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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.

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.

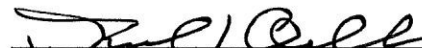
NO.: CV-2018-04003

**DEFENDANTS' REPLY TO
RESPONSE TO MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT**

23 COME NOW, Defendants, by and through their attorney, the undersigned, and Reply to
24 Plaintiff's Response that opposes Defendants' Motion to Dismiss Plaintiff's Complaint Count 2
25 previously filed herein on or about July 30, 2018. Defendants' Motion should be granted in accord
26 with the statutory provisions and case law precedence cited in both Defendants' original Motion,
27 including but not limited to the provisions of A.R.S. §33-441, as well as this Reply and the attached
28 supplemental Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 6th day of August, 2018.

LAW OFFICES OF DANIEL J. OEHLER



Daniel J. Oehler,
Attorney for Defendants

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff, in opposition to the pending Motion to Dismiss Count 2, filed a 10-page Response.
3 Plaintiff's Response would appear to allege, in substantial part, Plaintiff's rendition/written narrative
4 of the facts. Plaintiff's statements and fact positions are substantially irrelevant to the core of the
5 pending Motion to Dismiss. For instance, commencing on page 3, Plaintiff alleges that A.R.S. §33-
6 441 prohibiting "for sale" signs and other land/lot owner signage rights that may previously have
7 been prohibited via CC&R restrictive covenants that prohibit such signs are now codified as
8 unenforceable by state law. Subparagraphs (A) and (B) of A.R.S. §33-441 clearly describe other
9 instruments affecting the transfer or sale of "any interest" (emphasis supplied) in real property and
10 that this statute applies, pursuant to subsection (B), to any "covenant, restriction or condition" that
11 prevents such signage. Yet, Plaintiff argues that the CC&Rs covering Tract 4076-B are statutorily
12 compliant. Plaintiff's argument flies directly into the face of the reading of this statute when
13 Plaintiff tells this Court that A.R.S. §33-441 applies only to a lot with a house located thereon and
14 the "unimproved lot signage prohibition is unaffected by the statute. Plaintiff alleges that the subject
15 statute "applies to homes..." See, Plaintiff's Response, p. 3, line 23. Such is clearly not the fact and
16 under no circumstances can any reasonable interpretation that any Court could possibly give to the
17 statute support Plaintiff's position. The Defendants' lot in Tract 4076-B that is unimproved is in fact
18 an "interest in real property" as designated in subparagraph (A) of A.R.S. §33-441. Plaintiff is either
19 fully missing the point of the statute or is attempting to be intentionally deceptive. The signage issue
20 is and throughout this litigation dealing with unimproved lots.

21 Plaintiff next alleges that the Defendants are currently before this Court claiming that the
22 entire set of CC&Rs have been abandoned. That is an issue and a potential argument, but that is not
23 the issue or argument nor the subject matter of the pending Motion to Dismiss. While the
24 Defendants believe that the CC&Rs have been abandoned, the issue that is currently before the Court
25 is to the signage issues on unimproved lots that remain in Count 2 in Plaintiff's Complaint. One
26 should, therefore, review for a moment the prayer for relief set forth on page 17 of the Plaintiff's
27 Complaint dealing with the express issue which is the subject matter of the subject Motion to
28 Dismiss. It reads, in pertinent part, on page 17, paragraph C:

1 “C. For an injunction immediately and permanently removing all
2 signage on unimproved lots that is in violation of Desert
 Lakes Golf Course & Estates CC&Rs.”

3 The Court, through its existing Order, has limited the argument to Desert Lakes Golf Course
4 & Estates Tract 4076-B and, in theory therefore, Tract 4163, the tract in which the Plaintiff resides.
5 Plaintiff’s pleading therefore consist of a request to enforce the signage prohibition in Count 2, the
6 only surviving Count and Plaintiff’s prayers for relief consist of the following paragraphs:

7 “A. Finding that Defendants violated the Declaration of
8 Covenants, Conditions and Restrictions for Desert Lakes Golf Course
 & Estates.

9 B. For an injunction immediately and permanently removing all
10 construction from the real property located at 5732 Club House Drive
11 that violated the CC&R setbacks or a trade or purchase of the
 adjacent lot to be maintained as a green belt. *(Dismissed with
 prejudice in Count 1)*

12 C. For an injunction immediately and permanently removing all
13 signage on unimproved lots that is in violation of Desert Lakes Golf
 Course and Estates CC&Rs. *(The subject of this Motion to Dismiss)*

14 D. Plaintiff’s recovery of actual and consequential damages in an
15 amount to be determined by the Court or at trial, including, but not
16 limited to, compensation and reimbursement. *(Right to recovery lost
 if paragraph C dismissed)*

17 E. Compensation to all property owners for diminished value, to
18 be determined by the Court or at time of trial, due to the taking of
19 front and/or rear views as a result of the Defendants’ construction that
 violated the CC&Rs of Desert Lakes. *(Non parties-in-
 interest/Defendants Roberts dismissed)*

20 F. A Declaratory Judgment forgiving any CC&R construction
21 violations that were not the fault of the purchaser of the home who
22 unknowingly purchased a home that had been built, in error or
 deliberately by any builder, as out of compliance with the CC&Rs.
 (Not an actionable claim under Count 2)

23 G. For recovery of Plaintiff’s attorney fees and costs incurred, in
24 the event this action is contested, pursuant to law and A.R.S. §§12-
 349 and Rule 11, A.R.C.P. *(No attorney fees eligible)*

25 H. For such other and further relief as the Court deems just and
 equitable in the premises.”

26 Clearly, the singular issue remaining in Plaintiff’s prayer for relief in her Complaint is the
27 prayer that is included in Paragraph C, again, requesting “the removal of all signage on all
28 unimproved lots.” This paragraph in the CC&Rs as to “for sale,” “for lease,” “for rent” types of

1 signs regulated in size compliant with what the Defendant's realtors (U.S. Southwest) are doing are
2 statutorily prohibited as unenforceable.

3 Plaintiff at the beginning of page 6 at line 7 in her Response to the pending statutory Motion
4 to Dismiss presents to this Court a series of "red herring" issue. The Plaintiff complains about
5 Mohave County zoning laws and with the Mohave County Planning Commission and subsequently
6 the Board of Supervisors. Plaintiff states that she sent letters to 617 addresses in Desert Lakes
7 contesting a re-zone petition which has nothing whatsoever to do with the issue before this Court on
8 the pending Motion to Dismiss. Plaintiff refers this Court to the "egregious acts" that have caused
9 substantial emotional and physical distress to the Plaintiff complaining, once again, of her
10 presentation on the rezoning issue to the Mohave County Board of Supervisors, her apparent
11 decision not to build a motor home garage on her Tract 4163 lot; references correspondence to or
12 with an individual known as "Scott Holtry" dealing with her apparent motor home garage that she
13 proposed and apparently decided not to build. Plaintiff touts the appropriateness of sanctions against
14 the opposing parties' legal counsel for filing this pending second motion to dismiss (and/or other
15 filings).

16 On page 8 of Plaintiff's Response, Plaintiff talks about the provisions of A.R.S. §12-349,
17 sanctions against parties to a law suit which are fully irrelevant in regard to the pending Motion at
18 any time prior to this Court ruling on the pending Motion. Plaintiff argues and suggests that this
19 Court take action on her "breach of contract suit" (page 9, line 14) since it has been "substantiated"
20 by the Arizona Attorney General's Office, and the Federal Bureau of Investigation because those
21 entities have written to her and advised her that her complaint is a civil matter. Plaintiff appears to
22 believe these state and federal investigative agencies have ruled in her favor and legitimized her suit
23 (page 9, lines 13 and 14). These are fully irrelevant statements and have nothing whatsoever to do
24 with the pending Motion to Dismiss. Plaintiff alleges "harassment," "abuse," "being bilked,"
25 "annoyed to the point of sleepless nights," "fraud," and a multitude of other heinous events have
26 precipitated out of Defendant's unimproved lot signs offering to sell their vacant lots.

27 Perhaps, the highest degree of failure on the part of the Plaintiff to grasp the current Motion
28 and the status of this file, including the prior Orders of this Court, are set forth on page 2 under

1 Plaintiff's rendition of 'THE FACTS.'" Here, Plaintiff actually tells the Court, in reference to the
2 "Grice residence" (a non party), that this Court has enjoined the Defendants from constructing a
3 home or homes in Tract 4076-B as a result of court entered injunction orders issued at Plaintiff's
4 request and states:

5 "The preliminary injunction was violated with new home construction
6 that was applied for by the Defendants in March 2018 and was approved and was approved, after engineering review by the Mohave
7 County Development Services, in May 2018. Oral Arguments were
8 heard on April 2, 2018 and the Court granted the Plaintiff rights to
9 enforcement for Count 2 in Tract 4076-B in open court. The
10 Defendants have violated the preliminary injunction for the rear yard
11 setback on new home construction at 1839 Lipan Blvd. in Tract
12 4076-B." (Plaintiff's 7/31/2018 Response, p. 2, lines 16-22.)
(Emphasis added.)

11 There, of course, have been no injunctions of any type issued by this Court, the singular order
12 being the dismissal of Court 1 of Plaintiff's Complaint.

13 THE LAW

14 A.R.S. §33-441 is fully applicable as set forth in the original Motion to Dismiss. We are here
15 dealing with an interest in the Defendants' real property. The statute specifically allows signage of
16 requisite size in conformance with industry standards that includes a single rider thereon not to
17 exceed 6 x 24 inches. The statute applies to improved and unimproved real property and to "any
18 interest" therein. Plaintiff's Exhibit 1 is of the requisite size and, as does any for sale sign, advertises
19 the property for sale with the words "will build to suit" carrying a rider of the listing agent, U.S.
20 Southwest Properties, a licensed brokerage firm doing business in the State of Arizona and
21 disclosing the owners' company, Fairway Constructors, Inc., and a telephone number.

22 Plaintiff in her opposition suggests that "advertising" is prohibited. A for sale sign is
23 absolutely unquestionably advertising. A "for sale" sign with a listed brokerage firm is advertising.
24 A "for lease" sign is advertising. A "for rent" sign is advertising. The name of the advertiser on
25 such an advertisement is obviously intended as is the advertiser's contact information such as a
26 telephone number and/or address. The singular limitation is the size of the display:

27 "The size of a sign offering a property for sale shall be in
28 conformance with the industry standard size sign, which shall not
exceed eighteen by twenty-four inches, and the industry standard size

1 sign rider, which shall not exceed six by twenty-four inches.” A.R.S.
2 §33-441(A).

3 It appears that the single reported appellate decision dealing with this relatively new statute,
4 A.R.S. §33-441 can be found in Hawk v. PC Village Association, Inc., 233 Ariz. 94, 309 P.3d 918,
5 668 Ariz. Adv. Rep. 43 (Ct. App. Div. 1, Dept. A, 2013).

6 The Hawk, supra, court specifically found that A.R.S. §33-441 trumps CC&R provisions and
7 further that CC&Rs are within this law’s description of a contract “or other instrument affecting the
8 transfer or sale... of real property.” Hawk, supra, at 922.

9 Hawk, supra, went on to state:

10 “Such rights and obligations affect the property’s transfer or sale.”
11 Id., at 922.

12 * * *

13 “A.R.S. §33-441 had the effect of changing the substantive rights of
14 the parties to the CC&Rs. The statute deprived the Pine Canyon
15 property owners of their vested, substantive rights under Section 12.3
16 to live in a sign-free community.” Id., at 922-923.

17 The Hawk, supra, court sets forth a test:

- 18 1. The enforcing entity (Plaintiff) must bear the burden of showing the statute
19 is unconstitutional;
- 20 2. Plaintiff must show substantial impairment of the contractual relationship;
- 21 3. If there is a showing of substantial impairment, then Plaintiff must show the
22 absence of a significant and legitimate public purpose for the statutes existence or, at a minimum,
23 that the impairment is an unreasonable means of achieving the purpose. City Energy Reserves
24 Group, 459 U.S. at 411–13, 103 S.Ct. 697; McCleod, 174 Ariz at 359; 849 P.2d at 1389.

25 The court went on to find that the applicable statute does not impinge on the parties’
26 reasonable expectations and is valid and constitutional.

27 A.R.S. §33-441 is the law in the State of Arizona. Unless or until it is found to be
28 unconstitutional by a court of record, it is the law.

The words “will build to suit” (if this is now the basis of Plaintiff’s complaint) on a realtor’s
sign with a telephone contact number is one and the same with the words “for sale.” Clearly, the lot

1 is for sale.

2 Plaintiff's objections are not well taken, are not grounded in fact and the statutory prohibition
3 against page 4, paragraph 12, of the Declaration of Covenants, Conditions and Restrictions for
4 Desert Lakes Golf Course & Estates 4076-B are, as a result of the subject statute, contrary to Arizona
5 law and cannot stand.

6 Plaintiff's prayer for relief requesting an injunction "removing all signage on unimproved
7 lots..." is contrary to the current law; Plaintiff's Complaint, having been dismissed as to Count 1 with
8 prejudice, should be dismissed as to Count 2 with prejudice.

9 RESPECTFULLY SUBMITTED this 6 day of August, 2018.

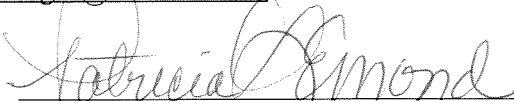
10 LAW OFFICES OF DANIEL J. OEHLER

11 
12 Daniel J. Oehler,
13 Attorney for Defendants

14 **COPY** of the foregoing emailed
15 this 6th day of August, 2018, to:

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