

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  
NON-AVOIDANCE OF  
SECOND ORDERS BY  
JUDGE JANTZEN**

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 November 21,  
27 2023, Motion for Declaratory Judgment on Non-Avoidance of Second Orders by Judge  
28 Jantzen. Plaintiff's request is moot. This Court issued a replacement Order directing the  
Plaintiff to serve the Rule 19 parties on September 13, 2023.

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

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

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

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

19 See also:

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

24 \*\*\*


25 "The court may also refuse to enter declaratory relief if such relief  
26 would not terminate the controversy giving rise to the proceeding.  
27 A.R.S. §12-1836. *Ariz Biltmore, supra*, at p. 6.

28 Declaratory judgment is not properly sought in an effort to obtain an answer from the  
court on a moot issue or question. *Arizona State Bd. of Directors for Junior Colleges v.*  
*Phoenix Union High School Dist. Of Maricopa County*, 102 Ariz. 69, 424 p.2d 819 (1967).

Plaintiff's Motion should be denied and attorney fees and costs awarded to  
Defendants.

RESPECTFULLY SUBMITTED this 8 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)

10 Plaintiff  
11 Nancy Knight  
12 1803 E. Lipan Circle  
13 Fort Mohave, Arizona 86426  
14 (928) 768-1537  
15 [nancyknight@frontier.com](mailto:nancyknight@frontier.com)

16 By:   
17 \_\_\_\_\_  
18 Patricia L. Emond, Legal Assistant

19  
20  
21  
22  
23  
24  
25  
26  
27  
28