

Carlisle

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SUPERIOR COURT CLERK

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4 Plaintiff Pro Per

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

7 NANCY KNIGHT,

8 Plaintiff,

9 and

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

16 Defendants.

Case No.: CV 2018-04003

**PLAINTIFF'S MOTION TO ALTER
OR AMEND ORDERS
3 AND 4 DATED JUNE 11, 2018**

**Division II
Honorable Derek Carlisle**

19 Pursuant to Rule 59(d) of the Arizona Rules of Civil Procedure the Plaintiff
20 respectfully requests the Court to reconsider and amend Orders 3 and 4 dated June 11,
21 2018 for the reasons that the ruling is susceptible to more than one interpretation and is
22 confusing given the Plaintiff's adjudicated rights in the matter including the Court's
23 statements evidenced in the transcript of the Oral Arguments held on April 2, 2018.
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26 The Oral Arguments were considered by the Court and cited as to "look at the
27 narrow issue of does she have the authority to bring a claim" (Transcript page 3 line 14-
28 15). After careful evaluation of the various Tracts and correlated CC&Rs, the Court



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1 found that “Ms. Knight does not have the authority to enforce any CC&Rs in Tract 4076-
2 A. However, there’s also not a dispute that Tract 4163 was previously a part of 4076-B,
3 and 4076-B specifically says it applies to lots and parcels within 4076-B. So Ms. Knight
4 can enforce the CC&Rs for 4076-B”. (Transcript page 7, lines 1-6). **Enforcement of**
5 **CC&R Violations is Count One of the Complaint. Therein lies one conflict in the**
6 **dismissal of Count One in its entirety as the Defendant has falsely interpreted the**
7 **result of the Oral Arguments.**

10 The Court said, “with respect to the two counts in the Complaint, the first count
11 clearly discusses setbacks or the violation of setbacks with respect to a particular
12 residence in Tract 4076-A. I am granting the Motion to Dismiss with respect to count 1
13 which deals with a particular lot, apparently the lot owned by the Roberts...” (Transcript
14 page 7 lines 11-16).

17 The Court further stated, “I am finding she can sue for things that occurred in
18 4076-B”.

19 The narrow issue of Ms. Knight’s authority to bring a claim was adjudicated in
20 favor of the Plaintiff for Tract 4076-B. All Counts of the Complaint for Tract 4076-B are
21 therefore valid claims. On page 10 of the Transcript the Court says, “All I said is that
22 count 1 is dismissed (lines 15-16) and on lines 19-20 the Court says, “Count 1 is the
23 setback with respect to the house”.

26 Count One of the Complaint cites violations of signage on unimproved lots which
27 the Defendant has in Tract 4076-B.
28

1 Count One attempted violations of the CC&Rs deals with the less restrictive
2 setbacks than those cited in the CC&Rs which was advocated by the Defendant for lots in
3 Tract 4076-B. In fact, this egregious attempt to violate the setbacks in Tract 4076-B
4 would have placed the Plaintiff in a serious financial hardship considering the lack of
5 full-disclosure for the Breach of Contract associated with the reduced setback offer. At no
6 time during Mr. Azarmi's presentation before his fellow Planning Commissioners did
7 Mr. Azarmi reveal that their vote to approve reduced setbacks would create a conflict for
8 property owners due to the more restrictive CC&Rs. Full-disclosure was withheld from
9 property owners and from the Planning Commissioners who voted unanimously to
10 approve the Defendant's proposed BOS Resolutions. **Count One deals with this**
11 **egregious attempted violation that occurred in Tract 4076-B.**

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16 The confusion rests with the Court's Motion to Dismiss with respect to count 1 in
17 its entirety rather than with respect to the Robert's house. Since the ruling cited above
18 was to only deny count 1 with respect to the one residence owned by the Roberts due to
19 its lot being situated in Tract 4076-A, the reconsideration of minor changes in verbiage
20 than that written by attorney Oehler and signed by the honorable Derek Carlisle is
21 warranted on the grounds of clarification and elimination of confusion.

22
23 It is acknowledged by the Plaintiff why the Court and Mr. Oehler were confused
24 regarding Count One where the house owned by Roberts was actually a minor component
25 in the case. The confusion was due to the significant amount of text required to explain
26 the extent to which the Defendants (Azarmi and Roberts) went to in order to circumvent a
27 denial of the permit for the house from Development Services with a reduced setback in
28

1 violation of a Zoning setback restriction and then to gain a variance from the Board of
2 Adjustment. If we strike all references to the house, the major portion of the Complaint is
3 valid for ALL Counts in relation to Tract 4076-B.
4

5 A taking of Count One from Tract 4076-B would be a miscarriage of justice and is
6 in conflict with the Plaintiff's rights granted by the Court and as cited in the transcript.
7
8 (Supra page 7, lines 1-6).

9 As cited in the Complaint, and aside from any setback violation for the one home
10 owned by the Roberts, Mr. Azarmi admits he has built over 700 homes in the area and
11 then states there are setback violations in the whole project. The Plaintiff's Count One is
12 valid for all violations conducted by the Defendants in Tract 4076-B where the Defendant
13 continues to build homes. In fact even as this Complaint is still being litigated, a sign
14 bearing the name Fairway Constructors is posted for a home under construction in Tract
15 4076-B apparently with approximately a ten foot (10') setback based on visual
16 observation from the Plaintiff's rear yard. The CC&Rs require a twenty foot rear yard
17 setback.
18
19
20

21 The Complaint cites the BOS Resolutions which also need to be vetted for Tract
22 4076-B under Count One (violations of the CC&Rs which includes attempted violations).
23 The Plaintiff had to invest a significant amount of time and expense to prevent these
24 Resolutions from coming to fruition.
25

26 As cited in the Complaint, Discovery and Disclosure will advance the knowledge
27 of the extent to which the Defendants have violated the CC&Rs in Tract 4076-B. The
28 Defendants are major developers in the Desert Lakes community and it is highly likely

1 that permits for other homes built by the Defendants in Tract 4076-B violated the CC&Rs
2 given that the Defendants have admitted that they have built over 700 homes in the area
3 and setback violations are admittedly known by the Defendants and are also visually
4 obvious to the Plaintiff throughout her Tract 4076-B.
5

6 This is the reason the Plaintiff had requested a method of forgiveness to any
7 homeowner who purchased a property that was out of compliance with the CC&Rs due to
8 no fault of their own.
9

10 The Plaintiff recognizes and accepts that permit drawings for only homes built by
11 the Defendants in Tract 4076-B shall be Disclosed.
12

13 The majority of the paragraph in the Complaint entitled "Count One" is applicable
14 to Tract 4076-B. Defendants intentionally violate the CC&Rs – signage on unimproved
15 lots is a current CC&R violation and not subject to only injunctions under "Count Two"
16 from future signage.
17

18 The new home on Lipan Blvd, in view of the Plaintiff's rear yard, has signage for
19 Fairway Constructors and visually does not have a 20 foot required setback. The permit
20 drawing and/or the development plans as submitted to the framers of the home are
21 expected to show the setbacks. This was the case for the Robert's home permit. The fence
22 permit will also be expected to assure the rear yard fence is built in compliance for the
23 CC&Rs for fences adjacent to fairways.
24
25

26 Given the Defendants egregious behavior, there exists a high likelihood that the
27 Defendants may be found to have intentionally violated the CC&Rs on other lots in Tract
28 4076-B.

1 The attempted violation of CC&Rs is addressed on line 24 of Count One and as
2 has been submitted to the Court in an Excel Spreadsheet, cites all lots whose owners were
3 offered the Defendant's proposed reduced setback in Tract 4076-B along with those
4 parcel numbers whose property owners submitted the required paperwork.
5

6 Count Two in the Complaint cites that the Plaintiff incorporates herein by
7 reference all allegations of Count One as though fully set forth herein. This too leads to
8 confusion if Count One is dismissed entirely as the Defendant has requested. For this
9 reason and the numerous times the Court cited that Count One was dismissed with
10 respect to the Robert's house are cause for reconsideration by the Court to amend Orders
11 3 and 4 dated June 11, 2018.
12

13 All of the Wherefores in the Complaint are valid for Tract 4076-B with the one
14 exception of Wherefore "B" for the Robert's home.
15

16 The Plaintiff did point out in Oral Arguments that Count One and Count Two were
17 intertwined in her Complaint. Both Count One and Count Two are critical matters for
18 which the Plaintiff sought and continues to seek enforcement rights for violations and
19 attempted violations that apply to her Tract 4076-B. The violations that exist in the
20 original Complaint appear to have been expanded by the Defendants since the filing of
21 the Complaint for at least one home currently under construction. If proven, based on the
22 permit drawings or other means, the Court would have been placed in a compromised
23 position by Mr. Oehler's verbiage in Orders 3 and 4. Count One CC&R violations may
24 have now occurred for a different home that is situated in Tract 4076-B. Orders 3 and 4,
25
26
27
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1 as written, is a taking of the Plaintiff's right to prosecution for all ongoing CC&R
2 violations.

3
4 The Court should be able to see through the Defendant's proposed dismissal of
5 Count One in its entirety as this provides the Defendants the ability to keep going about
6 their business of violating setbacks that are not an issue with Development Services.
7
8 Development Services did deny the Defendant a permit based on setback Zoning
9 restrictions for the Robert's home which led to the egregious BOA variance and
10 subsequently the egregious attempt to violate the setbacks in the entire Desert Lakes
11 community through BOS Resolutions. These acts are clear indications of the extreme
12 measures the Defendants will go to achieve their self-serving objectives of profit at the
13 expense of neighboring property owners.
14

15
16 The Defendant's defiance of the CC&Rs is supported by Mr. Oehler's language in
17 Orders 3 and 4 and for which he submitted to the Court for signature.

18
19 Bear in mind that had the Plaintiff opted-in for the Defendant's orchestrated BOS
20 Resolution setbacks in her Tract 4076-B and had built her RV garage that had been
21 preliminarily evaluated by Scott Holtry for compliance for land coverage, she would have
22 been faced with a potential law suit or the ongoing threat of a law suit by any property
23 owner for years to come due to the lengthy statute of limitation rules for contracts.
24

25
26 This matter can only be fully resolved and in full accordance with the Arizona
27 Rules of Civil Procedure with Count One not dismissed for Tract 4076-B.

28
But for the Defendant's false claim that the Plaintiff had no standing whatsoever
this case would have advanced expeditiously without the need for a waste of Court time

1 for a Motion to Dismiss the case in its entirety. Mr. Oehler knew Tract 4076-B governed
2 the Plaintiff's home (Refer to CV 2016 04026). The Plaintiff had no idea that five
3 separate CC&Rs existed in her golf course community. Mr. Oehler's Developer client
4 knew, or should have known as a major developer in the Desert Lakes community, that
5 Tract 4076-B CC&Rs governed the Plaintiff's property and should have limited the
6 Motion to Dismiss to the Robert's home and to the Defendant's attempted violations for
7 all Tracts with the exception of Tract 4076-B.
8

9
10 The Ruling and Orders 3 and 4 are also confusing since the Complaint clearly
11 cited in the Plaintiff's "**ALLEGATIONS COMMON TO ALL COUNTS** 1. For each
12 count included in this Complaint, Plaintiff incorporates all other allegations and
13 averments contained in this Complaint as though fully included and restated herein." And
14 in "**COUNT TWO - INJUNCTIVE RELIEF** 1. Plaintiff incorporates herein by
15 reference all allegations of Count One of this Complaint as though fully set forth herein."
16 "**COUNT ONE**" being the "**VIOLATIONS OF COVENANTS, CONDITIONS AND**
17 **RESTRICTIONS**" which includes the attempted violations made by the Defendant
18 proponent of the BOS Resolution for less restrictive setbacks than are cited in the
19 CC&Rs.
20
21

22
23 A taking of Count One in its entirety by the Defendant is a taking of the Plaintiff's
24 adjudicated rights to prosecution for CC&R violations in her Tract 4076-B.
25

26 The proposed amended verbiage for the reconsidered Order 3 is as follows with
27 the minor changes either stricken or underscored for emphasis:
28

1 That Plaintiff's claim against Defendants Glen Ludwig and Pearl Ludwig of Fairway
2 Constructors, Inc., Trustees of the Ludwig Family Trust, Mehdi Azarmi, Vice President
3
4 of Fairway Constructors, Inc., and Fairway Constructors, Inc. under Count 1 of the
5 Plaintiff's Complaint are not dismissed ~~with prejudice~~.

6 The proposed amended verbiage for the reconsidered Order 4 is as follows with
7
8 the minor change underscored for emphasis:

9 That Plaintiff has standing to prosecute this action as an owner of land in Tract 4163
10 which is a resubdivision of a parcel of land originally within Tract 4076-B and therefore
11 is an owner of land in Tract 4076-B, and pursuant to Tract 4076-B's CC&Rs as an owner
12 or person owning property is authorized to bring an action to enforce the CC&Rs
13 governing Tract 4076-B as complained in Count 1 and Count 2 of the Plaintiff's
14
15 Complaint.

16
17 RESPECTFULLY SUBMITTED this 20th day of June, 2018

18
19 
20 Nancy Knight
21 Plaintiff Pro Per

22
23 Copy of the foregoing was hand delivered
24 on June 20, 2018 to:

25 The Law Office of Daniel Oehler
26 2001 Highway 95, Suite 15
27 Bullhead City, Arizona 86442
28 Attorney for the Defendants
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