

FILED

TIME 10:26 AM

NOV 16 2023

CHRISTINA SPURLOCK
CLERK SUPERIOR COURT

BY: VA DEPUTY

1 Nancy Knight
2 1803 E. Lipan Cir.
3 Fort Mohave, AZ 86426
4 Telephone: (951) 837-1617
5 nancyknight@frontier.com

6 Plaintiff Pro Per

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

9 NANCY KNIGHT,

10 Plaintiff,

11 vs.

12 GLEN LUDWIG and PEARL LUDWIG,
13 Trustees of THE LUDWIG FAMILY
14 TRUST; FAIRWAY CONSTRUCTORS,
15 INC.; MEHDI AZARMI; JAMES B.
16 ROBERTS and DONNA M. ROBERTS,
17 husband and wife; JOHN DOES 1-10;
18 JANE DOES 1-10; ABC
19 CORPORATIONS 1-10; and XYZ
20 PARTNERSHIPS 1-10.

21 Defendants.

Case No.: CV 2018 04003

**PLAINTIFF'S REPLY TO
DEFENDANT'S NOVEMBER 3, 2023
RESPONSE IN OBJECTION TO
PLAINTIFF'S AFFIDAVIT FOR
ATTORNEY FEES**

**Hon. Judge Nielson
Visiting Judge**

21 COMES NOW, Plaintiff Pro Per, NANCY KNIGHT, hereby Responding to the
22 objections raised by Attorney Oehler and his clients for his and his clients to pay
23 Plaintiff's costs and attorney fees. "The problem" as stated in the Response, is that there
24 has been no ruling for Plaintiff's claims. Plaintiff does not need this Court to first rule on
25 claims that support her justification for attorney fees. Plaintiff is required to show cause
26
27
28



B8015CV201804003

1 for her claims. Plaintiff has done so and has respectfully filed her Affidavit of claims that
2 is associated with the Order for this Court's signature.

3
4 The rule of law provides Plaintiff with her justifications. The Defendants and their
5 attorney expanded the case, delayed the case and committed fraud.

6 This Court granted attorney fees to the Defendants for Plaintiff's Motions that had
7 not been ruled upon. Is attorney Oehler now claiming he was granted attorney fees of
8 over six thousand dollars fraudulently?
9

10 Striking the Affidavit in its entirety would be a miscarriage of justice and cause
11 further delay in this case. Rule 12 (f) does not apply to this matter. The issues of law for
12 granting attorney fees and double damages is justified.
13

14 **MEMORANDUM OF POINTS AND AUTHORITES**

15
16 1) The Declaration of Covenants, Conditions and Restrictions (CC&Rs) is a
17 Contract that is based on Law. The Defendant's 2019 Motion for Summary Judgment
18 (MSJ) for dismissal was based on a claim of "complete abandonment" of the Declaration
19 and dismissal was not granted. Therefore, the MSJ was effectively denied when the court
20 sought arguments from both sides based on material facts in this case for proceeding to
21 trial on other issues. That was an affirmative action by the Court in 2020.
22

23 The material issue in this case is not whether the Declaration has been "completely
24 abandoned" for three areas of Desert Lakes Subdivision Tract 4076 as this attorney
25 claims. That matter has already been settled.
26

27 It is not the "Plaintiff's position". It was the position of Judge Jantzen in 2020
28

1 after Oral Arguments were held on the Contract. The Contract, pursuant to section 19,
2 could not be ruled as “completely abandoned” and therefore the Motion for Summary
3 Judgment for dismissal was not granted.
4

5 The Contract was not found “completely abandoned” based on law and the
6 Defendant’s objective of complete abandonment of the Declaration was defeated
7 therefore the non-waiver clause remained in full force and effect as it still remains to this
8 day.
9

10 This Court awarded attorney fees to the Defendants for Plaintiff’s motion to Strike
11 the MSJ that was no longer at issue in this case. Litigants should be able to recognize a
12 judgment which on its face purports to be final. Not granting the MSJ purported to be
13 final for Denial of dismissal based on an invalid claim of “complete abandonment” of the
14 Declaration.
15

16 “The problem” that no ruling has been made does not exist. If an MSJ does not
17 dispose of all issues and all parties, it normally will be considered interlocutory and not
18 appealable. When the Defendants were not granted dismissal with their MSJ they did not
19 attempt to Appeal because it was unappealable. “Complete abandonment” of the
20 Declaration was denied.
21

22 2) If it is still the position of the Defendants that specific covenants have not been
23 enforced in 30-plus years, then they must state a claim pursuant to Rule 12 (b)(6) of what
24 Deed Restrictions they are now claiming have been “completely abandoned”.
25

26 This court awarded attorney fees to the Defendants for Plaintiff’s Motion on Rule
27 12(b)(6). Plaintiff should not be subjected to inferring what sections of the Declaration
28

1 that the Defendants are now claiming.

2 It is not clear to the Plaintiff on how her Motion could result in her paying the
3 Defendants' attorney fees when a ruling on Rule 12(b)(6) was not provided to the
4 Plaintiff. The Motion was stalled and we cannot proceed to trial based on unknowns. To
5 date, Plaintiff's attorney fees applies to the ongoing delays in this case caused by attorney
6 Oehler.
7
8

9 Once the Defendants provide the Plaintiff with a claim of what section or sections
10 of the Declaration have been "completely abandoned", then we will be able to proceed to
11 trial as was intended over three years ago when the MSJ for Dismissal was not granted.
12

13 To date, the frequency claims made in 2020 either do not apply due to changes in
14 Federal Law, such as the TV antennas; Do not apply because the language of the
15 Declaration is absent Attorney Oehler's claims such as his claiming all lots must have
16 fences or that fences must be maintained; There exists no evidence that fence height and
17 materials to be used were violated when a property owner wished to build a fence or
18 when Mohave County imposed fence conditions on a Developer; Defendants have not
19 proven any fence heights were violated "as built" and approved by Mohave County.
20 Plaintiff's own "as built" five foot high fence was modified by her adjacent neighbor and
21 had to be remedied in a Court of law. It was remedied before this case was filed.
22
23
24

25 3) It follows that Injunctive Relief would have been granted when the non-waiver
26 clause remained in full force and effect and the case was not dismissed in 2020.

27 But for the next trickery by Attorney Oehler to make the fraudulent claim that
28 the "build to suit" signs were one-and-the-same as "for sale" signs protected by Statute

1 §33-441, permanent Injunctive Relief would have been granted by now.

2 Fraud by attorney Oehler exists.

3
4 This court has been provided with the decision of the Arizona Department of Real
5 Estate (ADRE) that the signs are the developer's signs and not "for sale" nor "for lease"
6 signs. Attorney Oehler has belittled that investigation as being conducted by just an
7 employee of the ADRE. That employee was highly knowledgeable and included being
8 specific on differentiating "for lease" signs. The ADRE recognized that "build to suit" is
9 generally posted for real property to be built in accordance with the needs of the
10 prospective tenant on leased land and therefore accurately declared the Defendant's signs
11 were not "for lease" signs.
12
13

14 This Court has the Pettit Affidavit that states she always added a rider to a build to
15 suit type of sign when the lot was for sale. No such rider exists on the sign that she shares
16 with the Defendants for her US Southwest real estate logo recognition and advertising her
17 Development Services business on the defendant's signs.
18

19 This Court has Defendants' ADRE Public Report that admits they only sell
20 improved lots and this Court has the evidence that the Defendants buy lots in Desert
21 Lakes Tract 4076, build them in violation of the County zoning restriction for setbacks
22 and in violation of the CC&R Deed Restriction for setbacks.
23
24

25 This Court has photographic evidence of dilapidation of the signs due to long-term
26 exposure to the elements that posed a risk of harm to persons and property. The Deed
27 Restriction on signs is specific that no sign may remain on lots, improved or otherwise.
28

1 Mohave County is not an alternate authority on the Declaration or any of the Deed
2 Restrictions. The County is not a party to the CC&Rs. As already a part of the case, their
3 own Ordinance is proof that off-premises business advertising was not allowed on
4 residential lots when this case was filed. Any change in law that occurred after the case
5 was filed does not apply to this matter. It is clear that the church sign cited by the County
6 Attorney as free speech from the *Reed v. Town of Gilbert* case does not apply to the
7 Defendant's "build to suit" signs. In fact, the County Ordinance change, Res. 2022-01, is
8 dated April 4, 2022 for the Amendment to the Mohave County Zoning Ordinance, for
9 Section 42 on the Sign Ordinance. It is intended to allow for banners, pennants, and A-
10 frame signs, and to allow changes to be made to regulate signs by time, manner, and
11 place in accordance with the *Reed v. Town of Gilbert* case. It has no bearing on the
12 Ordinance for off-premises business advertising that are regulated to be allowed only on
13 commercial land, not on residential lots. Using a 2022 change in the County Ordinance is
14 a conniving attempt by Attorney Oehler to further use fraud for protection of his clients'
15 misdeeds.
16
17
18
19
20

21 As a matter of Law, the permanent Injunctive Relief sought has not been ruled
22 upon. This Court may be overwhelmed by what began as a simple case and became
23 complex at the hands of attorney Oehler and his fraudulent claims. It is time for this
24 Court to rule on its own for Injunctive Relief. It can do so on its own pursuant to Rule 60.
25

26 The court may correct a mistake arising from oversight in
27 any part of the record. The court may do so on motion or on
28 its own, with or without notice.

1 No real evidence exists for any other new home construction developer posting
2 advertising signs on residential lots in Desert Lakes. No real evidence exists for any
3 violation of the sign restriction except for the Defendant's signs. Whether acquiescence
4 occurred in the past is arguable and irrelevant. The non-waiver clause was in effect when
5 this case was filed and remained in full force and effect when the MSJ for dismissal was
6 not granted in 2020.
7
8

9 4) Affidavits must contain only facts that would be admissible as evidence at trial
10 under the Arizona Rules of Evidence. Affidavit Fraud documents are not admissible at
11 trial.
12

13 Fraudulent claims on Affidavits has been proven by the Plaintiff. Fraud is a matter
14 of Law. The claim that no enforcement has occurred in thirty years is a fraudulent claim.
15

16 Enforcement occurred in CV 2016 04026 for fence height on Plaintiff's side yard
17 fence. That remedy was a cutting away of the cement blocks to restore the original five
18 foot side yard fence height.
19

20 Enforcement occurred in CV 2016 04026 based on mediation judge Langford's
21 negotiation for settlement on the adjacent neighbor's rear yard fence that was a taking of
22 Plaintiff's views of the golf course and surrounding area. That remedy was for restoration
23 of the original design with wrought iron rail panels as imposed on the developer by
24 Mohave County when Tract 4163 was approved. Mr. Oehler was the defense counsel in
25 CV 2016 4026.
26

27 Based on County records, the County found only two homes built by Mr. McKee.
28 Both of those homes were found to have been built in compliance with County Res. 93-

1 122 for twenty foot setbacks, front and rear, and five feet on side yard setbacks. Res. 93-
2 122 was approved for Desert Lakes Tract 4076 to be in compliance with the Deed
3 Restriction for setbacks. McKees' fraudulent affidavit claimed all of the homes he built
4 had setback violations. Mr. McKee is Mr. Oehler's client.

6 Gate access to the golf course is not a violation since property owners have a right
7 by adverse possession. Several different owners of the golf course over the years have
8 allowed trespass. Further, the County imposed use of the golf course for the small lot
9 approval of Tract 4163 in accordance with Subdivision Regulations. Defendant Azarmi
10 was a party to that small lot approval that required Tract 4163 property owners to have
11 access to recreation land.

14 A preponderance of evidence exists that none of the Defendant's claims of
15 abandonment of any Deed Restriction would mount to a level of "complete
16 abandonment". Their claim is futile just as it was futile for their attempt at a ruling of
17 "complete abandonment" of the Declaration through their 2019 MSJ for dismissal.

19 5) A preponderance of evidence exists in this case for granting Plaintiff's Affidavit
20 and Order for attorney fees and to not strike the Affidavit.

22 6) Section 12-349 applies to this matter of Plaintiff's request for relief from her
23 costs and attorney fees as stated in the Affidavit.

25 7) Additional costs, as a pro per Plaintiff, continue to mount in this case.

26 8) Defendant's attorney has been causing delays in this case since 2019 with no
27 less than three failed attempts for dismissal.

1 his pleadings if the factual allegations are close to stating a claim for relief". *Haines v.*
2 *Kerner*, 4040 U.S. 519-20 (1972).

3
4 Plaintiff has not requested judgment without question nor are her claims
5 redundant, immaterial or impertinent.

6 The judge may impose a penalty on a party who submits an affidavit in bad faith,
7
8 or who files an affidavit only to delay the lawsuit as attorney Oehler has done.

9 The weight of evidence is clearly in favor of the Plaintiff.

10 **RESPECTFULLY SUBMITTED** this 6th day of November, 2023.

11
12 
13 NANCY KNIGHT
Plaintiff Pro Per

14 **COPY** of the foregoing was e-mailed on November 6, 2023 to:

15 djolaw10@gmail.com

16 The law office of Daniel Oehler, Attorney for the Defendants

17 kalerma@courts.az.gov Judicial Assistant to Judge Nielson
18
19
20
21
22
23
24
25
26
27
28