

1 LAW OFFICES  
2 DANIEL J. OEHLER  
3 2001 Highway 95, Suite 15  
4 Bullhead City, Arizona 86442  
5 (928) 758-3988  
6 (928) 763-3227 (fax)  
7 [djolaw10@gmail.com](mailto:djolaw10@gmail.com)

8 Daniel J. Oehler, Arizona State Bar No.: 002739  
9 Attorney for Defendants

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MOHAVE**

12 NANCY KNIGHT,

13 Plaintiff,

14 vs.

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

22 Defendants.

NO.: CV-2018-04003

**DEFENDANTS' RESPONSE  
TO PLAINTIFF'S MOTION  
FOR DECLARATORY  
JUDGMENT ON COMPLETE  
ABANDONMENT**

23 Come now, the Defendants, GLEN LUDWIG and PEARL LUDWIG, Trustees of  
24 THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC.; and MEHDI  
25 AZARMI (hereinafter referred to collectively as the "Defendants"), by and through their  
26 attorney, the undersigned, and respectfully move this Court to deny Plaintiff's request for the  
27 entry of a declaratory judgment on the issue of abandonment which is, of course the entire  
28 basis of the defense that given the hundreds or perhaps thousands of violations of the subject  
covenant that have occurred between 1989 and the present in the three tracts that are the  
subject of this litigation. Declaratory judgment of these disputed facts is not appropriate and  
ARCP Rule 57 does not permit its use.

The adoption of the Uniform Declaratory Judgments Act (A.R.S. §§12-1831 to 12-1846) is not intended to be used within litigation already before the Court. This specific

1 point is clearly and succinctly stated in Merritt-Chapman & Scott Corp. v. Frazier, 375 P.2d  
2 18, 92 Ariz. 136 (Ariz. 1962), wherein the Arizona Supreme Court provided the following:

3 “Plaintiff contends that a cause of action for declaratory relief under the  
4 Uniform Declaratory Judgments Act (A.R.S. §§ 12-1831 to 12-1846)  
was stated in the complaint and amended complaint.

5 It was never intended that the relief to be obtained under the  
6 Declaratory Judgment Act should be exercised for the purpose of trying  
7 issues involved in cases already pending. Staley Elevator Co., Inc. v.  
8 Otis Elevator Co., 35 F.Supp. 778 (D.C.N.J.1940). See also Borchard,  
9 Declaratory Judgments, 2d Ed., pp. 302, 350, 351. Generally,  
10 declaratory relief will be denied when the issue presented by the action  
11 is already pending in another forum. Burton v. Lester, 227 La. 347, 79  
12 So.2d 333 (1955).

13 The complaint was properly dismissed as to the defendants  
14 Bernice M. Frazier, Robert C. Frazier, Jr., Linda Joy Frazier, Kent M.  
15 Frazier, and Cleveland J. Frazier inasmuch as the complaint itself  
16 disclosed that a case was then pending between these defendants and  
17 the plaintiff which involved the same issues as those raised in this  
18 action. The Declaratory Judgment Act could not be invoked under such  
19 circumstances and the court properly declined to declare the rights of  
20 the parties.” Id. at pp. 19-20.

21 See also:

22 “‘The Act’ was not intended to constitute a fountain of legal advice for  
23 the court.” Ariz. Biltmore Hotel Villas Condos. Ass’n, Inc. v. Ariz.  
24 Biltmore Hotel Master Ass’n, Corp., No. 1 CA-CV 13-0703 (Ariz.  
25 App. Jul 30, 2015), p. 6.

26 Plaintiff’s Motion should be denied and attorney fees and costs awarded to  
27 Defendants.

28 RESPECTFULLY SUBMITTED this 26 day of December, 2023.

LAW OFFICES OF DANIEL J. OEHLER



Daniel J. Oehler,  
Attorney for Defendants

1 **COPY** of the foregoing emailed  
2 this 8<sup>th</sup> day of December, 2023, to:

3 Honorable Dale P. Nielson  
4 Navajo County Superior Court  
5 Post Office Box 668  
6 Holbrook, Arizona 86025  
7 (928) 524-4220  
8 Katelin Lerma, Judicial Assistant  
9 [kalerma@courts.az.gov](mailto:kalerma@courts.az.gov)

6 Plaintiff

7 Nancy Knight  
8 1803 E. Lipan Circle  
9 Fort Mohave, Arizona 86426  
10 (928) 768-1537  
11 [nancyknight@frontier.com](mailto:nancyknight@frontier.com)

10 By: PEmond  
11 Patricia L. Emond, Legal Assistant

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28