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Christina Spurlock SupCrtClerk

Plaintiff Pro Per

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

NANCY KNIGHT

Plaintiff,

v.

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

Defendants.

Case No.: B8015 **CV 2018 04003**

MOTION FOR RECONSIDERATION OF DENIAL OF PLAINTIFF'S AFFIDAVIT OF A CLAIM OF COURT BIAS WITH RULE 42.2 REASONS SUBMITTED HEREIN

Hon. Judge Lambert
Temporary Assignment

COMES NOW Plaintiff Pro Per, Nancy Knight ("Plaintiff"), pursuant to Rule 42.2, that was not a part of Plaintiff's following Statute §12-409 (5) language because the Statute does not reference Rule 42.2. Rule 42.2 references the Statute; therefore, Plaintiff hereby submits her reasons for Claims of Bias that has been ongoing for years and became seriously prejudicial when her Affidavit was filed on February 21, 2023 but was denied on March 22, 2023. Plaintiff believes this Motion is limited to 17 pages pursuant to Rule 7.1.

MEMORANDUM OF POINTS AND AUTHORITIES

"A pro se litigant should be given a reasonable opportunity to remedy defects in his pleadings if the factual allegations are close to stating a claim for relief." *Haines v. Kerner*, 404 U.S. 519-20, (1972)

A transfer to Yavapai County Court would serve the interest of judicial economy for the pending decision on Plaintiff's urgent request for a Change of Venue that was filed yesterday.

Plaintiff has reason to believe, and does believe, that on account of bias, she cannot get a fair and impartial trial from the Hon. Judge Jantzen ("Judge") for the following reasons:

The Judge is easily confused on matters of law and declared Plaintiff a vexatious litigant when he did not understand the difference between the binding mediated "settlement" reached in CV 2016 04026 and the written "agreement" that she had been compelled to sign. The negotiated settlement had been agreed to by all parties in Court and the written agreement came as a surprise with fraud and led to a Motion to Compel Plaintiff to sign the agreement. The Judge not only declared Plaintiff a vexatious litigant but he ruled that the two attorneys who attempted to change the negotiated "settlement" be paid thousands of dollars in attorney fees for their Motion to declare Plaintiff a Vexatious Litigant when she had found Rule 60 and attempted to have the Motion to Compel fees reversed. Plaintiff is not vexatious. Plaintiff is defending herself against tyranny as will be further understood regarding the Change of Venue to Yavapai County

where the defendants are involved with the County on charges of fraud.

Plaintiff continued to place trust in the judicial system in this case and under the Judge's taking of this case away from the Hon. Judge Gordon when Judge Gordon and this case was transferred to Kingman from Havasu City. This Judge is the 4th one on this case. Confusion was understandable, if it were true.

Injunctive Relief was stalled in this case when the defendants claimed their dilapidated sheet metal "build to suit" signs, that were a hazard to persons and property as claimed in the Complaint, were "for sale" signs protected by Statute §33-441. Plaintiff argued, to no avail.

The Judge clearly has prejudiced the case against the Plaintiff. The signs were proven to not be "for sale" signs by the Arizona Department of Real Estate. The signs were proven to be dilapidated with photographic evidence from years of unfair competition and exposure to the elements.

Injunctive Relief would have resolved his case rather than extended it for years with a risk of harm from high winds and rusted structures supporting loosened and rusty "build to suit" sheet metal signs where the safety of persons and property was ignored by this Judge. This Judge not only favors the defendants but his actions against the Plaintiff are in contempt of public safety.

In the course of this case, this Judge has been increasingly prejudicial against the Plaintiff to the point that his bias carried over to defiance of Plaintiff's attorney Coughlin's ("Coughlin") Motions.

When Coughlin made a presence in the case, he recognized that no statute would

allow a hazard to persons or property and that the claim of protection for the signs under the cover of Statute §33-441 as "for sale" signs was Fraud Upon the Court and upon the Plaintiff. The Judge had cause to rule Fraud Upon the Court.

The Judge has refused reconsideration of Injunctive Relief that allowed the defendants to continue to advertise their development services businesses that attracts clients who then enter into building contracts that violate the setback restrictions of the CC&Rs and become victims of Breach of Contract law suits. Four such defendants were attempted to be Amended to this Complaint.

In July 2021, Coughlin filed a Motion for Leave to Amend the Complaint for judicial economy and so a second law suit would not be necessary. The Judge defied Rule 15(a)(2) "Leave to amend must be freely given when justice requires".

The Judge defied the law of cases "...it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." *Morgan v. Superior Court*, 172 Cal.App.2d 527, 530 (Cal. Ct. App. 1959)

By denying Coughlin's Motion, the second case was filed in Mohave County and taken from Judge Jantzen with a Motion for Change of Judge that did not require any reason to be cited by the Plaintiff and then the case was transferred to Yavapai County with a Change of Venue.

The Judge has favored the defendants by defying the law of cases for Rule 19 and defied the definition of a Plaintiff in law.

The Defendant's filed a Motion for Summary Judgment on abandonment. The Judge denied Plaintiff's May 2020 Motion to Dismiss for Failure of the Defendants to Join Indispensable Parties (Rule 19). The Judge claimed he did not see a need for joining parties and proceeded with Oral Arguments on the Defendant's MSJ and on the Plaintiff's MSJ for Injunctive Relief. The Judge denied Plaintiff's MSJ but did not deny Defendant's MSJ.

When Coughlin made a presence in the case, he saw a need for parties to be joined and fully expected the Judge to follow the rule of law and law of cases where it would have been the defendants to join the parties. Instead, the Judge ordered Knight as the Plaintiff in the Complaint to join the parties. An Appeal was filed by Coughlin, inappropriately, because the Judge's Order was a Rule 54(b) Final Judgment where no claim nor party had been dismissed. The Appeal was denied. Coughlin has withdrawn.

The law of cases is clear that the party seeking abrogation *must* join parties and the use of the word Plaintiff was found to be due to those Plaintiffs having filed Motions for Summary Judgment or partial Summary Judgment.

Courts are expected to know the language of law and that a movant in a Motion for Summary Judgment is the Plaintiff in that action. It makes no sense for

the Plaintiff who files the Complaint and is the Defendant in the matter of abandonment must join parties per Rule 19. This Judge has used Rule 19(a) to abuse his discretion.

Pursuant to case law: "If plaintiff desires to have this covenant invalidated and stricken from the deed of the original grantee, he must bring in the interested parties and give them a day in court." *Karner v. Roy White Flowers, Inc.*, 351 N.C. 433, 439 (N.C. 2000).

In Karner, the plaintiffs [in the Complaint] owned property in a residential subdivision in which each lot was governed by a restrictive covenant which limited the lot to residential use. Roy White Flowers claimed abandonment.

Knight is the plaintiff in this Complaint who owns property in a residential subdivision in which each lot is governed by a restrictive covenant that includes restrictions for signs and setbacks that the defendants in this case wish to keep violating and at other people's expense.

National City Bank v. Harbin Electric Joint-Stock Co., at 472. "The party who seeks to invalidate restrictions must bring in the interested parties and give them a day in court."

It is an abuse of discretion for the Judge to Order Knight to join over 400 property owners among 225 lots at an expense of an estimated $10,000 that is not only error but is an abuse of discretion of Rule 19(a).

Plaintiff filed another Motion for Injunctive Relief on October 24, 2022 and it took until February 17, 2023 to deny her motion during the Status Conference.

This Judge has effectively allowed the defendants to continue to violate the CC&Rs that are still valid and in effect. Their MSJ should have been denied years ago that is based on frequency data and that frequency data included errors and fraud and unclean hands by the defendants themselves.

The 24 out of 244 (9.8 %) lots in Tract 4163 with rear yard setback violations, including the Plaintiff's lot, was caused by the defendant's engineering company creating the plat in an approval for a fraudulent zoning change and in violation of Res. 93-122 for twenty foot setbacks, front and rear. This violation of Res. 93-122 for all setback violations in Desert Lakes is the reason Mohave County is being sued in CV 2021 04003 that became CV 2022 00177 with the change of venue. Two defendants in this case are defendants in Yavapai County and they are charged with fraud and collusion in fraud. Tyranny is what the Plaintiff is attempting to defend herself against in that case where she has again had a Motion filed to Declare her a Vexatious Litigant and where the County Deputy Attorney is using this Judge's Vexatious Litigant Order in an apparent attempt to attack the Plaintiff's character.

The violations are not being acquiesced and Plaintiff is attempting to bring the parties who caused the violations to justice and for the current owners of homes to remedy their violation. All of this because this Judge's denial of justice against these defendants in an Amended Complaint years ago and denying justice to prevail against unsafe signage.

Judge Carlisle was the second judge assigned to this case who erred in signing what Mr. Oehler wrote in the Court Order that dismissed Count One. Defendant Azarmi's Res. 2016-125 was not to be dismissed according to the Transcript of the Oral Arguments in this case. He is now being prosecuted in the Yavapai County case where the grounds are Fraud that includes collusion in Fraud that affects every lot owner in Desert Lakes and where his actions as a Planning Commissioner is not protected by Qualified Immunity - if the law is followed. This is one of the reasons for Plaintiff's request that this case be transferred to Yavapai County.

From *Burke v. Voicestream Wireless Corp.*, 207 Ariz. 393, 398 (Ariz. Ct. App. 2004), "In the absence of a non-waiver provision, particular deed restrictions will be considered abandoned and waived, and therefore unenforceable, if frequent violations of those restrictions have been permitted." Emphasis Supplied to be explained below.

In the case of Burke, on appeal, "we recognized at the outset that absent a non-waiver provision, deed restrictions may be considered abandoned or waived "if frequent violations of those restrictions have been permitted." Id. at 398, ¶ 21, 87 P.3d at 86. "But when CC&Rs contain a non-waiver provision, a restriction remains enforceable, despite prior violations, so long as the violations did not constitute a "complete abandonment" of the CC&Rs". Id. at 399, ¶ 26, 87 P.3d at 87. "Complete abandonment of deed restrictions occurs when "the restrictions imposed upon the use of lots in [a] subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions [and] defeat the purposes for which they were imposed [.]" Id. (quoting *Condos v. Home Dev. Co.*, 77 Ariz. 129, 133, 267 P.2d 1069, 1071

(1954)).

Explanation for Emphasis Supplied: Plaintiff has not permitted violations; and, she seeks remedy in a Court of law for her own violations against those who caused them. This Judge is violating Rule 12 by not enforcing a claim of a particular servitude to be ruled upon. The defendants have not stated a claim of particularity.

Plaintiff's own fence color violation of white that Mr. Oehler charges her with, was remedied to match the entire fence color of Tract 4163 lots that are adjacent to the golf course. New wrought iron panels were needed in the CV 2016 04026 case. If a jury does not agree with the Plaintiff that "black only" for the color of wrought iron was arbitrary and therefore does not constitute a ruling of frequency for waiver nor "complete abandonment", then the paint color has an easy and affordable remedy for all property owners. The Judge could have ruled that the MSJ was denied for lack of following Rule 12 and for lack of making a claim of sufficiency of frequency for waiver that has no remedy.

The matter of "complete abandonment" requires a *particular* servitude to be cited pursuant to Rule 12 for stating a claim. This Judge has violated the rights of the Plaintiff and the potential Indispensable Parties of their need to have particularity of what they are defending against in the "complete abandonment" claim that thus far is based on inappropriate frequency data that is in part fraudulent

This Judge takes over 60 days to rule on Plaintiff's motions that has caused her to lose rights for a case of Affidavit Fraud.

Plaintiff's enforcement of her fence modifications was costly ($37,286.85). Mohave County is in violation of the Arizona Constitution Article 2, Section 17 for the fence permit given to her adjacent neighbor. Mohave County is in violation of many Statutes that have affected Plaintiff's property. Mohave County employees would not have acted alone and a preponderance of evidence has been discovered that led to collusion in fraud defendants. This is another matter being tried in Yavapai County.

Remedy by the Plaintiff proved valuable because when the fence restrictions and conditions were violated, her patio became very dark and the workmanship was unsightly that was a taking of enjoyment of her home. The modification of Plaintiff's fence that the County allowed without a permit became a leaning block wall fence that was a serious hazard for the children who resided in the home after it was sold with the advertised claim of a "privately located pool and spa". That binding mediated "settlement" was reached with negotiation for restoring Plaintiff's views for "a portion" of the adjacent neighbor's rear yard fence violation of the CC&Rs and was in violation of the County's imposed "assured for" fence design. This is the reason the wrought iron is not 100% steel rails and per the language of the CC&Rs it does not have to be 100 % steel rails nor does the covenant for fences require property owners to have a fence at all as Mr. Oehler attempted to use in his frequency data that any competent, unbiased judge, would have read and used to deny the MSJ. Just as Judge Carlisle had done when he read the CC&Rs and ruled that Plaintiff's lot in Tract 4163 was a part of the Tract 4076 Subdivision and the Tract 4076-B CC&Rs run with the land therefore Count One would dismiss only the

Robert's home that was in Tract 4076-A. Mr. Oehler appears to have tricked an Order to be signed otherwise.

Our CC&Rs have value as a part of the value of our real property. This Judge had an opportunity to protect our value by granting Plaintiff's Motion to dismiss the abandonment claim for Unclean Hands. Instead, this Court has denied the Motion and has effectively allowed Affidavit Fraud to support the defendant's claim of abandonment.

That motion was filed on November 2, 2022 and it took until February 17 ,2023 for this Court to orally deny the motion during a Status Conference.

This Court's Gag Order against the Plaintiff is yet another abuse of discretion where Plaintiff as President of the Unincorporated Association for Desert Lakes, did nothing wrong in mailing a packet for a Ballot to amend the Tract 4076-B CC&Rs and included information, that legal counsel had raised regarding a Class Action. There was nothing wrong in serving Plaintiff's duty as President of the Unincorporated Association in offering information for free as a volunteer to those who may be in need but for bias favoring these defendants and against the Plaintiff. The Gag Order is an abuse of this Judge's power because he feels she did something wrong.

The most recent Status Conference held on February 17,2023 revealed that this Judge is having Mr. Oehler file an Affidavit for Attorney fees for every Motion Plaintiff has filed since September 2022. This is yet another cause of action in this matter. Plaintiff has not filed any motion that was not necessary in seeking fairness and justice in this case.

This Judge delayed the September 29, 2022 Motion for so long that Plaintiff lost her ability to prosecute the Affidavit Fraud defendants in a civil matter which is what the Police Department who investigated the evidence advised her to do. It should not have taken over four months for this Judge to make the determination that it was a criminal matter. Assuming he is even correct and several persons at the P.D. were wrong. The three year statute of limitations from when Mr. Oehler filed those Affidavits in this case has now expired.

Plaintiff has received a CD of the digital recording of the Status Conference but it has not been transcribed. A copy is available to Hon. Judge Lambert from the Mohave County Clerk as extrinsic evidence for taking judicial notice.

As the Judge is aware, Plaintiff opened her May 2020 Oral Argument hearing with the following statement, "With all due respect for your honor's high position, there exists a peremptory challenge under A.R.S. $12-409 that the Plaintiff bring allegations of bias to the forefront before a lower Court enters a final judgment. There exists a real possibility that bias is affecting court rulings. I understand the Court's close ties to attorneys and Mohave County Judges."

The Transcript of that Oral Argument hearing was received on March 22, 2023 and delivered to the Judge's assistant, Ms. Lecher, and to Mr. Oehler.

This issue of bias is not a spur of the moment claim.

In nearly three years, this Judge's behavior toward the Plaintiff has not changed since he declared Plaintiff a Vexatious Litigant for attempting to defend herself from attorney fees for a motion to compel her to sign an agreement that did not conform to the

mediated settlement. This Judge's ruling that the Plaintiff in a Complaint for Injunctive Relief must serve Indispensable Parties is a Public Policy error. It must be challenged. Rule 19 (a) should not allow a court to abuse his discretion and thereby allow a court to not follow law or precedents or the definition of a movant in a Summary Judgment action.

Mr. Oehler's clients are the Plaintiffs in that action and should be the parties who must serve the indispensable parties with the very expensive and time consuming creation of the Service Packets.

Thirty-seven (37) precedent cases citing Sheets v. Dillon 221 N.C. 426. 20 S.E.2d 344 (1942) on joining indispensable parties for abrogation of contracts was available to this Judge. This Judge failed his duty to either dismiss Mr. Oehler's MSJ in 2020 for their failure to join parties or Order them now to join the indispensable parties pursuant to Rule 19 based on the precedent cases that cite *Sheets v. Dillon.* l) Karner v.Roy White Flowers, Inc.2) Runyon v. Paley 3) Lamica v. Gerdes 4) Tull v. Doctors Building, Inc. 5) Karner v. Roy White Flowers, Inc. (appeal) 6) Chappell v. Winslow 7) Sherer v. Steel Creek Prop. Owners Ass'n 8) Wise v. Harrington Grove Cmty. Ass'n 9) Smith v. Butler Mtn. Estates Property Owners Assoc. l0) Hawthorn y. Realty Syndicate, Inc. lt) Stegall v. Housing Authority 12) Realty Co. v. Hobbs 13) Reed v. Elmore 14) Schoenith v. Reahy Co. 15) Muilenburg v. Blevins 16) Hege v. Sellers 17) Malamplry v. Potamac Edison Co. 18) Story v. Walcott 19) Sedberuy v. Parsons 20) Higdon v. Joffa 21) Yernon v. Realty Co. 22) Warcender v. Gull Harbor Yacht Club, Inc.23) Fairfield

Harbour Prop. Owners Ass'n v. Midsouth Golf Llc 24) Fairfield Harbour Prop. Owners Ass'n v. Midsouth Golf Llc (appeal) 25) Bodine v. Harris Village Property Owners 26) Harrison v. Lands End of Emerald Isle Assoc 27) Lltein II, LLC v. Porter 28) Wein II, LLC v. Porter (appeal) 29) Dep't of Transp. v. Fernwood Hill Townhome 30) Page v. Bald Head Ass'n 3l) Mills v. Enterprises, Inc. 32) Srickland v. Overman 33) Quadro Stations v. Gilley 34) Building Co. v. Peacock 35) Land Corp. v. Styron. 36) Hale v. Moore 37) Church v. Berry.

The Court to whom this case is reassigned must at least reconsider this Judge's Order as a possible error and reverse the Order. According to law and precedent, Mr. Oehler's clients must join the necessary and indispensable parties.

This Court has attempted to redefine what a movant is in a summary judgment action. The legal definition of a movant is the party with the burden of proof. The movant in a motion for Summary Judgment has the burden of proof of "complete abandonment" in this case. LFA defendants, as their counsel identifies them, are Plaintiffs that have that burden of proof of "complete abandonment" with particularity that is not based on frequency for a ruling on waiver. Waiver has not been acquiesced.

Futility of a ruling of "complete abandonment" is demonstrated in the case of *Burke v. Voicestream Wireless Corp.*,87 P.3d 81 (Ariz. Ct. App. 2004) that specifically sets forth terminology and circumstances that are similar to those before this Judge.

The Burke's purchased a home in a subdivision in Scottsdale, AZ. The Declarant chose not to form a homeowner association. The CC&Rs included a non-waiver provision. Other violations had occurred in the subdivision and Voicestream claimed

abandonment of the Covenants.

Voicestream's evidence failed to establish that the prior violations of the Section 4 restrictive covenant had 'destroyed the fundamental character of the neighborhood'. Quotes from the case: "Even though Voicestream presented evidence that the homeowners acquiesced in prior violations, the Court said 'we have not been presented any persuasive reason why the non-waiver provision of the Restrictions should not be enforced in this instance.'. No evidence was presented, that Burkes' subdivision is no longer a "choice residential district." The violations described by Voicestream have not destroyed the fundamental character of the neighborhood. We conclude, as a matter of law on the record before us, that the non-waiver provision of the Restrictions remains enforceable and the subdivision property owners have not waived or abandoned enforcement even though they or their predecessors have acquiesced in several prior violations of its provisions."

Plaintiff points out that she nor her predecessors have acquiesced in prior violations. Frank Passantino of Desert Lakes Development LP did not keep quiet on Parcel VV being zoned multifamily. At CEO Passantino's request on or about 1991, the Board of Supervisors approved abandonment of a County's perceived multifamily zoning designation on Parcel VV. It had to be abandoned from the record because multifamily housing is a violation of the Tract 4076-B CC&Rs.

Thomas and Mary Coury of T&M Mohave Properties did not keep quiet on the 1998 proposal that Parcel VV lots be annexed to an existing property owner association. That condition of approval for Tract 4163, apparently for annexation to Azarmi's

Fairway Estates property owner association, was omitted by the Board of Supervisors in 2002. There had never been a property owner association in Desert Lakes Golf Course and Estates when T&M purchased the Tract 4163 land. Taking that condition of approval from Tract 4163 has saved every lot owner in Tract 4163 from having to pay association fees to an annexed subdivision where fees are as high as $400 per year per lot.

Plaintiff did not keep quiet when Mohave County gave a permit to her adjacent neighbor to trespass on her real property and extended the height of her boundary fence to over six feet that was a violation of the CC&Rs. Even after she paid $1400 for a Survey and it was found that her boundary fences were inside her property line and not shared by the adjacent neighbors, the County refused to revoke the permit.

Due to the finding that it was a violation of the Constitution and other Statutes, the County is now being sued for damages in three distinct claims for damages.

Plaintiff had an urgent need for remedy before the leaning block wall fell and injured persons or property and the County is proposing that she is guilty somehow since she paid for the remedy. She paid for the remedy because Mr. Oehler is claimed to have told Plaintiff's attorney that his clients had no money, had purchased an RV and were leaving the state therefore she could not even get a judgment against them. Then Mr. Oehler refused to prove his clients were actually paying his fees of over $300 per hour for over two years of litigation by redacting the Subpoenaed Statement of charges and payments as attorney-client privilege.

The remedy was to cut away the extended height of 30 lineal feet of cement block wall. The remedy was to cut away filled in cement blocks that had been extended to over

five feet from an original two foot height with the County not having any knowledge of the size of the original footing, and remedy was to purchase new wrought iron rails on both her own fence return and on "a portion" of her neighbor's rear yard fence.

Voicestream's remedy was to remove their tower at a reported cost of $300,000.

Self-serving defendants and many of their affiants either claim they caused setback violations or listed violations on their Affidavits that are fraudulent and now want to use those violations to assist Mr. Oehler's clients with a claim of abandonment based on frequency - apparently in support of a ruling by this Judge that the waiver clause has been abandoned. Plaintiff has received the Transcript of the words of Attorney Oehler that were spoken over three years ago and the case law that he was citing for the Judge. The MSJ should have been denied and dismissed.

The Court in the *Burke v. Voicestream* case also agreed that Voicestream was not entitled to claim hardship because they proceeded with construction knowing of the Restrictions. Similarly, Mr. Oehler's clients and any defendant that knowingly builds in violation of the restrictions are not entitled to claim hardship. And those who have continuing violations are going to have to pay for remedy and then hold those responsible in a separate case as this Plaintiff is having to do.

For these reasons, in the limited space allowed, Plaintiff pleads for her Affidavit to stand and for reassignment of this case to another Judge. Another County is requested.

RESPECTFULLY SUBMITTED this 23rd day of March, 2023.

Nancy Knight

Nancy Knight, Plaintiff Pro Per

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