHT: Yeah, that's coming next, after
17 break. I think you wanted to break.

18 THE COURT: Yeah, I want to break. And, more
19 importantly, the court reporter needs a break. I could
20 keep going, but we're going to take 10 minutes. We'll
21 come back at 3:25. You have used 30 minutes.

22 Mr. Oehler has used an hour and 9 minutes.

23 So, as you can tell, we're going to be
24 pushing here to get done by 5:00. So, let's do that.

25 All right. 10 minutes.

1 (The proceedings recessed from 3:13 p.m. until
2 3:24 p.m.)

3 THE COURT: We're back on the record in
4 CV-2018-4003. Show the presence of parties.

5 Ms. Knight, you've used 30 minutes.
6 Go ahead.

7 NANCY KNIGHT: I was going to start off with the
8 indispensable parties, so I guess I'll read it anyway.

9 Indispensable parties that have not been joined for
10 Tract 4076-B, Tract 4132, which I recently discovered is
11 a fourth tract involved in the CC&Rs for Tract B, those
12 lots in Tract 4132 are defined in -- on one of the pages
13 of the CC&Rs.

14 So, there's all of the Tract B, 4132; all of Tract D
15 because that is also in the CC&Rs. It was -- it was
16 developed with the frontage road, even though the new
17 CC&Rs for Tract D didn't -- didn't specify a frontage
18 road.

19 It's very -- this development is very confusing.

20 But anyway, so, and then, of course, my tract
21 runs with the land because Parcel VV runs with the land
22 for Tract B.

23 There's a total of 252 property owners; and in my
24 opinion it is necessary to join these parties before
25 dismissal of this case can be granted by the Court.

1 I've made every effort to assist the defense attorney
2 with a list of owners of all lots in subdivision Tract
3 4076. The defendants have made no effort to join
4 indispensable parties, as is necessary, for their intent
5 to abrogate the CC&Rs.

6 I had to file a motion to dismiss defendants' motion
7 for summary judgment for failure to join the
8 indispensable parties today.

9 In Gila Bend versus Walled Lake Door Company,
10 an Arizona case, I quote: In Arizona, the test of
11 indispensability is whether the absent person's interest
12 in the controversy is such that no final judgment or
13 decree could be entered, doing justice between the
14 parties actually before the Court and without injuriously
15 affecting the rights of others not brought into the
16 action, end quote.

17 In Karner versus Roy White Flowers, Inc., I
18 quote: It is only necessary to join other lot owners in
19 an action to abrogate, not to enforce CC&Rs, end quote.

20 I plead with the Court to dismiss the
21 balance of the oral argument. But I've lost that
22 complaint because I think you opened your hearing today
23 by saying you dismiss my motion for --

24 THE COURT: I denied those motions.

25 NANCY KNIGHT: Correct?

1 THE COURT: That's correct, yes.

2 NANCY KNIGHT: Okay.

3 THE COURT: But I will tell you that they were
4 untimely; and I've just denied them. We're going forward
5 with it.

6 NANCY KNIGHT: I think your court order will
7 explain why, right?

8 THE COURT: I hope so, yes.

9 NANCY KNIGHT: Okay. So, material facts for the
10 jury. I have been adjudicated rights to prosecute
11 violations in Tract 4076-B. Count 1 setback violations
12 occurred in Tract B prior to the June 11, 2018 court
13 order signed by Judge Carlisle.

14 And someone has written in court orders that anything
15 that occurred is prosecutable violation; and violations
16 are count 1.

17 Count 1 setback violations continued to occur in
18 Tract B during litigation.

19 Causes of action common to all counts in the original
20 complaint include signage on unimproved lots, building
21 and projection setback violations; and attempted building
22 setback violations.

23 Violations occur when a party decides to circumvent
24 or ignore the provisions cited in the CC&Rs. The
25 defendants both ignored and circumvented the provisions

1 of the CC&Rs.

2 It can be shown by plot plans that setbacks were
3 violated. Setback violation is a material fact for the
4 jury.

5 And I noticed I have had no real evidence
6 confirming any of this bar graph data that the defendants
7 have provided.

8 The causes of action for count 1 of the plaintiff's
9 original complaint included the proposed setback
10 resolution amendment that has been proven to be
11 orchestrated by Defendant Azarmi as the proponent.

12 It can be shown by video recording and by emails
13 that the attempted setback violations were committed by
14 Defendant Azarmi.

15 It can be shown that Mr. Azarmi's attempted violation
16 of the CC&R setbacks was in progress at the time of the
17 permit denial for the subject home in Tract A. He
18 convinced the volunteer Board of Adjustment to give him
19 a variance on May 16 for the setbacks, front and rear,
20 claiming in words and by inference that his attempted
21 Board of Supervisor resolutions would soon be approved.

22 And I already told you what he -- what was quoted out
23 of the -- out of the minutes.

24 Financial compensation for me to prevent this
25 attempted violation is warranted. Financial compensation

1 is a material fact for the jury.

2 I fully expect that the Court will reconsider
3 dismissal of count 1 for Tract-A given the preponderance
4 of evidence that there exists one subdivision, namely
5 subdivision Tract 4076, and that final plats are given
6 alphabetically suffixed tract numbers appended to the
7 approved preliminary plat's legal name of the subdivision
8 such as 4076-A through 4076-F.

9 A single developer, Desert Lakes Development, created
10 a declaration for said tract lot restrictions and
11 conditions; and the responsibility for prosecution of
12 violations, threatened and attempted, was left in the
13 hands of all property owners in the subdivision Tract
14 4076, regardless of what phase of development their lot
15 is situated in.

16 It can be shown through the plot plan for the home in
17 Tract A that front and rear setbacks were violated. It
18 can be shown that Mr. Roberts was complicit in
19 circumventing the permit denial from Development
20 Services.

21 It can be shown that Mr. Azarmi and Mr. Roberts
22 convinced the volunteer Board to approve a variance.

23 It can be shown that disingenuous claims were made to
24 the volunteer Board of Adjustment. Violations are
25 material facts for the jury.

1 Remedy for setback violations is available.

2 Remedy is a material fact for the jury.

3 It can be shown that real estate advertising espouses
4 no HOA, which the plaintiff alleges creates a perception
5 that no CC&Rs exist.

6 Escrow does not provide a copy of the CC&Rs during or
7 after close of escrow. Abandonment, therefore, cannot be
8 adjudicated for lack of knowledge. Abandonment, without
9 knowledge of the CC&Rs, is a material fact for the jury.

10 Complete abandonment does not exist. It can be shown
11 that about 25 percent of the lots in the subdivision
12 remain vacant. Therefore, complete abandonment of the
13 CC&Rs in the subdivision is impossible to claim at this
14 time.

15 Complete abandonment is a material fact for the jury.

16 Subdivision Tract 4076 is desirable. No reasonable
17 person would judge our subdivision CC&Rs so thoroughly
18 disregarded that their effectiveness has been destroyed
19 and defeated the purposes for which they were intended.

20 The existing violations have available remedies to
21 substantially achieve the intent of the purpose of the
22 covenants.

23 The visual appearance of our homes is attractive and
24 maintained. Our wrought iron fences are aesthetically
25 attractive regardless of paint color. The golf course

1 that was a part of the original general plan of
2 development still exists. The entire image of the
3 subdivision is harmonious, aesthetic and appealing.

4 It can be shown that investment in private ownership
5 continues in the subdivision. It can be shown that home
6 prices have risen substantially between 2018 and 2019.
7 Home prices rose an average of 24.63 percent in the
8 subdivision as a whole. 24.61 percent in Tract A. 19.55
9 percent in Tract B. 18.58 percent in Tract C. 16.55
10 percent in Tract 4132; and a whopping 43.88 percent in
11 Tract 4163 for lots adjacent to the golf course.

12 Thorough disregard for the CC&Rs such that their
13 effectiveness has been destroyed and defeated the
14 purposes for which they were intended is a material fact
15 for the jury.

16 Another material fact for the jury is whether
17 available remedies exist to substantially achieve the
18 intent of the purpose of the covenant.

19 Undersized lots only the exist in Tract 4163.

20 Frank Passantino had no direct hand involved in
21 what happened to 4163.

22 The 6,000 square-foot minimum lot size approved by
23 the County for all lots in subdivision Tract 4076 was
24 violated; however, due to purchaser's combining lots only
25 13 out of the 759 buildable lots in the entire

1 subdivision Tract 4076 are outliers. That's 1.7 percent
2 of the buildable lots. These outliers affected the
3 average home price for the period between 2018 and 2019.

4 So, those lots, small lots, they only rose about
5 9 percent.

6 The special development minimum 20-foot rear-yard
7 setback was only violated by the County in Tract 4163.
8 Due to purchasers combining lots, only 25 out of the 759
9 lots are in a County-approved state of violation. That's
10 3.3 percent, subdivision-wide.

11 A material fact for the jury is whether the
12 percentage should be calculated for an effect on the
13 entire subdivision or only for the 290 lots in the
14 limited adjudication -- adjudicated area, and that would
15 be 8.6 percent.

16 What percent constitutes frequent violations is a
17 matter of fact for the jury. It can be shown that
18 setback violations, front and rear, on my property are
19 due to no fault of my own.

20 A jury needs to rule on remedy for violations due to
21 no fault of my own, and consequently no fault of any
22 property owner with violations due to no fault of their
23 own.

24 It can be shown that when clustering occurs, as is
25 the case in Tract 4163, where all homes have a 10-foot

1 rear-yard setback, the purpose of golf course views for
2 lots adjacent to the fairways has not been defeated.

3 Views and a ruling on any defeated purpose are
4 material facts for the jury.

5 Setbacks are the primary violations in this case to
6 date. Attempted setback violations and actual building
7 and projection setback violations, front and rear.

8 There is no evidence to conclude that the setbacks
9 have been violated to the extent that any reasonable
10 person would be able to consider the existing violations
11 as abandonment of the setback restrictions.

12 What constitutes frequency violations, complete
13 abandonment of the setback restrictions, and a change in
14 the character of the subdivision due to setback
15 violations are material facts for the jury.

16 Defendants claim that count 2 is the remainder of the
17 complaint. That is false; and was already ruled as an
18 inaccurate claim made repeatedly by the defendants.

19 Judge Carlisle corrected the defendants in his court
20 order, and Judge Carlisle's words in the April 2 of 2018
21 transcript exclusively gives the plaintiff the right to
22 preserve count -- pursue count 1 violations in this same
23 complaint; albeit for only Tract 4076-B violations.

24 Judge Carlisle only dismissed count 1 with respect to
25 the Roberts home. The Roberts and the other defendants

1 are subject to the causes of action in count 1 for the
2 Roberts home.

3 The entire fiasco limiting plaintiff's right to
4 prosecute violations in only Tract B has been found to be
5 an error of the Court in misinterpreting the difference
6 in the language of the declaration for said tract and
7 subdivision. They are not one-and-the-same as has been
8 the position of the Court to date.

9 The subdivision is Tract 4076, and the said tract is
10 an alphabetical suffix appended to the subdivision name
11 for the final plat that is recorded before construction
12 begins.

13 I've limited my complaint to the alphabetically
14 suffixed said Tracts A and B for this matter.

15 I fully expect dismissal of the Roberts to be
16 reversed. I have no intention of searching Development
17 Services records to seek out additional violations in
18 Tract A.

19 I do expect the Court to grant my rights to prosecute
20 violations for this one home in said Tract A, as was the
21 intent of covenant 20 in Book 1641, page 897, for
22 prosecution rights in the subdivision known as Tract
23 4076.

24 I will be filing a motion for reconsideration
25 with one more piece of new evidence for my rights and

1 expectations for my purchase in this master planned
2 community.

3 I'm not prosecuting violations in two said tracts.
4 Tract C, which is a Phase IV, which is Phase IV on the
5 approved preliminary plat and it's situated on the
6 easterly side of a main road; and Tract 4159, which is
7 not even a part of this approved preliminary plat for
8 subdivision Tract 4076. Tract 4159 is comprised of a few
9 lots that had been a part of a Mohave Mesa Acres.

10 The cause of action for part 2 is preliminary and
11 permanent injunction -- injunctions enjoining Defendants
12 from all current signage violations on unimproved lots,
13 for preliminary injunctions enjoining defendants from any
14 existing or future violations of the CC&Rs, including but
15 not limited to setback violations and signage on
16 unimproved lots.

17 Reasonable monetary compensation that does not exceed
18 the jurisdictional limit of the Court, including but not
19 limited to filing fees, compensation for hours of
20 research, emails, letters, postage; and the physical and
21 emotional distress from the battle to protect my Desert
22 Lakes Community from CC&R violations which, in turn,
23 threatened my property values and enjoyment of home.

24 Injunctive relief is a matter of material fact for
25 the jury.

1 The defendants claim that the CC&Rs have been
2 abandoned; and that there is no issue of material facts
3 in this case. There exists a multitude of material facts
4 for the jury in this case.

5 Regarding Plaintiff's standing. The defendants'
6 continuous false claims of abandonment of Tract 4163 from
7 the subdivision includes bad faith affidavits acquired in
8 their rally for support.

9 I have had to repeatedly defend that Parcel VV, where
10 my lot is situated, was not abandoned. The truth is that
11 Parcel VV's zoning for multi-family housing was
12 abandoned, and the abandoned zoning reverted Parcel VV
13 back to residential acreage for 22 single family lots by
14 the original developers, Desert Lakes Development.

15 I was going to give overheads, but I don't think
16 I'm going to have time. So, the resolutions are 90-362,
17 91-98 and 91-185.

18 Defendant Azarmi served on the Planning Commission
19 for nearly 15 years and, therefore, knew or should have
20 known that it was the multi-family zoning that was
21 abandoned.

22 He and attorney Oehler chose to deceive the Court
23 with the repeated reference to the abandonment of a
24 sliver of Parcel KK from the golf course as abandonment
25 of both Parcel VV and Parcel KK from the subdivision.

1 Parcel VV land was an original part of Phase II in
2 the 1988 preliminary plat that created subdivision Tract
3 4076.

4 The second phase of development was labeled Tract
5 4076-B, and since the CC&Rs run with the land, Parcel VV
6 is subject to Tract 4076-B CC&Rs recorded in 1989.

7 This matter of law has been adjudicated and reuttered
8 in court records.

9 This case against the subject defendants has a
10 potential to establish a new precedent, by jury or by
11 appeal, for a very large subdivision with a frequency of
12 specific violations to be determined by jury or an
13 appeals court.

14 Rule 56. I filed a motion on February 28th for
15 clarification of what part of Rule 56 I did not follow in
16 my response, stating in the conclusion, I quote:

17 Plaintiff pleads with the Court to clarify what part of
18 the rule was not followed, and to grant Plaintiff leave
19 to amend her complaint for errors and/or omissions.

20 The 60-day time limit, according to the Arizona
21 Constitution for the Court to respond, has passed; with
22 no opportunity to amend errors and/or omissions, nor any
23 clarification from the Court on what part of the
24 procedure I did not follow.

25 In Wigglesworth versus Mauldin, I quote:

1 Generally, before granting a motion to dismiss on the
2 pleadings a Court should give a defendant a chance to
3 amend if that would cure the defect, end quote.

4 In Haines versus Kerner I quote: A pro per
5 litigant should be given a reasonable opportunity to
6 remedy defects in his pleadings if the factual
7 allegations are close to stating a claim for relief,
8 end quote.

9 The American Bar Association has standards that
10 allows courts to help pro se litigants with regard to the
11 pleadings they file.

12 This case should not be dismissed due to any
13 error or omission in Plaintiff's response to the motion
14 for summary judgment.

15 A preponderance of factual allegations, supported by
16 real evidence, exists in the record for relief from the
17 Defendant's plea for dismissal.

18 Plaintiff expects the Court to respect -- I
19 mean, to respond to my plea for knowledge as to what I
20 did not follow.

21 I expect this is not the last motion for summary
22 judgment that the defendants will file; and I do not want
23 to keep making the same mistakes they claim that I made.

24 The Court needs to address my motion for
25 clarification.

1 Plaintiff has suffered substantial emotional and
2 physical distress; who found herself having to spend
3 hours of sleepless nights conducting research and sending
4 requests for public information to the County in order to
5 finally prove her original complaint was valid for
6 prosecution rights in Tract A, and that the defendants
7 and Mr. Oehler are suspect of fraud upon the Court.

8 Compensation is warranted. When matters of fact
9 exist for the jury, the case must go to trial.

10 Affiant statements are suspect of fraud.
11 Cross-examination of the affiants requires a jury trial.
12 A class 4 felony or perjury are punishable offenses.

13 Necessary and interested parties. Plaintiff has
14 served all necessary and interested parties in the
15 lawsuit to date.

16 An amended complaint will be forthcoming to name
17 additional defendants who violated the CC&Rs during
18 litigation, and the current owners of homes who will have
19 an interest in the lawsuit.

20 While the case of Standish versus White Mountain
21 Vacation Village Subdivision does not establish legal
22 precedent, discussion is food for thought upon which
23 Plaintiff relies, especially given that remedy for
24 setback violations includes a cutting-away of the
25 violating building projections.

1 In the Standish case lot owners were approved for
2 violations by the subdivision's homeowners association.
3 In our case, the County approved the offending
4 improvements.

5 According to the CC&Rs, the more restrictive setback
6 governs over any County variance or County ordinance.

7 The pertinent part of the supreme court discussion, I
8 quote: Lot owners who had previously received approval
9 from the HOA would be required to remove the alleged
10 offending improvements, end quote.

11 I repeat for emphasis. Required to remove the
12 alleged offending improvements. Remedy is a matter of
13 fact for the jury to decide.

14 Plaintiff is following the rules of procedure by
15 joining the necessary and interested lot owners, as well
16 as those who committed the setback violations; such as
17 Fairway Constructors, who is a party to the CC&Rs as
18 owners of the lot in the subdivision.

19 A material fact for the jury is who is the
20 responsible party who is required to remove the alleged
21 offending improvements.

22 In this matter, Mr. Roberts was complicit in the
23 approval for the variance to violate the CC&Rs.

24 Abandonment of a party's right to enforce a
25 violation. Lot owners must be able to see a violation in

1 order to enforce a CC&R.

2 For example, livable space is not visible from the
3 exterior of a home. In a subdivision of 571 built homes,
4 it would be a prohibitive burden to do a search of every
5 Development Services plot plan to see if a livable space
6 violation had occurred.

7 However, if a violation has been identified for
8 a subject home, and the property owner does nothing about
9 it, abandonment can be claimed in the future.

10 Therefore, Plaintiff is obligated to add Does for
11 livable space violations to her future proposed amended
12 complaint.

13 The Court is required to grant such an amendment in
14 order to prevent prejudicing this case and any future
15 case in relation to livable space.

16 The plaintiff can see wood fence materials in a
17 property owner's yard and, therefore, a wood fence
18 violation is another potential amendment to the existing
19 complaint.

20 The potential new defendants' attorney costs could be
21 avoided by compliance; and therefore, a registered letter
22 to the potential defendants asking for removal of the
23 wood fence is preferred.

24 Plaintiff remains in this state of defense against
25 dismissal of the case and must await the court order on

1 this dispositive motion before proceeding with a
2 potential mailing of a registered letter asking for
3 compliance.

4 The defendants claim that 75 percent of the
5 subdivision's homes have been built in contradiction of
6 the CC&Rs is not a relevant nor plausible claim.

7 First, each restriction must be evaluated
8 independently. You cannot bundle all of the various
9 possibilities of violations in 4076 for one calculation
10 due to the non-waiver clause that is consistently cited
11 in all versions of the alphabetically suffixed said tract
12 declarations.

13 It states: Invalidation of any of these
14 restrictions, covenants or conditions above by judgment
15 or court order shall in no way affect any of the other
16 provisions thereof, which shall remain in full force and
17 effect.

18 That's clause 19 in 4076-B CC&Rs.

19 For example, even if the defendants found 75
20 percent of the fences to be painted some color other than
21 black, it would not affect the small frequency of setback
22 violations that would remain in full force and effect.

23 Secondly, the law provides for remedy such that
24 any violation can be restored to the intent of the
25 declaration. Wrought iron fences can easily be painted

1 black.

2 Setback violations have a cutting away remedy just
3 as I had to cut away my side-yard fence and my adjacent
4 neighbor's rear-yard fence to restore compliance for
5 fence height and steel rail restoration for views.

6 And, by the way, it was the County that required T&N
7 Development, who built my home, to file -- to file an
8 assurance and even take out a loan that he would build a
9 block -- a cement block bottom part and steel rails above
10 it; as part of the County assurance for fences.

11 Secondly, the law provides for remedy. Oh, I
12 did that already.

13 While the motion for dismissal at this time is
14 futile, in my opinion, I take this time to address the
15 appeals court authority.

16 An appeals court has authority to rule on both law
17 and fact; and therefore, in an effort to be proactive in
18 attempting to prevent defendants from a futile appeal, I
19 will cover areas of law and fact here.

20 In *Condos versus Home Development Company*, I
21 quote, complete abandonment of deed restrictions occurs
22 when the restriction imposed upon the use of lots in a
23 subdivision have been so thoroughly disregarded as to
24 result in a change in the area as to destroy the
25 effectiveness of the restrictions and defeat the purposes

1 for which they were imposed.

2 It can be shown that as of March 18, 2020, the
3 subdivision still had nearly 25 percent of the 759
4 buildable lots still unimproved.

5 Thorough disregard and complete abandonment of the
6 CC&Rs for setbacks, therefore, has not occurred.

7 It can be shown that the defendants' setback
8 violations have remedy; therefore, the long-term
9 effectiveness of the restriction and purposes for which
10 these front and rear setbacks were imposed will not be
11 defeated.

12 Regarding any court order that may invalidate a
13 CC&R. Even if an appeals court could find a restriction
14 that is deemed abandoned, this case could not be
15 dismissed for the other restrictions that cannot be
16 deemed abandoned, such as the setbacks that shall remain
17 in full force and effect.

18 The original developers did not have unclean hands in
19 the creation of Tract 4163, unit E, for a 32 lot
20 subdivision in Parcel VV.

21 Ludwig Engineering is the culpable -- is culpable for
22 this re-subdivision, and possibly for the flooding of 2
23 of those 32 lots in Tract 4163.

24 Remedies upon breach of a CC&R.

25 Plaintiff's ongoing research into CC&Rs revealed,

1 in April, 2020, a difference in remedies available to the
2 injured party between a restriction and a condition.

3 A breach of a condition allows a property owner the
4 right to entry for removing the offending violation
5 without risk of a claim of trespass or -- and to recover
6 costs for removal of the offending violation.

7 An example is weed removal. This violation does not
8 require a \$300 filing of a civil complaint.

9 THE COURT: Mr. Oehler?

10 MS. KNIGHT: My time is up?

11 THE COURT: No, no. Mr. Oehler is talking too
12 loud. He can't whisper very well.

13 So, go ahead. Keep talking.

14 MR. OEHLER: I apologize, your Honor.

15 THE COURT: You are now 3 minutes away from being
16 at 30 minutes left.

17 NANCY KNIGHT: Oh, I've got a lot of time.

18 THE COURT: So, you have 33 minutes left.

19 Yeah, don't use it all if you don't have to.

20 So, go ahead.

21 NANCY KNIGHT: The costs of clearance of weeds
22 could be recovered in small claims court.

23 With breach of a restriction, the lot owners in a
24 subdivision, who are similarly bound by the restriction,
25 can seek relief by either an action for money damages or

1 an injunction terminating the breach of the restriction.

2 Money damages, to me, for setback violations is
3 inappropriate in this matter; therefore, the remedy for
4 terminating a breach of setbacks is to cut away the
5 offending building projections just as I won the right to
6 have CC&R fence restrictions of height and solid block on
7 the side and rear-yard fences cut away in case
8 CV-2016-04026.

9 And I'd like to clarify that chain-link is not a
10 fence. It is open-ended, and it is a barrier for golf --
11 air golf balls that are hit because I'm adjacent to a
12 fairway. It is not a fence. I have one fence.

13 With a breach of a restriction the lot owners in a
14 subdivision -- oh, I think I did that.

15 Cutting away violating building projections fulfills
16 the intent of the restriction in accordance with
17 Restatement 3rd on property.

18 Plan of restrictions. In Murphy versus Marino, it is
19 stated that, I quote, in order to create a binding
20 covenant running with the land in a subdivision which is
21 enforceable by any purchaser of property therein,
22 there should be a uniform plan of restriction applicable
23 to the subdivision as a whole or to a particular part of
24 the subdivision known to each purchaser; and thereby, by
25 reference or implication, forming a part of his contract

1 with the subdivider, end quote.

2 Every said tract declaration of CC&Rs is consistent
3 for the plan of restrictions imposed by the original
4 single developer Desert Lakes Development, L.P.

5 The uniform setback restrictions were imposed by the
6 original developer upon all lot owners for the
7 improvements to be constructed on the lots in the entire
8 subdivision Tract 4076.

9 Each lot owner is granted the right to protect his
10 investment through enforcement of the plan of
11 restrictions against other lot owners within subdivision
12 Tract 4076.

13 The consistent plan of development, together with the
14 plan of restriction, accomplished the intent for burdens
15 and benefits afforded to all property owners, including
16 the consistent language for their enforcement rights in
17 the entire subdivision.

18 As cited in Lillard versus Jet Homes, I quote:
19 Where these principles must be applied to determine one's
20 right to enforce a covenant, it becomes necessary to: 1.
21 Define a plan of development. 2. The basic nature of the
22 rights acquired; and 3. A grantee under such plan of
23 development, end quote.

24 These principles have been shown to exist; and
25 therefore, I have a right to enforce covenants through

1 prosecution of CC&R violations.

2 The issues of abandonment and waiver.

3 In College Book Centers versus Carefree Foothills
4 Homeowners' Association, I quote: Deed restrictions may
5 be considered abandoned or waived if frequent violations
6 of these restrictions have been permitted.

7 Frequent violations is a material fact for the jury.
8 It goes on; but when the CC&Rs contain a non-waiver
9 provision, a restriction remains enforceable despite
10 prior violations, so long as the violations did not
11 constitute a complete abandonment of the CC&Rs.

12 25 percent of our lots are still undeveloped; there
13 cannot be a determination of complete abandonment.
14 However, that is another material fact for the jury.

15 As shown and can be shown to the jury we do not
16 have complete abandonment of any of the violations, and
17 the plaintiff intends to enforce -- that I intend to
18 enforce in this lawsuit.

19 Due to the non-waiver clause, no failure of any
20 person to enforce violations in the past shall impact my
21 right to enforce in this lawsuit.

22 A non-waiver clause, the non-waiver clause is
23 consistent in all alphabetically suffixed said tract
24 declarations as follows: From the third sentence in
25 clause 20, in Book 1641, which is for Tract B, no failure

1 of the trustee or any other person or party to enforce
2 any of the restrictions, covenants or conditions
3 contained herein shall, in any event, be construed or
4 held to be a waiver thereof, or consent to any further or
5 succeeding breach or violation thereof, or consent to any
6 further succeeding breach of violation thereof.

7 Due to limited time for this oral argument, I
8 refer the Court to look up, if you need verification,
9 it's in -- on Page 899, Book 1631.

10 THE COURT: All right. Let me clarify. You're
11 now down to 27 minutes left.

12 NANCY KNIGHT: Okay.

13 THE COURT: That includes your rebuttal; so, if
14 you use it all up you don't have any rebuttal, but just
15 to --

16 NANCY KNIGHT: I only -- I've got maybe --

17 THE COURT: I'm just telling you how much you have
18 left.

19 NANCY KNIGHT: I have 3 minutes.

20 THE COURT: All right. Go ahead.

21 NANCY KNIGHT: Before I get to my closing argument
22 or rebuttal whatever.

23 THE COURT: All right.

24 NANCY KNIGHT: Now I lost my place. Let's see.

25 From the first sentence in clause 20 this

1 lawsuit is my implied duty to prevent violations and
2 attempted violations.

3 It can be shown that the attempted violations to
4 reduce setbacks in the entire subdivision has been
5 factually determined to have been committed by Defendant
6 Azarmi both in the recorded video of September 25, 2016,
7 at the planning commission meeting, and the email from
8 direct -- the director of Development Services, Tim
9 Walsh.

10 Plaintiff alleges that the jury needs to rule on the
11 remedy for \$12,500 in misappropriation of government
12 funds to benefit this defendant's proposed setback
13 reduction.

14 Plaintiff prevented the attempted setback violation
15 orchestrated by Defendant Azarmi through her successful
16 efforts in achieving denial of the Board of Supervisors
17 resolutions 2016-125 and 2016-126.

18 County Planning and Zoning approved the 20-foot
19 setback, front and rear, for the -- front and rear for
20 the entire subdivision in 1989, and Frank Passantino
21 went back and had them clarified in 1993.

22 Those are resolution 89-116, resolution -- resolution
23 93-122; and it's resolution 93-122 that is clearly cited
24 in the supervisors' denial for resolution 2016-125, and
25 it's clearly cited in the supervisors' denial that the

1 name of the subdivision is Tract 4076.

2 Remedies are available, and remedies are valuable.

3 Remedies are valuable.

4 A visually graphic cutting-away remedy is a deterrent

5 to any future violations; front and rear setback

6 violations perpetrated by the defendants in Phase I,

7 Tract 4076-A through a Board of Adjustment setback

8 variance, has a cutting-away remedy.

9 All exist -- existing front and rear setback

10 violations in Tract B, that is pending a motion for leave

11 to amend the complaint, has a cutting-away remedy.

12 Remedy has a potential to bring the CC&Rs into a

13 hundred percent compliance for front-yard setbacks.

14 And it has the additional benefit for all of the

15 people who have no idea that we even have CC&Rs to

16 finally learn that they better get a copy of them and

17 follow the rules.

18 Existing rear-yard setback violations in Tract 4163

19 amounts to 25 of 759 lots, or less than 5 percent of the

20 lots in the entire subdivision Tract 4076.

21 There is just no remedy today for these violations

22 that are adjacent to the golf course; and as I think the

23 defendant said my creative idea to get the Indian tribe

24 to sell parcels, the Indian tribe has responded back to

25 me that because it's Indian reservation land they cannot

1 sell any part to an American citizen.

2 So, we are stuck with what we have.

3 Potential does, in Tract 4076-B, for other
4 violations have available remedies. Livable space
5 violations can be remedied through adding square footage
6 to these homes. Wood fence materials can be remedied
7 through taking down the wood fence.

8 In other words, the possibility of realizing, to
9 a substantial degree, the benefits intended through the
10 covenants exists.

11 And I reserve the balance of my time; whatever the
12 word is.

13 THE COURT: All right. Let me just clarify that.
14 You still have 23 minutes when it's your turn.

15 NANCY KNIGHT: Thank you.

16 THE COURT: All right. Mr. Oehler, you have 21
17 minutes; beginning now.

18 MR. OEHLER: Thank you, your Honor.

19 My initial comment would flow along the lines or
20 the stream of what would appear to be the fourth, fifth,
21 sixth, seventh, maybe eighth -- I'm sure I'll find out
22 what the exact number is later -- motion to reconsider.

23 That's basically what we have been hearing for the
24 last hour and-a-half. A motion to reconsider what the
25 plaintiff believes was Judge Carlisle's mistaken finding

1 that 4076-B was a sole and separate subdivision.

2 I mean, that is the law of the case.

3 The plaintiff doesn't like it. So, she ignores
4 it. The plaintiff's talking about 700-and-some lots that
5 are apparently involved in x-number of different separate
6 subdivisions.

7 Despite the fact that the law of the case is we're
8 talking about 4076-B, and its two derivative
9 subdivisions; the 4076-D and 4163.

10 But the plaintiff doesn't like it.

11 This is not a motion for reconsideration. Roberts
12 are not defendants in this cause of action. Roberts have
13 been dismissed.

14 Count 1 has been dismissed. At some point in time
15 Plaintiff has to realize what the law of the case is.

16 I have spent quite a few minutes before your Honor
17 today certainly indicating that I don't necessarily agree
18 with the law of the case; but that is what we are arguing
19 today.

20 I don't like the fact that the burden, in effect, as
21 a result of court of appeals and supreme court law says
22 that to avoid a restriction in a non-waiver case it is
23 the opponent's, in effect, obligation to show that there
24 has been an abandonment of the scheme that was
25 orchestrated by the developer.

1 Since there has been, indeed, an abandonment and have
2 we shown that; have we shown that through Rule 56
3 required documentation.

4 I think the clear answer is absolutely and
5 unequivocally in the affirmative.

6 If you have subdivision restrictions that have been
7 -- that there have been more violations of than there
8 have been commitments to, does that show there has been
9 an open disregard for what those restrictions have,
10 apparently at one time, -- in this case, early-on, hoped
11 to have been.

12 If, in fact, we have, perhaps a hundred percent of
13 the homes that have been built in the tracts that are the
14 subject matter of this litigation, with one or more
15 violations, does that show a disregard for the codes,
16 covenants and restrictions.

17 THE COURT: Is that a jury question under College
18 Book?

19 MR. OEHLER: No, I don't believe it is, your
20 Honor. I believe it is under Rule 56; the quality and
21 the state of the documentation and evidence supporting,
22 in this case, the dispositive motion for summary
23 judgment.

24 It sounds as if the plaintiff wants to argue
25 that her filing a motion for what she's supposed to argue

1 in a Rule 56 matter, and not having the Court respond to
2 the motion or not having the opposing party give her
3 direction, is supposed to be some kind of, what,
4 inappropriate or unethical conduct. I think not.

5 I don't think that is my obligation. I don't think
6 it's the Court's obligation.

7 But, you know, I think the Court has to take a
8 look at Rule 56. Was there compliance in the plaintiff's
9 motion. Was there compliance in her response; or indeed
10 was the plaintiff's response to the actual issue -- not a
11 motion to reconsider today, but a motion for summary
12 judgment.

13 Was it appropriately and properly opposed. What are
14 the provisions of Rule 56. Rule 56; what is it, um, E
15 under subparagraph 5.

16 When a summary judgment action is made and supported,
17 as provided by this rule -- I suggest to the Court it was
18 -- an opposing party may not rely merely on allegations
19 of denials of its own pleadings.

20 The opposing party must, by affidavits or otherwise,
21 provided in this rule, set forth specific facts showing a
22 genuine issue for trial.

23 If the opposing party does not so respond summary
24 judgment is appropriate, and it shall be entered.

25 So, your Honor, in the couple of minutes I

1 have left, or remaining, I mean let's -- let's take a
2 look, just for a moment, at Plaintiff's response.

3 She sets forth, I believe it's 15 separate alleged
4 material facts; and what are those material facts in the
5 15 categories she's outlined.

6 Many of them have no application. They're irrelevant
7 to the issue that's before this court. In fact, it might
8 be fair to say most of them are irrelevant to the issues
9 that were raised in the motion.

10 Material fact 1. Condensed from multiple pages
11 basically says Judge Carlisle didn't really dismiss count
12 1. That's on page 2, line 13. That's her argument. He
13 didn't really dismiss count 1.

14 Material fact 2. It's irrelevant to this action.
15 The defendant, here she's complaining, as we've spent
16 many minutes with your Honor here in the last hour,
17 talking about an application that was filed by the
18 defendant to the planning commission.

19 That's not the issue that's before this Court. The
20 planning commission denied the application. The County
21 followed its ordinance as far as notification. It's
22 irrelevant to anything that is before your Honor.

23 Material fact number 3. Here the plaintiff is
24 talking about it's her intention to prevent the
25 defendants, not others, from violating the restrictions

1 that have been violated consistently and conclusively for
2 30 years.

3 Number 4. Nuisance signs. Business advertising.
4 She's unhappy, and alleging corruption within Mohave
5 County because they don't agree with her off-premise
6 advertising assessment; because she doesn't agree with
7 title 33, eliminating the covenant regarding no signage
8 on unimproved lots.

9 Number 5. An action to recover zoning expense
10 contrary to the County ordinance.

11 One or more of the judges that have heard this case
12 already have clearly found that Plaintiff does not
13 represent Mohave County; is not in a position to attempt
14 to reclaim zoning expense that was incurred as a result
15 of Mohave County's zoning ordinance that requires
16 notification.

17 It is irrelevant to anything that's before the Court.

18 Material fact number 6. Realtor email, miscellaneous
19 documents, apparently intended as evidence, which she
20 says, which the plaintiff says in her own material fact
21 paragraph, is snapshots of thoughts of the plaintiff.

22 Where does that fit within Rule 56.

23 Material item 7. Mohave County's obligation and
24 their right to issue permits. Plaintiff believes that
25 the County, the permitting entity, has the duty and

1 obligation, apparently, to be aware of and enforce CC&Rs.

2 They do not. Where is it relevant or germane in
3 anything that is in the motion before the Court. That
4 was item 7.

5 Item 8. Antennas and signage. With antennas she
6 says it must be ignored because the law changed saying
7 you can't prohibit them, as if it had not been inserted.

8 Same thing applies for the signs.

9 Different jurisdiction. The State of Arizona versus
10 a federal court decision. But maybe the State of Arizona
11 and the legislative body that passes the laws don't have
12 the authority that is acceptable to the plaintiff.

13 It's irrelevant.

14 THE COURT: Mr. Oehler, what was the mechanism if,
15 in fact, these original covenants and restrictions were
16 to be enforced back in 18 -- '89 and '93. Who was to
17 enforce them; the other users of the property?

18 MR. OEHLER: Well, ultimately, yes, if they chose
19 to do so. The codes were set up that there was a named
20 committee that was to serve for a period of one year from
21 the date of issuance of the public report.

22 That one year terminated, as I recall, in January of
23 1991. As is indicated by the plaintiff in a multitude of
24 her pleadings, she has been unable to find, I've been
25 unable to find that there ever was a meeting of that

1 architectural committee, even for the one year of its
2 existence.

3 It terminated one year after the date of issuance of
4 the public report. It has not been seen nor heard from
5 since.

6 THE COURT: I heard some reference to the escrow;
7 when people buy property or buy houses does not reflect
8 the CC&Rs.

9 MR. OEHLER: Some of them do and some of them do
10 not. Some of them, in regard to transactions occurring
11 in 4163, have gone back and picked up the 4076-B
12 regulations, which of course, should advise the
13 prospective purchaser immediately, as it did Mrs. Knight,
14 that her house was out of compliance when she bought it.

15 That it was within 9 -- according to her, 9.19 feet
16 of the rear-yard setback; that it was within 4.-something
17 feet of the side-yard setback.

18 THE COURT: All right. That was --

19 MR. OEHLER: There was a block wall on both sides,
20 but those were violations that were open and obvious; but
21 she purchased them.

22 THE COURT: You have about --

23 MR. OEHLER: Other title companies have not, and I
24 think correctly, incorporated the 4076-B CC&Rs in dealing
25 with 4163, including Chicago Title.

1 THE COURT: You have 3 minutes, Mr. Oehler.

2 MR. OEHLER: Sorry, you got me off --

3 THE COURT: Sorry; my bad.

4 MR. OEHLER: In any event, your Honor, I mean,
5 they're open, obvious, consistent; they're universal.

6 There have been far-more violations than there have
7 been compliance.

8 But let's go back. I think we were on number 8.

9 Number 9. CC&Rs were recorded. No enforcement for
10 over 30 years. Hundreds, if not thousands, of violations
11 have occurred.

12 Material fact number 10. Enforcement proven. Her
13 enforcement proven as a material fact is that the tribe,
14 the Mohave Indian tribe, bought the golf course.

15 That's a material fact proving there has been
16 enforcement? What else did she say about it. The
17 plaintiff complained to the tribe that she saw an ATV on
18 the golf course. That's enforcement according to the
19 plaintiff. That's in material fact number 10.

20 And finally, in material fact number 10, the Fort
21 Mohave Indian Tribe, who owns the golf course, needs to
22 be protected; and the plaintiff is providing that
23 protection.

24 Material fact number 11. Enforcement has been proven
25 by the Edwards-Chase case. She incurred \$14,000 worth of

1 fees. A specific finding and statement -- excuse me.

2 A specific agreement in that case is that if
3 Plaintiff wanted to tear down the block wall between her
4 house and the Edwards house, formerly the Chase house,
5 and install wrought iron, she could do it.

6 Not because there was an agreement that the CC&Rs
7 mandated it, or even required it; but if she wanted to do
8 it she was allowed the right with the specific inclusion
9 in that agreement that the Court has made and no one has
10 made any finding of applicability of the CC&Rs in 4076-B
11 to the 4163 tract in which she lives.

12 And no matter how many times she wants to say
13 different, that's exactly what the agreement in the
14 Chase-Edwards case says.

15 She alleges in number 12 that Tract 4163 developers
16 violated the 4076-B CC&Rs, re: fencing; and she's exactly
17 right. As they did, in most every other respect, when
18 they developed 4163; and I hasten to point out, although
19 it has not been said, your Honor, my client was not
20 the developer of this property.

21 My client developed 9.1. something -- excuse me.
22 Developed .091 percent of the homes in 4076-B. 9 percent
23 of them over 30 years.

24 No houses in 4163. Zero, of which 100 percent
25 violate the covenants she's attempting to enforce.

1 THE COURT: All right. Your time is up if you --
2 that's why she was standing; and I'm going to cut her off
3 when her time is up, so ...

4 MR. OEHLER: I understand.

5 THE COURT: Your time is up.

6 MR. OEHLER: Your Honor, the plaintiff has not
7 complied, even remotely, with rule 50 -- with Rule 56.

8 We are entitled to a determinative ruling from this
9 Court, including attorney fees --

10 THE COURT: Thank you.

11 MR. OEHLER: -- that have been incurred as a
12 result of the actions.

13 The question before the Court, finally, your Honor,
14 is is the plaintiff in a position -- is the plaintiff in
15 a position to enforce the covenants against the
16 defendants she has named, and the answer is clearly no.

17 THE COURT: All right. Thank you.

18 Ms. Knight?

19 NANCY KNIGHT: I don't even, I don't -- I think he
20 was --

21 THE COURT: Ms. Knight, just talk to me --

22 NANCY KNIGHT: I'm sorry.

23 THE COURT: -- and argue your case. All right.

24 NANCY KNIGHT: You have a copy of my response?

25 THE COURT: You have 23 minutes.

1 NANCY KNIGHT: So, I think he was twisting the
2 words to cloud your view again.

3 The thing I mentioned about --

4 THE COURT: Ma'am, Mr. Oehler can argue just like
5 you're arguing your case.

6 NANCY KNIGHT: I'm arguing. I'm arguing his
7 claims.

8 THE COURT: So, go ahead.

9 NANCY KNIGHT: The sign is clearly not a for sale
10 sign; that is a material fact for the jury to look at
11 that sign and make a determination.

12 The Supervisor Johnson, regarding the \$12,500, I am
13 not asking on behalf of the County. What I'm doing is
14 giving the jury the opportunity to recover tax dollars.
15 My tax dollars. Their tax dollars.

16 Because even Supervisor Johnson, at the meeting, said
17 with all this labor and -- to the director, at the time,
18 Director Hahn (phonetic), the proponent is paying for
19 this, right; and the answer was no.

20 So, normally, it looks like proponents pay when
21 they want a change in the zoning or the setbacks,
22 whatever -- whatever the proposal was going to be, they
23 pay for it. And the taxpayers should not be burdened
24 with so much. I mean, it was outrageous.

25 Let's see. Regarding, um, the golf course.

1 Regardless of who owns it, we don't need to have these
2 CC&Rs terminated so that some developer who wants mobile
3 homes in Desert Lakes can now go before the Board of
4 Supervisors and get approval to have mobile homes and
5 wood fences put in our yards because the economic --
6 there's economic value to the property owners, to the
7 golf course that are running a business there, that it
8 remains attractive.

9 It is attractive now, and what I'm trying to do is
10 protect my property value because I've got an acrimonious
11 neighbor -- and by the way, that wood -- that block that
12 I had to cut away was because a neighbor, that was a
13 prior owner, went to the County, got a permit to build on
14 my property.

15 That's why I had to spend \$1400 on a survey, and it
16 came up with a setback of the -- less than 5-foot
17 setback, which according to the County, as long as you
18 have a total of 10 feet between two structures it's okay
19 because the purpose of a 5-foot setback on both sides of
20 a fence is for light, air and fire protection.

21 My 5-foot setback -- and that's probably another
22 thing for the jury if you want to counterclaim; that the
23 jury could determine whether this is an issue. It was
24 not my fault. Somebody at the County didn't do
25 inspection properly, I assume.

1 But, the distance between two structures is over 25
2 feet. There is no issue of light, air or fire. And
3 there was when -- when my adjacent neighbor decided he's
4 going to take out the steel rails, which are required by
5 the CC&Rs, the block wall is not -- not required; it's
6 okay to have partial block wall and partial -- as long as
7 you've got the steel rails that create the view.

8 What was I saying?

9 Anyway, I had to cut away the blocks because it was a
10 -- it was an infringement on my -- a trespass on my
11 property, and it was a CC&R case.

12 That's part the record. You've got a copy from the
13 Arizona -- what is it that when attorneys go the bar --
14 state bar. I got a letter from the state bar.

15 It was a CC&R case, which is why a lis pendens wasn't
16 in place to protect the new owner, who now wants to take
17 his view back; and he got the Court to quash my rights to
18 get an adjudication that that fence belongs to me based
19 on the -- based on the survey.

20 So, they quashed my thing to quiet title. Action to
21 quiet title.

22 Anyway, I did -- what I was doing is saying in
23 defense of these oral arguments for a dismissal,
24 indispensable parties, there's a lot of -- I mean,
25 there's a multitude of property owners who will be

1 affected if these CC&Rs are considered abandoned.

2 I gave material facts. The words were twisted
3 as far as I could see, when he recited back to you; so I
4 hope you go back and look and see what I actually said.

5 There -- the signs are definitely not -- not for
6 sale signs, and even the Department of Real Estate who
7 did the investigation claimed no, those are -- and it's
8 Development Services; U.S. Southwest, it's their
9 development services, boutique of services, out of their
10 U.S. Southwest business.

11 And even Ann Pettit's own testimony in the affidavit
12 that when she -- she would append a rider onto somebody's
13 development services to put for sale on it. That made it
14 a legal sign. Yours have -- the defendant has nothing on
15 his signs that claim that --

16 THE COURT: Yeah, just talk to me; don't --

17 NANCY KNIGHT: Yes, they do.

18 To claim that they are for sale signs.

19 Okay. So, the setbacks bestow a substantial
20 benefit to property owners.

21 Conditions inside the subdivision have not changed
22 drastically.

23 The covenants provide value to the property owners.

24 Material facts exist for the jury.

25 And I don't -- I need to wait for your -- I may

1 have written the motion wrong about indispensable
2 parties; but according to law it looks like that when
3 you're going to abrogate CC&Rs there are indispensable
4 parties that need to be joined.

5 And the affidavits in the record are subject to
6 cross-examination. That can only happen at trial.

7 Then we talked about relevance. Evidence is
8 relevant when it has a tendency in reason to make the
9 fact that is offered probable proof or probable disproof
10 of claims.

11 So, yes, every one of my arguments is real
12 evidence, unlike your bar graph that has no real
13 evidence.

14 THE COURT: Ms. Knight.

15 NANCY KNIGHT: I'm sorry.

16 THE COURT: Argue your case.

17 NANCY KNIGHT: I did it again. I'm sorry. I'm
18 sorry.

19 Anyway, real -- I gave real evidence. Evidence
20 is material if it's offered to prove a fact that is at
21 issue in the case, and evidence is competent if the proof
22 is reliable.

23 It can be shown that the affiants have not submitted
24 relevant material nor competent evidence.

25 Affidavits submitted with false statements of

1 material facts, such as claiming my fence is 4 -- 5 feet,
2 4 inches high. It is not. It is 5 feet exactly
3 according do the -- what was written in the CC&Rs.

4 In Swain versus Bixby Village Golf Course the
5 developer had to prove that fundamental or radical
6 changes defeated or frustrated the covenant's purposes.

7 The homeowners established their harm would continue
8 without an injunction and enforcing CC&Rs preserves
9 public policy and is in the public interest.

10 I also need to have, um, protection from harm
11 from an acrimonious neighbor who bought a house thinking
12 he's going to have a privately-located pool and spa, and
13 he is -- he is adamant about trying to get that -- those
14 steel rails taken out; and if the CC&Rs are abandoned,
15 considered abandoned by the Court, they can retake -- all
16 the money I invested to restore the CC&Rs to comply --
17 the fence to compliance with CC&Rs is lost, and my views
18 will be lost again.

19 As in our case, developer defendants, Ludwig, Ludwig
20 Trust, and Fairway Constructors have not proven that
21 fundamental or radical changes have defeated or
22 frustrated the covenant's purposes.

23 In 2014 they began the process of offering 10 lots in
24 Tract 4076-A for sale as developed lots. One of the
25 those lots is a subject home in this case, currently

1 owned by defendant Roberts.

2 The defendants' violations and the indisputable
3 attempted violations by defendant Azarmi, which is in
4 count 1 of my original complaint, -- I don't know why I
5 should lose that part -- remain prosecutable, in my
6 opinion, and have remedies that will serve to preserve
7 public policy and serves public interest.

8 Public policy of the peoples' expectations for the
9 benefits and burdens of the contract, and the public
10 policy of protecting people from harm, the safety from
11 these wind-bent and deteriorated sheet metal signs and
12 sign riders, which you have photographic evidence of,
13 public policy in protection from tax dollars being spent
14 inappropriately to benefit a politically well-connected
15 developer who served on the planning commission for 15
16 years; you think they want to tell him no, take your
17 signs down?

18 I think there is a conflict of interest; and the
19 reason they refuse to enforce their own ordinance.

20 Public interest in fair competition. Off-premises,
21 advertising signs are prohibited. Consistent
22 application of the rules for equity, and the economic
23 value of protecting the aesthetic appeal of the
24 subdivision serves the public interest of economic growth
25 of property values.

1 Plaintiff is entitled to compensation in law and
2 in equity from a court of competent jurisdiction.

3 Let's see. I think I'll -- I will give up
4 the balance of my time.

5 THE COURT: All right. That will be it.

6 NANCY KNIGHT: My throat's sore.

7 THE COURT: That will be a conclusion of our
8 arguments then.

9 NANCY KNIGHT: Except that I plead to the Court to
10 deny it.

11 THE COURT: Okay. And you're asking to grant your
12 motion and deny Mr. Oehler's motion; is that correct?

13 NANCY KNIGHT: Yeah. My motion is based on
14 evidence that the signs are not for sale signs, and
15 that's something for you to rule on.

16 THE COURT: All right. I'm just clarifying what
17 you said then.

18 NANCY KNIGHT: Yeah.

19 THE COURT: You're not just asking me to deny
20 both. You're asking to deny Mr. Oehler's motion for
21 summary judgment; and not grant --

22 NANCY KNIGHT: Deny dismissal of his dispositive
23 motion about CC&Rs, and approve my motion --

24 THE COURT: For summary judgment.

25 NANCY KNIGHT: -- to take down the signs.

1 THE COURT: All right.

2 NANCY KNIGHT: I'll redirect.

3 THE COURT: And you mentioned earlier that you
4 have written copies for the court reporter.

5 Do you have -- have you given those to her
6 already, or --

7 NANCY KNIGHT: Yeah, this one -- this one I went a
8 little bit off-script, the final one; but I do have my
9 beginning one that I can -- I gave her the original
10 beginning, and then opening argument.

11 THE COURT: Yeah, give her what you can to help
12 her put this together in case it ever needs to be put
13 together.

14 Okay. I just want to make a couple
15 clarifications. One, you know, I have not told anybody
16 to do a special action.

17 I suggested on the record that that's one of the
18 options if you talk to a lawyer or if you don't talk to a
19 lawyer. But one of the options is a special action.

20 I cannot give legal advice. I think special actions
21 are hard to win, and I've made that record, as well.

22 So, the point is it's just an option if you don't
23 like the Court's ruling. The other option, of course, is
24 to wait till the final ruling or to have our jury trial
25 if I -- if, you know, we can ever get to that part; and

1 then appeal whatever rulings both sides don't like.

2 Mr. Oehler doesn't like one of Judge Carlisle's
3 rulings either.

4 So, that's the issues that we have to deal with
5 as we go forward here; and so, I kind-of, despite this
6 being more than 3 hours today, I did get a good feel for
7 both sides' issues; and I did some reading.

8 I obviously have to go back and apply this to some of
9 these cases that are cited, but Mr. -- you know, Mr.
10 Oehler doesn't disagree; I don't think anybody disagrees
11 that covenants, CC&Rs are legitimate in cases that he has
12 to show, based on the case law, that they've been
13 abandoned by the numerous violations that have taken
14 place over the last 30 years.

15 That's his argument. Nobody's disagreeing that CC&Rs
16 are valid and enforceable when they're not -- when
17 they're not abandoned.

18 So, that's where I have to come -- that's step one,
19 and then we start dealing with the legitimacy of each and
20 every argument as we go forward; but we haven't got to
21 that part yet because I have rule on this.

22 The one thing I -- you know, I find myself concerned
23 about, Ms. Knight, is you mentioned today that you're
24 going to file two new motions during the middle of your
25 argument in this motion.

1 I don't know what those -- I mean, I do know what you
2 said they're going to be; but I don't know why you're
3 considering filing more motions.

4 And when you've argued stuff, I'll address what
5 you've argued today in my rulings that I make in this
6 case. But you have a right.

7 You have not been declared a vexatious litigant
8 in this case; and if you recall that case I wasn't the
9 judge.

10 I was asked to review what was going on at the time,
11 as the plethora of filings that kept coming, and I made
12 that ruling. We made that record when you first -- when
13 this case first came to me.

14 So, I -- you know, ruling against you, ruling on
15 things you disagree with, is not evidence of bias.

16 It's, you know, ruling against Mr. Oehler is not
17 evidence of bias. Ruling for you against Mr. Oehler will
18 not be evidence of bias against Mr. Oehler. Ruling for
19 Mr. Oehler against you will not be evidence of bias.

20 So, I just want that that's -- that's clear case
21 law. That's a history. There has to be some other
22 indication of bias besides the rulings.

23 So, you've brought that up -- and Ms. Knight, do not
24 raise your hand. You're done talking today. Time is up.

25 I'm just making that record just to say, when I'm

1 addressing this, I don't -- even being accused of bias
2 doesn't make me biased against you.

3 I'm going to go read the case law. You've accused
4 multiple people today of multiple crimes; but I'm going
5 to go read the case law and do the things that I need to
6 do in this case; and it's not -- not going to be easy.

7 This is a complicated -- I allowed both of you to
8 file lengthy pleadings, lengthier than I -- as I look
9 back at it, than I should have. But I allowed it. You
10 both did it. I've reviewed those pleadings. I'll now
11 have to go review them again.

12 But that's where we're at.

13 It is ordered taking under advisement both
14 of the pending motions for summary judgment, and I'll get
15 a ruling out.

16 We'll stand at recess.

17 NANCY KNIGHT: Can I just answer the question?
18 You posed a question to Mr. Oehler about the CC&Rs, and
19 he isn't even not a part of the CC&Rs; the answer to your
20 question about architectural committee; like who is
21 supposed to enforce --

22 THE COURT: Ms. Knight?

23 NANCY KNIGHT: Can I answer it?

24 THE COURT: No, you may not.

25 NANCY KNIGHT: Okay.

1 THE COURT: You had a chance.

2 NANCY KNIGHT: I just wanted to say if he could --

3 THE COURT: You had time. You've stopped arguing.

4 I did pose that; that's why you had the last word.

5 And we're done today. All right.

6 So, that's it. I'm taking this matter under

7 advisement; and I'll get that out to you.

8 We'll stand at recess.

9 (The proceedings recessed at 4:39 a.m.)

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CERTIFICATE OF REPORTER

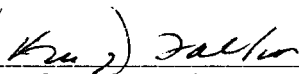
I, Kimberly M. Faehn, Official Court Reporter for the Superior Court of the State of Arizona, in and for the County of Mohave, do hereby certify that I made a shorthand record of the proceedings had in the foregoing entitled cause at the time and place hereinbefore stated;

That said record is full, true and accurate;

That the same was thereafter transcribed under my direction; and

That the foregoing one-hundred eleven (111) typewritten pages constitute a full, true and accurate transcript of said record, all to the best of my knowledge and ability.

Dated this 19th day of March, 2023.

/s/ 

Kimberly M. Faehn
Certificate #50427