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W. LYNN TINNELL
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
9 Plaintiff,

Case No.: CV 2018 04003

10 vs.


**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS COMPLAINT**

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

16 Defendants.

19 Plaintiff Pro Per, NANCY KNIGHT, hereby submits her Response in Opposition to the
20 Defendants Ludwig, et. al. Motion to Dismiss Count 2 of the Plaintiff's Complaint as submitted
21 by their attorney of record, Mr. Oehler. This Response is supported by the attached
22 Memorandum of Points, Authorities, and Plaintiff's Statement of Facts and Exhibits.
23

24 RESPECTFULLY submitted this 31 day of July, 2018.

25 
26 _____
27 NANCY KNIGHT
Plaintiff Pro Per



1 **THE FACTS**

2 Oral Arguments were heard on April 2, 2018 and the Court ruled that the Plaintiff
3 had enforcement rights for Count 2 of her Complaint for Tract 4076-B. Count 2 includes
4 two pertinent paragraphs that were cited in the January 2018 Complaint that are
5 enforceable violations at the present time.

6 1.) "Plaintiff is entitled to preliminary and permanent injunctions enjoining
7 Defendants from all current signage violations on unimproved lots". Contrary to the
8 Defendant's claim, the Plaintiff did not cite the current signage as "For Sale" signage.
9 And, in fact, the signage that is posted on unimproved lots by the Defendants are "Build
10 to Suit" **advertising signs for their business**. The phone number on the signage was
11 assigned to Fairway Constructors. US Southwest has a small logo on the signage for
12 **development services** as well. **Exhibit 1** –Photo of sign.

13 2) "Plaintiff is entitled to preliminary and permanent injunctions enjoining
14 Defendants from any existing or future violations of the CC&Rs including but not limited
15 to setback reductions and signage on unimproved lots." Contrary to the Defendants claim,
16 this case is not just about signage. The preliminary injunction was violated with new
17 home construction that was applied for by the Defendants in March 2018 and was
18 approved, after engineering review by Mohave County Development Services, in May
19 2018. Oral Arguments were heard on April 2, 2018 and the Court granted the Plaintiff
20 rights to enforcement for Count 2 in Tract 4076-B in open court. The Defendants have
21 violated the preliminary injunction for the rear yard setback on new home construction at
22 1839 Lipan Blvd. in Tract 4076-B. The Permit and plot plan have already been provided
23 to the Court. The Defendants have disrespected the Court who gave rights to the Plaintiff
24 for Count 2 and they continue to show contempt and disrespect for the CC&Rs.

25 It has yet to be determined if the minimum square footage of livable space for this
26 home at 1839 Lipan Blvd, that is adjacent to the golf course, has also been violated. The
27 Plaintiff has asked the Defendants to provide the engineering drawing for the square
28 footage of livable and non-livable space in their Disclosure Statement that is due, based

1 on the Plaintiff's agreement to give the Defendants a few extra days extension, no later
2 than August 1, 2018. Plaintiff filed her Disclosure Statement timely on July 30, 2018 and
3 delivered a copy to the Defendant's attorney around noon on that day.

4 This second Motion to Dismiss is not about the law on "For Sale" signs, as will be
5 shown, but a malicious attempt to take the Plaintiff's lawful rights away. Plaintiff
6 respectfully requests the Court to deny the Defendants Motion to Dismiss.

7
8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 The Defendants try to distract the Court with claims of abandonment for the land
10 in Plaintiff's Tract 4163 (page 2, line 5). Contrary to the Defendants personal views, the
11 Court correctly evaluated the evidence and found Tract 4163 was a resubdivided "Parcel"
12 from within Tract 4076-B. Lots and parcels run with the land and are subject to the
13 CC&Rs for Tract 4076-B.

14 The Defendants first filed a Motion to Dismiss the Complaint in its entirety
15 claiming the Plaintiff had no standing whatsoever. They lost that argument and now are
16 desperately attempting to use Arizona Statutes regarding "for sale" signs as a defense of
17 their inappropriate actions.

18 In fact, the CC&Rs do not prohibit "for sale" signs, Paragraph 12 "... an owner
19 may place on his improved lot "For Sale" signs, "For Lease" signs or "For Rent" signs so
20 long as they are of reasonable dimensions." The Plaintiff restates, the Defendant's sign is
21 business advertising and therefore the entire context of the statutes is irrelevant however
22 it is good fodder for the mind and therefore worth a close look.

23 The statutes, cited by the Defendants, applies to homes and the reasonable
24 dimensions cited in the statutes, whether posted indoors (such as in a window) or
25 outdoors (such as in a yard) are the industry standard dimensions for signage (not exceed
26 eighteen by twenty-four inches). Let's compare the common language used in both
27 statutes and the specificity of homes (emboldened, underscored text for emphasis).

28 *Arizona Statute 33-441. For sale signs; restrictions unenforceable*

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

9 B. This section applies to any covenant, restriction or condition without regard to the
10 date the covenant, restriction or condition was created, signed or recorded. **This section**
11 **does not apply to timeshare property and timeshare interest as defined in section 33-**
12 **2202.**

13 Arizona Statute § 33-1808. Flag display; political signs; caution signs; for sale, rent or
14 lease signs; political activities.

15 Paragraph F below deals with the for sale, rent or lease signage. Note this statute deals
16 with associations however there exists common language in both statutes and 33-1808
17 clearly cites homes whereas 33-441 exempts specific types of homes such as timeshare
18 properties.

19 F. Notwithstanding any provision in the community documents, an association shall not
20 prohibit or charge a fee for the use of, placement of or the **indoor or outdoor display of a**
21 **for sale, for rent or for lease sign and a sign rider** by an association member on that
22 member's property in any combination, including a sign that indicates the member is
23 **offering the property for sale by owner**. The size of a sign offering a property for sale,
24 for rent or for lease shall be in conformance with the **industry standard size sign, which**
25 **shall not exceed eighteen by twenty-four inches,** and the industry standard size sign
26 rider, which shall not exceed six by twenty-four inches. This subsection applies only to a
27 commercially produced sign, and an association may prohibit the use of signs that are
28 not commercially produced.

With respect to real estate for sale, for rent or for lease in the planned community, an
association shall not prohibit in any way other than as is specifically authorized by this
section or otherwise regulate any of the following:

1. Temporary **open house** signs or a member's for sale sign. The association shall not
require the use of particular signs indicating **an open house or real property for sale** and
may not further regulate the use of temporary **open house or for sale signs** that are
industry standard size and that are owned or used by the seller or the seller's agent.

2. **Open house hours.** The association may not limit the hours for an **open house for**
real estate that is for sale in the planned community, except that the association may

1 *prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit*
2 *open house signs on the common areas of the planned community.*

3 *3. An owner's or an owner's agent's for rent or for lease sign unless an association's*
4 *documents prohibit or restrict leasing of a member's property. An association shall not*
5 *further regulate a for rent or for lease sign or require the use of a particular for rent or*
6 *for lease sign other than the for rent or for lease sign shall not be any larger than the*
7 *industry standard size sign of eighteen by twenty-four inches on or in the member's*
8 *property. If rental or leasing of a member's property is not prohibited or restricted, the*
9 *association may prohibit an open house for rental or leasing being held before 8:00 a.m.*
10 *or after 6:00 p.m.*

11 As the Court can clearly see, these statutes conform entirely to the CC&Rs for
12 improved property. The statutes do not give leave to the Defendants to advertise their
13 "Build to Suit" business on unimproved lots.

14 The Defendants claim the entire set of CC&Rs have been abandoned. Not True. In
15 fact, in the absence of a Homeowner Association, the Declarant and Developer
16 recognized the need to provide long-term rights of property owners to enforce the
17 CC&Rs. Paragraph 20 of the CC&Rs states: "No failure of the Trustee or any other
18 person or party to enforce any of the restrictions, covenants or conditions contained
19 herein shall, in any event, be construed or held to be a waiver thereof or consent to any
20 further or succeeding breach or violation thereof."

21 It was also most likely recognized that as an area ages, the likelihood of violations
22 will become more prevalent. The Plaintiff is witness to that as a matter of fact. And
23 testimony to that is also found in the CC&Rs whereby Paragraph 18 states: "These
24 covenants, restrictions, reservations and conditions run with the land and shall be binding
25 upon all parties and all persons claiming under them for a period of twenty-five (25)
26 years from the date hereof. Thereafter, they shall be deemed to have been renewed for
27 successive terms of ten (10) years, unless revoked or amended by an instrument in
28 writing, executed and acknowledged by the then owners of not less than seventy-five
percent (75%) of the lots on all of the property then subject to these conditions."

1 The CC&Rs have not been abandoned, revoked, nor amended. There is no way of
2 knowing if the CC&Rs have never been enforced either. Most good neighbors would
3 simply abide in the CC&Rs on request.

4 In addition to the Plaintiff's rights for Count 2 above, the Plaintiff's Complaint
5 also stated that the "Plaintiff incorporates herein by reference all allegations of Count
6 One of this Complaint as though fully set forth herein."

7 There are a few allegations that are pertinent from Count 1 of the Complaint as
8 follows: **1.** The proposed BOS Resolution for Tract 4076-B is still a claim against the
9 Defendants. The numbers changed due to the limitation for only Tract 4076-B property
10 owners but it is still true that the County refused to send letters to the parcel owners who
11 signed up for the setback reduction to inform them that the BOS Resolution was Denied.
12 Based on the sorted spreadsheet that was provided previously to the Court as an Exhibit,
13 approximately 25% of Tract 4076-B parcel owners signed up for a setback reduction.
14 They may have no idea that it was denied and could become yet more victims of Mr.
15 Azarmi's proposed BOS Resolution. Real Estate professionals in the area are now
16 watching this case. When the Plaintiff sent letters to 617 addresses in Desert Lakes
17 regarding the CC&Rs being under attack, the responses were clear that no one, real estate
18 professionals nor homeowners, wanted a Homeowner Association to form. They did want
19 CC&Rs enforced. Since the Grice's have become yet another victim of Fairway
20 Constructors for the lot they purchased on Lipan Blvd., two real estate professionals are
21 especially watchful of this case – the listing agent for the seller of the lot (Gina Harris)
22 and Mr. and Mrs. Grice's real estate agent (Velma Hall). **2.** It is the responsibility of the
23 builder to comply with the CC&Rs and, in the absence of an HOA, enforcement
24 proceedings in a Court of Law is left to the discretion of any property owner. The Court
25 will need to rule on the Plaintiff's claim of responsibility of the Defendants to abide in
26 the CC&Rs, whether they are the lot owner or not. In the Plaintiff's opinion they know of
27 the CC&Rs and they caused the violation (s) therefore they are responsible. In Discovery
28 and Disclosure, Plaintiff will be seeking permit drawings for all homes that were built by

1 the Defendants in order to identify the extent to which the Defendants have violated or
2 caused to violate the CC&Rs. 3. As a result of Defendants CC&R setback violations,
3 Plaintiff is entitled to injunctive relief and compensation for her expenses in this matter.
4 The egregious acts caused substantial emotional and physical distress to the Plaintiff who
5 found herself having to spend hours of sleepless nights conducting research, writing
6 letters and emails, and making a presentation before the Mohave County Board of
7 Supervisors in Kingman, Arizona in her efforts to protect all Desert Lakes property
8 owners from individuals who had self-serving interests and intended to take away the
9 CC&R protections that assure everyone in the community with equal property rights and
10 protection of property values. This was not just about helping other people. The Plaintiff
11 had been placed at risk too and but for her due diligence she may have been yet another
12 victim of Mr. Azarmi had she opted-in and built the Motor Home garage. Email
13 correspondence with Scott Holtry regarding the RV garage has already been provided to
14 the Court as an Exhibit.

15 If Fairway Constructors, Inc. is allowed to continue the practice of violating the
16 CC&Rs, there will be no end to the battle to protect the property values of the entire
17 Desert Lakes community. The human element in every neighborhood can become self-
18 serving and that self-serving behavior can lead to blight in time. With no remedy nor
19 support by the Court, blight will be the result as no person will venture forth to protect
20 the intent of the CC&Rs that are in effect and established for the protection of everyone's
21 property values and enjoyment of their homes.

22 The Plaintiff respectfully requests sanctions against attorney Oehler for his attempt
23 at deception and delay in this second Motion to Dismiss in accordance with Rule 11 of
24 civil procedure. He is well aware of the signage Exhibits. It was a deceptive attempt to
25 pass his client's business signs off as "For Sale" signs. Nowhere on the Defendant's
26 signs do you find the words "For Sale".

27 Under the Rule, a signature constitutes a certification by the party or attorney that
28 the pleading "is well grounded in fact ..." Before signing a pleading, counsel is required

1 to make reasonable efforts to assure that the matters asserted are not illusory, frivolous,
2 unnecessary or insubstantial. Mr. Oehler ignored his duty under Rule 11 and has inflicted
3 undue and unnecessary stress, time, and money for the cost of materials for the Plaintiff
4 to respond to this matter.

5 Also, according to ARS 12-349 Unjustified actions, ... "...in any civil action
6 commenced ... the court shall assess ... expenses and, at the court's discretion, double
7 damages of not to exceed five thousand dollars against an attorney...". The Court has a
8 preponderance of evidence for use in its discretion for double damages against attorney
9 Oehler.

10 According to the rules, penalties shall be assessed if the attorney brings or defends
11 a claim without substantial justification or solely or primarily for delay or harassment."
12 "without substantial justification" means that the claim or defense is groundless and is
13 not made in good faith.

14 On more than one occasion, Mr. Oehler has filed claims against the Plaintiff
15 without substantial justification. In fact, with no justification whatsoever.

16 In the first Motion to Dismiss, for which Mr. Oehler claimed the Plaintiff had no
17 standing whatsoever nor any CC&Rs for her Tract, was patently false i.e. had no
18 justification whatsoever. He had a copy of the Tract 4076-B CC&Rs. The parcel that ran
19 with the land for which the re-subdivision to form Tract 4163 homes within Tract 4076-B
20 is clear. The Court made it explicitly clear too in Oral Arguments on April 2, 2018 and
21 Mr. Oehler is still trying to place blame on the Court with his words that an order was
22 issued in favor of the Plaintiffs "despite the fact that the Plaintiff resides and is a property
23 owner exclusively in Tract 4163, an abandoned and re-subdivided portion of the original
24 Tract 4076-B". The Plaintiff's parcel of land was never abandoned. The zoning for the
25 parcel was in violation of the CC&Rs for multi-family housing and that was corrected
26 through a zoning change by a member of the architectural committee, Sterling Varner.
27 Mr. Oehler was not confused. He was deliberately harassing the Plaintiff pro per.
28

1 This second claim for a motion to dismiss is just as patently false. Mr. Oehler is
2 well aware of the business signage his clients have on unimproved lots. Claiming statutes
3 for signage regarding homes “For Sale” is another harassing tactic. The Plaintiff feels the
4 harassment, as any reasonable person would under similar circumstances. These constant
5 filings with no basis of fact are malicious.

6 A financial award to the Plaintiff Pro Per is justified in this matter. Over ten hours
7 was spent defending this second attempt at a Motion to Dismiss. The statutes cited are
8 irrelevant for his client’s “business advertising signage”. Attorney Oehler wastes the
9 Court’s time and has displayed a pattern of harassment against the Plaintiff that goes
10 beyond mere opportunities for delays or opportunities for awards for attorney fees. As
11 stated, and as evidence was already provided to the Court, the Special Investigative
12 Section of the Arizona Attorney General’s office and the FBI took an interest in this case
13 and therefore when they wrote to her that this was a civil matter for which she could file a
14 law suit, she had expert opinion that her Breach of Contract suit was justified and no
15 attorney fees are to be awarded for justified law suits in accordance with section 12-349
16 of civil procedure.


17 Mr. Oehler is well aware of this section of the law and yet he expects the Court to
18 award him attorney fees for his egregious and patently false presentation of statutes for
19 “For Sale” signage.

20 Any reasonable person, in a similar situation, would be seriously alarmed,
21 annoyed or harassed by these abusive efforts to bilk them of attorney fees and to have
22 their justified case dismissed. The Plaintiffs are being harassed, they are annoyed to the
23 point of sleepless nights for all of the fraud that has taken place to protect Defendant
24 Ludwig et. al. all so they could go about their business of continuing to violate the
25 CC&Rs - even while litigation is in progress.

1 Mr. Oehler cannot let go of the fact that his clients are guilty of CC&R violations
2 for which Mr. Oehler has no defense except to trump up claims that their business
3 signage is a "For Sale" sign. And it is especially troubling for him that he will lose that
4 battle to a pro per Plaintiff if he cannot get the Court to Dismiss the Complaint entirely.

5 So what does he do now? He files a Motion to Declare the Plaintiffs Vexatious
6 Litigants and attempt to take their rights to any future pro per or pro se litigation away
7 from the Plaintiffs without first posting a \$10,000 bond.

8
9 **RESPECTFULLY SUBMITTED** this 31 day of July 2018.

10
11 
12 Nancy Knight
13 Plaintiff Pro Per

14
15 **Exhibit list:**

16 1 - photo of the business advertising signage

17 **COPY** of the foregoing was hand delivered
18 on the 31 day of July, 2018 to:

19 The law office of Daniel Oehler
20 2001 highway 95, Suite 15
21 Bullhead City, Arizona 86442
22 Attorney for the Defendants
23
24
25
26
27
28

Exhibit 1



07/04/2018