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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE DEREK CARLISLE, SUPERIOR COURT JUDGE
DIVISION II ***mk**
DATE: AUGUST 24, 2018

COURT NOTICE / ORDER

NANCY KNIGHT, **Plaintiff,** **and** **GLEN LUDWIG, et al.** **Defendant(s).**	**CASE NO. CV2018-04003**

On June 20, 2018, the plaintiff filed a motion to alter or amend orders. On June 29, 2018, the Court issued a notice / order / ruling stating that although the plaintiff requested the Court to reconsider its ruling, the Court was not treating the pleading as a motion to reconsider, but the Court was treating the pleading as a motion to amend pursuant to Rule 59(d) of the Arizona Rules of Civil Procedure ("ARCP"). The Court clarified that the pleading was not a motion to reconsider because the defendants could not respond to a motion to reconsider unless the Court allowed it. *See,* ARCP Rule 7.1(e).

On July 9, 2018, the defendants filed a pleading entitled "Objection to Plaintiff's Motion/s to Amend Complaint." In the objection, the defendants treated the plaintiff's motion to amend the order / judgment pursuant to ARCP Rule 59(d) as a motion to amend the complaint pursuant to ARCP Rule 15. The Court is unclear why the defendants treated the motion to amend the order as a motion to amend the complaint.

The plaintiffs filed two replies. The first reply was titled, "Plaintiff's New Evidence Reply to Defendant's Objection to Amend Court Orders 3 and 4." That reply was filed on July 9, 2018, prior to the defendants' objection. The Court does not find any pleading filed by the defendants which is titled "Objection to Amend Court Orders 3 and 4." The second reply was titled "Reply to Defendant's Objection to an Amended Complaint." The plaintiff is only entitled to file one reply. The Court will consider the second reply and will not consider the first reply.

In the motion to amend the order, the plaintiff requested the Court amend the third order issued on June 11 by not dismissing the defendants. The third order states in pertinent part, "That Plaintiff's claim against Defendants . . . under Count 1 of Plaintiff's Complaint are dismissed with prejudice." In the motion, the plaintiff requested the Court amend the fourth order to specifically indicate that the plaintiff has the authority to bring an action to enforce the CC&R's regarding Tract 4076-B as complained of in count one. The Court found that count one of the complaint alleged a setback violation involving a specific residence. The residence was in a different tract and the plaintiff did not have the authority to enforce the CC&R's in that tract. The Court found it appropriate to dismiss count one in its entirety. Nothing in the plaintiff's motion changes the Court's analysis.

IT IS ORDERED denying the motion to alter or amend orders.

On July 30, 2018, the defendants filed a motion to dismiss count two. The plaintiff filed a response on July 31 and the defendants filed a reply on August 6. In the motion to dismiss, the defendants argued that the signs at issue are "for sale" signs and the CC&R's may not be enforced against "for sale" signs, citing A.R.S. §§ 33-1808 and 33-441. However, the complaint did not specifically identify the signs at issue as "for sale" signs. In order to determine the applicability of the statutes, the Court would have to consider information outside the pleadings. Although the Court could treat the motion to dismiss as a motion for summary judgment, neither party submitted a proposed statement of facts or exhibits (such as pictures of the signs at issue) for the Court to consider.

Additionally, in paragraph 62 of the complaint, the plaintiff alleged that she was entitled to enjoin defendants from any existing or future violations of the CC&R's, including setback reductions and signage on unimproved lots. The defendants' motion referred only to the plaintiff's signage complaints and did not address her allegation that she was entitled to injunctive relief regarding other CC&R violations.

IT IS ORDERED denying, without prejudice, the motion to dismiss.

Finally, on August 6, 2018, the plaintiff filed a motion to compel defendant's initial disclosure statement. The defendants filed a response on August 15 and the plaintiff filed a reply on August 16. Pursuant to ARCP Rule 37(a)(1), when a party files a motion to compel disclosure or discovery, the party must attach a good faith consultation certification which demonstrates that the party attempted to resolve the issue by conferring with the other party in person or by telephone, not just by letter or email. The plaintiff did not include a good faith consultation certification. Although the plaintiff included some correspondence between the parties, there is no indication that the parties attempted to resolve the issue by conferring in person or telephonically.

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IT IS ORDERED denying, without prejudice, the motion to compel filed August 6, 2018.

To the extent that either party requested attorney's fees in connection with any of the pleadings identified above,

IT IS ORDERED denying the requests for attorney's fees.

The Court generally rules only on matters which are pending before it. Although the issue is not squarely before the Court, the Court did want to address one other issue. The plaintiff stated in some responsive pleadings that the defendants had violated a preliminary injunction. The Court notes that there have not been any injunctions issued in this case, preliminary or otherwise. The Court is unaware of any injunctive relief that has been issued against the defendants.

cc:

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Honorable Derek Carlisle
Superior Court Judge