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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.

NO.: CV-2018-04003

**MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

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.

23 COME NOW, the Defendants, by and through their attorney, the undersigned, and
24 respectfully request that Count 2 of Plaintiff's Complaint be dismissed.

25 This Court has previously ruled that Count 1 of Plaintiff's Complaint be dismissed with
26 prejudice. The Court further found that the Plaintiff's Complaint as set forth in Count 2 dealing with
27 the installation of "for sale" signs in the front yards of various lots in Tract 4076-B, was available
28 to the Plaintiff who the Court found had standing to argue the enforceability of the covenant that
prohibited the subject "for sale" signs. More specifically, the covenant in question from the
Declaration of Covenants, Conditions & Restrictions record December 18, 1989, at Fee No. 89-
67670 in Book 1641 at Page 895, reads:

"12. No sign, advertisement, billboard or advertising
structure of any kind shall be erected or allowed on any of the
unimproved lots, and no signs shall be erected or allowed to remain

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on any lots, improved or otherwise, provided, however, that an owner may place on his improved lot "For Sale" signs, "For Lease" signs or "For Rent" signs so long as they are of reasonable dimensions."

This Court has ruled that Plaintiff has standing under and pursuant to the 1989 CC&Rs covering the Desert Lakes Golf Course & Estates Tract 4076-B and despite the fact that Plaintiff resides and is a property owner exclusively in Tract 4163, an abandoned and re-subdivided portion of the original Tract 4076-B.

This second Motion to Dismiss is based upon the law as hereinafter set forth, and Defendants respectfully request that this Court, without further action, dismiss Count 2 of Plaintiff's Complaint and award all of Defendants' fees and costs herein incurred and as further set forth in the following Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 30 day of July, 2018.

LAW OFFICES OF DANIEL J. OEHLER


Daniel J. Oehler,
Attorney for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

Tract 4076-B Desert Lakes Golf Course & Estates CC&Rs prohibit the display of a "for sale" sign on unimproved lots within the tract. The covenant in question was recorded in 1989 in the Office of the Mohave County Recorder. The provision in the CC&Rs for this project has never been enforced nor has any other provision in the document been enforced over the past approximate 30 year existence of this subdivision, rather, the entire set of CC&Rs have been fully abandoned in fact.

The Arizona Legislature passed two separate statutes that impact the specific covenant prohibiting "for sale" signage, namely, A.R.S. §33-1808, adopted by the Legislature in 2002, and the same becoming effective in 2003, and further, the provisions of A.R.S. §33-441, which directly invalidated "for sale" sign prohibitions in restrictive covenants in those projects that were recorded prior to 2009.

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More specifically, and in applicable part, the provisions of A.R.S. §33-1808(F), state:

“F. Notwithstanding any provision in the community documents, an association shall not prohibit or charge a fee for the use of, placement of or the indoor or outdoor display of a for sale ... sign....”

Jump forward to 2009, and the legislative adoption and implementation of A.R.S. §33-441, titled: “For sale signs; restrictions unenforceable.” This more recent statute/law that reads, in pertinent part, as follows:


“A. A covenant, restriction or condition contained in any deed, contract, security agreement or other instrument affecting the transfer or sale of any interest in real property shall not be applied to prohibit the indoor or outdoor display of a for sale sign and a sign rider by a property owner on that person’s property, including a sign that indicates the person is offering the property for sale by owner. The size of a sign offering a property for sale shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches.

B. This section applies to any covenant, restriction or condition without regard to the date the covenant, restriction or condition was created, signed or recorded.” (Emphasis added.)

There have been established laws in the State of Arizona specifically setting aside the applicable 1989 CC&R provision. As such, Plaintiffs’ case must be dismissed and the Defendants, in accordance with the provisions of A.R.S. §12-341.01, should be awarded their reasonable attorney’s fees and costs herein incurred, all in accord with the Schweiger v. China Doll Restaurant, Inc., 138 Ariz. 183, 673 P.2d 927 (Ariz. App., Div. 1, July 1983), and in further accord with Orfaly v. Tucson Symphony Soc’y, 209 Ariz.260, 265, 99 P.3d 1030, 1035 (App. 2004).

RESPECTFULLY SUBMITTED this 30th day of July, 2018.

LAW OFFICES OF DANIEL J. OEHLER



Daniel J. Oehler
Attorney for Defendants

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COPY of the foregoing emailed
this 30th day of July, 2018, to:

Honorable Derek Carlisle
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By: 
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