

FILED
TIME 4:14 PM
OCT 25 2023
CHRISTINA SPURLOCK
CLERK SUPERIOR COURT
BY: CS DEPUTY

1 Nancy Knight
2 1803 E. Lipan Cir.
3 Fort Mohave, AZ 86426
4 Telephone: (928) 768-1537
nancyknight@frontier.com

5 Plaintiff Pro Per

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

8 NANCY KNIGHT,

9 Plaintiff,

10 V.

11 LUDWIG; ET. AL.

12 Defendants.

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

) **MOTION FOR RELIEF FROM**
) **THIS COURT'S ORDER AND**
) **AWARD OF ATTORNEY FEES**
) **DATED OCTOBER 17, 2023**

) Hon. Judge Nielson

13
14
15
16 COMES NOW, Plaintiff Pro Per, Nancy Knight, pursuant to Rule 60 (b) pleading
17 for Relief from this Court's October 17, 2023 Order for failure of this court's due process
18 for new claims by the Defendants for Plaintiff's valid motions.

19
20 This Court, at the very first status conference held, said he always provides
21 reasons for his decisions. Plaintiff has been provided no reasons for why this Court has
22 imposed a Gag Order on the Plaintiff and yet refuses a fair application of a Gag Order on
23 the Defendants and their attorney.

24
25 The one-sided Gag Order that was imposed on the Plaintiff at the request of
26 attorney Oehler is a Void Order. In fact, every Order issued by that biased and now
27 recused Court is a Void Order and this Court does not have to abide in any of that Court's
28



1 decisions. A Void Order does not need to be Appealed. It is Void.

2 Further, the Gag Order imposed on the Plaintiff was a penalty for her acting in the
3 capacity of President of the Desert Lakes Tract 4076 Unincorporated Association for the
4 Ballot and Information on a Class Action that was mailed to property owners in 2021.
5 The Gag Order had nothing to do with this case. It was malicious and it was an attempt to
6 threaten the Plaintiff.
7
8

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10
11 No state shall deprive any person of life, liberty, or property, without due process
12 of law; nor deny to any person within its jurisdiction the equal protection of the laws.
13 Plaintiff's Motion for a Gag Order on attorney Oehler and the Defendants that was filed
14 on or about June 9, 2023 would have been an equal protection strategy for the Plaintiff.
15 Penalizing her by taking her property, money, for any of her motions is malicious unless
16 the Court can claim how those motions violated law. The Gag Order also deprives the
17 Plaintiff of liberty. She has been deprived of her freedom to speak to her neighbors for
18 over a year.
19
20

21 Plaintiff's Motion to Strike Defendants' 2019 Motion for Summary Judgment filed
22 March 1, 2023 was necessary in the interest of justice. The now recused Court did not
23 grant Summary Judgment after Oral Arguments were heard. The now recused Court did
24 not require the Defendants to join indispensable parties when the Plaintiff motioned for
25 that Rule 19 Order. The Motion was necessary in the interest of justice. The Summary
26 Judgment was a dilatory strategy to stall Injunctive Relief and allowed the Defendants to
27
28

1 continue to cause victims of their “build to suit” advertising where the Defendant’s
2 profited from larger building footprints at the expense of the home buyers who are now
3 subject to Breach of Contract law suits. This Court has become complicit in failing to
4 either make a decision of law, based on the many law of cases cited by the Plaintiff, and
5 declare that the Declaration of CC&Rs has not been abandoned. Instead, this Court is
6 punishing the Plaintiff for her attempt to serve justice.
7
8

9 Plaintiff’s Motion for Oehler to State a Rule 12 Claim that she filed on or about
10 June 12, 2023 was necessary in the event that Mr. Oehler has now decided that he is not
11 claiming “complete abandonment” of the Declaration but rather he is claiming “complete
12 abandonment” of one or more Deed Restrictions. What is Plaintiff expected to defend at
13 trial? The Defendants need to state a claim for which remedy is available. Any claim of a
14 Deed Restriction has remedy. The removal of any contested Deed Restriction has already
15 been vetted case law examples when the party making a claim of abandonment and lost
16 he must remove the violation. See the *Voicestream* case, already a part of the record,
17 where a \$300,000 tower was ordered to be taken down (removed).
18
19
20

21 Equally consistent with the requirements of due process is a statutory procedure
22 whereby a prosecutor of a case is adjudged liable for costs, and committed to jail in
23 default of payment thereof, whenever the court or jury, after according him an
24 opportunity to present evidence of good faith, finds that he instituted the prosecution
25 without probable cause and from malicious motives. A state may permit harassed litigants
26 to recover penalties in the form of attorney’s fees or damages. Attorney Oehler is one
27 such prosecutor in this case. He has malicious motives to win at all costs.
28

1 Also constitutional is the traditional common law approach for measuring punitive
2 damages, granting the jury wide but not unlimited discretion to consider the gravity of the
3 offense and the need to deter similar offenses. This attorney and his defendants need to be
4 deterred from continuing to make a travesty of justice. They should not be rewarded by
5 this Court for their misdeeds.
6

7
8 The Due Process Clause prevents the deprivation of liberty or property upon
9 application of a standard of proof where this Court was to make a reasonable assurance of
10 accurate factfinding. The function of a standard of proof, as that concept is embodied in
11 the Due Process Clause and in the realm of factfinding, is to instruct the factfinder
12 concerning the degree of confidence our society thinks he should have in the correctness
13 of factual conclusions for a particular type of adjudication. There is no rational
14 connection between what is proved and what is inferred for the Gag Order imposed on
15 the Plaintiff where the former biased Court argued that he "thinks" she did something
16 wrong. Plaintiff has a right to know what exactly she did in her capacity of a party in this
17 law suit that constituted the penalty of a Gag Order. Case law would side with the
18 Plaintiff that this Court has violated the Plaintiff's Constitutional Right to Free Speech.
19
20
21

22 It is well established that pro se complaints, "however inartfully pleaded[,] are
23 held to less stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v.*
24 *Rowe*, 449 U.S. 5, 9,101 S. Ct. 173, 66 L. Ed. 2d 163 (1980) (quotation marks omitted);
25 *see Ortez v. Wash. County*, 88 F.3d 804, 807 (9th Cir.1996) ("Because Ortez is a pro se
26 litigant, we must construe liberally his inartful pleading.])" (citation omitted). "In civil
27 rights cases where the plaintiff appears pro se, the court must construe the pleading
28

1 liberally and must afford plaintiff the benefit of any doubt." *Karim-Panahi v. L.A. Police*
2 *Dep't*, 839 F.2d 621, 623 (9th Cir.1988); *see Morrison v. Hall*, 261 F.3d 896, 899 n. 2
3 (9th Cir.2001) (citing *Karim-Panahi* 839 F.2d at 623; *Haines v. Kerner*, 404 U.S. 519,
4 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)); *Frost v. Symington*, 197 F.3d 348, 352 (9th
5 Cir.1999) (citing *Karim-Panahi* 839 F.2d at 623).
6

7
8 When analyzing a complaint for failure to state a claim, "all allegations of material
9 fact are taken as true and construed in the light most favorable to the non-moving party."
10 *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir.1996); *see Miree v. DeKalb County*, 433
11 U.S. 25, 27 n. 2, 97 S. Ct. 2490, 53 L. Ed. 2d 557 (1977). In addition, the district court
12 must assume that all general allegations "embrace whatever specific facts might be
13 necessary to support them." *Pelozza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521
14 (9th Cir.1994), *cert. denied*, 515 U.S. 1173, 115 S. Ct. 2640, 132 L. Ed. 2d 878 (1995)
15 (citations omitted). The district court need not assume, however, that the plaintiff can
16 prove facts different from those alleged in the complaint. *See Associated Gen.*
17 *Contractors of Cal. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526, 103 S. Ct.
18 897, 74 L. Ed. 2d 723 (1983). Similarly, legal conclusions couched as factual allegations
19 are not given a presumption of truthfulness and "conclusory allegations of law and
20 unwarranted inferences are not sufficient to defeat a motion to dismiss." *Pareto v.*
21 *F.D.I.C.*, 139 F.3d 696, 699 (9th Cir.1998); *see Jones v. Cmty. Redev. Agency*, 733 F.2d
22 646, 649-50 (9th Cir.1984); *W. Mining Council*, 643 F.2d at 624.
23
24
25
26
27
28

1 "Dismissal can be based on the lack of a cognizable legal theory or the absence of
2 sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police*
3 *Dept.*, 901 F.2d 696, 699 (9th Cir.1988); *see* William W. Schwarzer et al., *Federal Civil*
4 *Procedure Before Trial* § 9:187, at 9-46 (2002). Alternatively, dismissal may be
5 appropriate when the plaintiff has included sufficient allegations disclosing some
6 absolute defense or bar to recovery. *See Weisbuch v. County of L.A.*, 119 F.3d 778, 783, n.
7 1 (9th Cir.1997) ("If the pleadings establish facts compelling a decision one way, that is
8 as good as if depositions and other... evidence on summary judgment establishes the
9 identical facts."); *see also Federal Civil Procedure Before Trial* § 9:193, at 9-47.

13 "Generally, a district court may not consider any material beyond the pleadings in
14 ruling on a Rule 12(b) (6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896
15 F.2d 1542, 1555 n. 19 (9th Cir. 1990); *see Lee v. City of LA*, 250 F.3d 668, 688 (9th
16 Cir.2001). Indeed, "a court may not look beyond the complaint to a plaintiff's moving
17 papers, such as a memorandum in opposition to a defendant's motion to dismiss."
18 *Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1197 (9th Cir.1998) (citing *Harrell v.*
19 *United States*, 13 F.3d 232, 236 (7th Cir.1993)).

23 "However, material which is properly submitted *as part of the complaint* may be
24 considered' on a motion to dismiss." *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir.), *cert,*
25 *denied*, 512 U.S. 1219, 114 S. Ct. 2704, 129 L. Ed. 2d 832 (1994) (quoting *Hal Roach*
26 *Studios*, 896 F.2d at 1555 n. 19) (emphasis in original); *see Federal Civil Procedure*
27 *Before Trial* § 9:212, at 9-54. Similarly, a district court may consider any documents
28

1 referred to or "whose contents are alleged in a complaint and whose authenticity no party
2 questions." *Id.* at 454; *see Lee*, 250 F.3d at 688 (citing *Parrino v. FHP, Inc.*, 146 F.3d
3 699, 705-06 (9th Cir.), *cert. denied*, 525 U.S. 1001, 119 S. Ct. 510, 142 L. Ed. 2d 423
4 (1998)); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.2001) (citing
5 *Branch*, 14 F.3d at 453-54); *see also Robinson v. Fred Meyers Stores, Inc.*, 184 F. Supp.
6 2d 968, 972 (D.Ariz.2002); *see Federal Civil Procedure Before Trial* § 9:212.1, at 9-54.
7
8 In addition, "even if the plaintiffs complaint does not explicitly refer to" a document, "a
9 district court ruling on a motion to dismiss may consider a document the authenticity of
10 which is not contested, and upon which the plaintiffs complaint necessarily relies"
11 because this prevents "plaintiffs from surviving a Rule 12(b) (6) motion by deliberately
12 omitting references to documents upon which their claims are based[.]" *Parrino*, 146
13 F.3d at 705-06. "Such consideration does `not convert the motion to dismiss into a
14 motion for summary judgment.'" *Branch*, 14 F.3d at 454 (quoting *Romani v. Shearson*
15 *Lehman Hutton*, 929 F.2d 875, 879 n. 3 (1st Cir.1991)); *see Parrino*, 146 F.3d at 705-06;
16 *Parks Sch. of Bus.*, 51 F.3d at 1484; *cf. Fed. Rs. Civ. P.* 12(b), 56.
17
18
19
20

21 At this stage of the litigation, however, the district court must resolve any
22 ambiguities in the considered documents in the plaintiff's favor. *See Int'l Audiotext*
23 *Network, Inc. v. AT & T Co.*, 62 F.3d 69, 72 (2d Cir.1995); *see also Smith*, 84 F.3d at
24 1217; *Miree*, 433 U.S. at 27 n. 2, 97 S. Ct. 2490.; *Federal Civil Procedure Before Trial* §
25 9:212.1c, at 9-55.
26
27
28

1 Damages for the alleged wrongs committed against the Plaintiff constitute retrospective
2 relief designed to compensate Plaintiff for past harm.

3
4 In civil contexts, What costs are allowed by law is for the court to determine; an
5 erroneous judgment of what the law allows does not deprive a party of his property
6 without due process of law.

7
8 Pursuant to the Arizona Supreme Court, “We hold that courts lack authority to
9 enter a nunc pro tunc order absent clerical error or mistake in the record, rendering such
10 an order void and subject to collateral attack.” Emphasis Supplied.

11
12 A Void Judgment is an order procured by fraud that can be attacked at any time, in
13 any court, either directly or collaterally, provided that the party is properly before the
14 court, *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999).

15
16 A void judgment, insofar as it purports to be pronouncement of court, is an
17 absolute nullity, *Thompson v. Thompson*, 238 S.W.2d 218 (Tex.Civ.App. – Waco 1951).
18 Pronouncement of judgment is the rendition of judgment by the court. It is the rendition
19 of judgment and direction for the entry thereof.

20
21 Arizona courts give great weight to federal courts’ interpretations of Federal Rule
22 of Civil Procedure governing motion for relief from judgment in interpreting identical
23 text of Arizona Rule of Civil Procedure. When rule providing for relief from void
24 judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v.*
25 *Shalala*, 30 F.3d 1307, (Colo. 1994). Judgments entered that were in violation of due
26 process of law, must be set aside, *Jaffe and Asher v. Van Brunt*, S.D.N.Y.1994. 158
27
28

1 F.R.D. 278.

2 Judgment is a void judgment if the court acted in a manner inconsistent with due
3 process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 –
4 *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985).

6 A void judgment is one which, from its inception, is and forever continues to be
7 absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right,
8 of no legal force and effect whatever, and incapable of enforcement in any manner or to
9 any degree – *Loyd v. Director, Dept. of Public Safety*, 480 So. 2d 577 (Ala. Civ. App.
10 1985).

13 ***The Requirements of Due Process.***—Although due process tolerates variances in
14 procedure “appropriate to the nature of the case,” its core goals and requirements are that
15 “procedural due process rules are meant to protect persons from the mistaken or
16 unjustified deprivation of life, liberty, or property.” Thus, the required elements of due
17 process are those that “minimize substantively unfair or mistaken deprivations” by
18 enabling persons to contest the basis upon which a state proposes to deprive them of
19 protected interests.

22 The Court held, “We must look not to the ‘weight’ but to the nature of the interest
23 at stake. . . . We must look to see if the interest is within the Fourteenth Amendment’s
24 protection of liberty and property.” To have a property interest in the constitutional sense,
25 the Court held, it was not enough that one has an abstract need or desire for a benefit or a
26 unilateral expectation. He must rather “have a legitimate claim of entitlement” to the
27 benefit. “Property interests, of course, are not created by the Constitution. Rather, they
28

1 are created and their dimensions are defined by existing rules or understandings that stem
2 from an independent source such as state law—rules or understandings that secure certain
3 benefits and that support claims of entitlement to those benefits.”
4


5 Liberty is a right to free speech that has been imposed unfairly against the Plaintiff
6 and has impugned the Plaintiff’s reputation, honor, and integrity without either this Court
7 or the former biased, recused Court following due process in stating the reasons for the
8 Gag Order. Stating, I think you did something wrong is inappropriate. Plaintiff’s
9 reputation has been impugned by this case being displayed on the high profile cases on
10 the County website. The Gag Order is atypical and has posed a significant hardship on
11 the Plaintiff in her capacity as President of the Unincorporated Association to assist
12 property owners in preventing law suits with a Ballot for amendments to the CC&Rs and
13 for seeking volunteers to serve in the capacity of providing variances and exceptions to
14 restrictions and conditions. Fair Play and Substantial Justice applies to this matter.
15
16
17
18

19 **CONCLUSION**

20 Plaintiff pleads for reversal of the attorney fees.
21

22 Plaintiff pleads for this Court to Void all Orders issued by the now recused Court.
23

24 **RESPECTFULLY SUBMITTED** this 23rd day of October, 2023

25 
26 _____

27 Nancy Knight, Plaintiff Pro Per
28

1 Original of the Foregoing Mailed on October 23, 2023 to:

2 Clerk of Mohave County Superior Court

3
4 PO Box 7000

5 Kingman, AZ 86402

6
7
8 Copy emailed on October 23, 2023 to:

9 djolaw10@gmail.com attorney for the Defendants

10 kalerma@courts.az.gov judicial assistant to visiting judge Nielson