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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

NANCY KNIGHT, Plaintiff, vs. GLEN LUDWIG and PEARL LUDWIG, Trustees of THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC.; MEHDI AZARMI; JAMES B. ROBERTS and DONNA M. ROBERTS, husband and wife; JOHN DOES 1-10; JANE DOES 1-10; ABC CORPORATIONS 1-10; and XYZ PARTNERSHIPS 1-10. Defendants.	NO.: CV-2018-04003 **DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR DECLARATORY JUDGMENT ON GROUNDS FOR PLAINTIFF SUING INDISPENSABLE PARTIES**

Come now, the Defendants, GLEN LUDWIG and PEARL LUDWIG, Trustees of THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC.; and MEHDI AZARMI (hereinafter referred to collectively as the "Defendants"), by and through their attorney, the undersigned, and respectfully move this Court to deny Plaintiff's November 21, 2023, Motion for Declaratory Judgment on Grounds for Plaintiff Suing Indispensable Parties.

Plaintiff's request for declaratory judgment is simply relitigating/arguing Plaintiff's failed Motion for Correction filed October 5, 2023, and thereafter responded to and ruled on by this Court denying Plaintiff's Motion on this same issue on November 11, 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:

> "Plaintiff contends that a cause of action for declaratory relief under the Uniform Declaratory Judgments Act (A.R.S. §§ 12-1831 to 12-1846) was stated in the complaint and amended complaint.
>
> It was never intended that the relief to be obtained under the Declaratory Judgment Act should be exercised for the purpose of trying issues involved in cases already pending. Staley Elevator Co., Inc. v. Otis Elevator Co., 35 F.Supp. 778 (D.C.N.J.1940). See also Borchard, Declaratory Judgments, 2d Ed., pp. 302, 350, 351. Generally, declaratory relief will be denied when the issue presented by the action is already pending in another forum. Burton v. Lester, 227 La. 347, 79 So.2d 333 (1955).
>
> The complaint was properly dismissed as to the defendants Bernice M. Frazier, Robert C. Frazier, Jr., Linda Joy Frazier, Kent M. Frazier, and Cleveland J. Frazier inasmuch as the complaint itself disclosed that a case was then pending between these defendants and the plaintiff which involved the same issues as those raised in this action. The Declaratory Judgment Act could not be invoked under such circumstances and the court properly declined to declare the rights of the parties." Id. at pp. 19-20.

See also:

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

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

COPY of the foregoing emailed this 8th day of December, 2023, to:

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