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Plaintiff Pro Per

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

NANCY KNIGHT Plaintiff, 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** **NOTICE TO PROPERTY OWNERS** **Honorable Judge Nielson**

THIS LAW SUIT MAY AFFECT YOUR
DESERT LAKES GOLF COURSE & ESTATES
TRACT 4076-B, TRACT 4076-D AND TRACT 4163
PROPERTY RIGHTS

You have been served as a party in this lawsuit based upon your interest in real property subject to the Tract 4076-B and/or Tract 4076-D Declaration of Covenants, Conditions and Restrictions for Desert Lakes Golf Course and Estates (referred to herein collectively as "Declarations") so that you can decide what action you wish to take regarding the pending trial by jury for Ludwig's et. al. claim of abandonment of the

Declarations and/or claim of abandonment of specific Deed Restrictions.

Twenty-five Tract 4163 lots created from Parcel VV and a portion of Parcel KK, as delineated in Phase II on the 1988 Preliminary Plat that created the 300+ acre Desert Lakes Golf Course & Estates Subdivision Tract 4076, is subject to the Tract 4076-B Declaration.

Twelve Phase II lots planned as Tract 4076-B lots that are situated along the Frontage Road at the intersection of Lipan Blvd. and Mountain View are subject to both the Tract 4076-B and Tract 4076-D Declarations. Section 7 in the Tract 4076-B Declaration lists the twelve lots numbered 75-86 inclusive, Block F.

Lot 81 in Block F is called out in the Tract 4076-B Declaration as being a lot adjacent to the golf course. Due to realignment of some of those preliminary plat locations, Lot 81 became a lot that is not adjacent to the golf course. This realignment of lots caused Tract 4076-D to have a separate map and County Tract designation within Subdivision Tract 4076.

A copy of the Declaration(s) pertinent to your Assessor Parcel Number(s) is included in your Service Packet of Documents.

A copy of Plaintiff Knight's January 2018 Complaint and the Defendant's June 2018 Answer are included in the Service Packet along with Waiver of Service Forms for your DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS pursuant to Rules 16, 4(f) 4.1 and 4.2 of Arizona Rules of Civil Procedure.

Pursuant to Rule 4.1 (2), if a party fails, without good cause, to sign and return a waiver requested by a plaintiff, the court must impose on the party: (A) the expenses later incurred in making service including copying costs and postage; and (B) the reasonable expenses, and attorney's fees, of any motion required to collect those service expenses.

You are being provided with an email address for submitting a letter of good cause explaining why you or any partner in the ownership of your lot is unable to sign and return the Waiver of Service form. You may send the letter in the self-addressed stamped envelope enclosed or send a pdf of the signed letter to Nancy Knight's email address at: nancyknight@frontier.com

Knight's claim against Defendants James B. Roberts and Donna M. Roberts was dismissed in 2018 when Knight was granted standing to prosecute violations only for lots that run with the land in Tract 4076-B (refer to the 1988 Preliminary Plat that created Subdivision Tract 4076 for the lots and parcels delineated as Phase II (Tract 4076-B) available from Mohave County Development Services. The Robert's lot is in Phase I, Tract 4076-A. Knight's lot is a part of Parcel VV delineated on the approved 1988 Preliminary Plat in Phase II.

This law suit involves claims by Knight that the Defendants, Glen Ludwig and Pearl Ludwig of the Ludwig Family Trust, Fairway Constructors, Inc., and Mehdi Azarmi, have violated certain sections of the Tract 4076-B Declaration. Specifically, they are alleged as violating Res. 93-122 setbacks for Desert Lakes' Tract 4076 Special Development Zoning as approved in conformance with Section 6 of the Declaration; Section 12 (business advertising signs on unimproved lots); and Section 20 (threatened and attempted violation of Section 6 for efforts to amend Res. 93-122 with Res. 2016-125 and Res. 2016-126 that failed to pass Board of Supervisor approval on October 3, 2016).

The Defendants have not denied Knight's claims. Their affirmative defense is a claim of abandonment of the Declaration which in turn results in abandonment of the non-waiver provision of Section 20 and all protective Sections of the Declaration.

Knight argues that complete abandonment of the Declaration has not occurred pursuant to case law. Complete abandonment of the **Declaration** - which is the "entire set of Deed Restrictions" – is found in *Burke v. Voicestream Wireless Corp.*, 207 Ariz at 399, ¶ 26, 87 P.3d at 87 (Ariz. Ct. App. 2004).

> ¶ 26 The non-waiver provision would be ineffective if a complete abandonment of the entire set of Restrictions has occurred. The test for determining a complete abandonment of deed restrictions — in contrast to waiver of a particular section of restrictions — was set forth by our supreme court in *Condos v. Home Development Company*, 77 Ariz. 129, 267 P.2d 1069 (1954): "[W]hether the restrictions imposed upon the use of lots in this subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions, defeat the purposes for which they were imposed and consequently amount to an abandonment thereof." Id. at 133,

267 P.2d at 1071.

The *Burke* court held that the violations of section 4 have not destroyed the fundamental character of the neighborhood and concluded as a matter of law that the non-waiver provision remained enforceable.

In *Cundiff et.al. v. Cox et.al.*, an Arizona case in Yavapai County that began in 2003, the fundamental character of the neighborhood was captured in a video where the nine acre parcels with dirt roads maintained the fundamental character of the intent for a rural, residential community.

From *O'Malley v. Central Methodist Church*, 67 Ariz. at 257, 194 P.2d 444 (1948) the Arizona Supreme Court held that where frequent violations of the restrictions have been permitted, then the neighborhood scheme will be considered abandoned.

Refer to paragraph four of the Declaration for Tract 4076-B for the intent of the Declarants who "established a general plan for the protection, maintenance, development and improvement of said tract".

The said tract in this civil case is Tract 4076-B. It is one of three Declarations for all lots in Phase I through Phase IV of the 1988 approved Preliminary Plat. Phase I became Tract 4076-A. Phase II and Phase III lots and parcels were combined for the Tract 4076-B Declaration. Phase IV became Tract 4076-C that is situated east of Mountain View and north of Lipan Blvd. for the Tract 4076-C Declaration.

Knight contends the fundamental character of Desert Lakes Golf Course & Estates has been maintained for the intent of a golf course and single family residential lots therefore the non-waiver provision of the Declaration remains valid and enforceable.

Further, frequent violations have not been permitted. Knight's CV 2016 04026 case resulted in remedy for a fence violation. In 1991, CEO Passantino of Desert Lakes Development, who created Subdivision Tract 4076, had the Board of Supervisors abandon the erroneous Multifamily housing designation applied to Parcel VV by the County when no multifamily zoning existed in 1988 when the Preliminary Plat was approved. T&M Mohave Properties' member, Tom Coury, did not acquiesce in 2002 for Tract 4163 to be conditioned for annexation or creation of a Property Owner Association and the Board approved abandonment of that POA condition.

The CC&Rs continue to expressly prohibit multifamily housing, no Corporation has been formed for a Property Owner Association and remedy for violations continues to be enforced or attempted to be enforced in a Court of law in three cases to date. Remedy between neighbors continues without the need to file a law suit.

Desert Lakes has an Unincorporated Association (UA) for the explicit purpose of amending the CC&Rs to prevent law suits and for forming a Committee for variances or exceptions pursuant to Article I of the Declaration that could also prevent law suits. The UA is completely volunteer based with no annual fees/dues and the UA does not enforce CC&Rs. Enforcement remains the responsibility of property owners as was intended in the Declarations.

Knight argues that all sections of the Declaration have remedy therefore the intent of these sections cannot be defeated and these sections remain valid and enforceable including Knight's own setback violations that she seeks remedy for from these Defendants and others in a separate law suit (CV 2022 00177) that had a change of venue

to Yavapai County due to Defendant Mohave County being among the other Defendants who is charged with fraud and breach of duty for Knight's real property damages and her allegation of collusion with other Defendants.

Documents filed in this 2018 case can be accessed from the Mohave County Superior Court website's "High Profile Cases" link at https://www.mohavecourts.com/court-departments/clerk-superior-court/high-profile-cases and scrolling to Knight v. Ludwig et. al.

You are advised to seek legal counsel for return of your Signed Waiver of Service Form and your decision to join in this law suit as a Plaintiff, Defendant, Plaintiff Pro Per, Defendant Pro Per or not join in the law suit and accept the results of the jury at trial.

You are required to sign the Waiver of Service Form and return it in the enclosed self-addressed stamped envelope for filing with the Clerk of the Court. Failure to return the signed waiver of service has financial consequences for Knight's additional cost in her efforts to provide you with the Service Packet documents as Ordered by the Court. A Small Claims matter will be filed against you for those costs to be paid by you to Knight if the Waiver of Service Form is not returned for filing with the Court.

You must also provide an email address for delivery of documents, orders, rulings as sent to you by the Clerk of the Court or suffer the mailing costs.

You are not to contact the Plaintiff, Defendants nor Defendant's attorney who are litigating this matter.

A Gag Order was imposed on Knight who formed the UA and mailed a Ballot for Amendments to the CC&Rs in June 2022. She is prohibited from any direct or indirect

contact with any of the Indispensable Parties in this matter with the exception of mailing this Service Packet. If you retain legal counsel, your representative may contact any of the litigants.

Your Service Packet includes (1) This Notice, (2) personal Summonses, (3) a copy of the Knight's Complaint filed with this Court on January 22, 2018, (4) a copy of Ludwig's et. al. Answer filed on June 19, 2018, (5) Declaration of Covenants, Conditions and Restrictions for Desert Lakes Golf Course and Estates Tract 4076-B. Twelve Tract 4076-D lot owners will also receive a copy of the Tract 4076-D Declaration of Covenants, Conditions and Restrictions, (6) Two Waiver of Service forms for each property owner listed for your Assessor Parcel Number(s) and sufficient self-addressed stamped envelopes for return of one copy of each signed waiver to be returned to Knight for filing with the court. You keep a copy of the Waiver of Service Form for your records.

You may return a letter to Knight in the envelope provided for the return of the Waiver of Service that explains why you or a partner in ownership of your Assessor Parcel Number(s) for good cause could not return the signed waiver of service form.

Plaintiff is not obligated to suffer any subsequent costs of service beyond the first mailing. For those lot owners who have not signed a Return Receipt for either the first or second mailing, Knight is required to hire a professional licensed process server. That cost that will be assessed upon you in Small Claims Court is estimated to be $100 per property owner.

This alternate form of service is in accordance with ARCP Rules 4, 4.1 and 4.2 for personal service upon the subject lot owner/s.

For those property owners who are not served in the ways set forth above, the Court will consider other forms of alternative service such as notice by publication and that cost will be paid by you.

You must provide Knight with an email address for use in transmitting documents to you electronically. You must notify Knight of any change in your email address. Your email address may be sent to nancyknight@frontier.com

Failure to comply with any of the above provisions may cause the Court, on Motion by Knight, to relinquish your rights to be joined and to accept your Return Receipt as proof of service whether you accepted the service packet or refused delivery pursuant to the mail carrier.

You have a choice to opt-in as a Plaintiff or Defendant in this matter. You have a choice to opt-out as well. But you must return the signed Waiver as proof that you were provided an opportunity to join. Contact an attorney for the benefits and/or risks of opting-in.

SIGNED AND SEALED this date: _____

Christine Spurlock
Clerk of the Superior Court

By: _____
Deputy Clerk