

1 LAW OFFICES
2 DANIEL J. OEHLER
3 2001 Highway 95, Suite 15
4 Bullhead City, Arizona 86442
5 (928) 758-3988
6 (928) 763-3227 (fax)
7 djolaw@frontiernet.net

8 Daniel J. Oehler, Arizona State Bar No.: 002739
9 Attorney for Defendants

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

**OBJECTION TO MOTION FOR
INJUNCTIVE RELIEF**

23 COME NOW, the Defendants, by and through their attorney, the undersigned, and hereby
24 respectfully request that this Court take no action on Plaintiff's Motion for Injunctive Relief dated
25 November 13, 2018, and thereafter served on Defendant, Fairway Constructors, Inc., on or about the
26 26th day of November, 2018. In opposition to the entry of the requested injunctive relief seeking a
27 preliminary and permanent injunction, Defendants submit the following Memorandum of Points and
28 Authorities.

RESPECTFULLY SUBMITTED this 3rd day of December, 2018.

LAW OFFICES OF DANIEL J. OEHLER


Daniel J. Oehler
Attorney for Defendants

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The issuance of an injunction requested by Plaintiff will cause the Defendants herein, as well
3 as property owners who are not parties to this action, significant damage potentially well in excess
4 of \$100,000.

5 The subject injunction can only issue after a showing that the preliminary injunction
6 requested, in this case by the Plaintiff, has: (1) a strong likelihood of success on the merits; (2) the
7 possibility of irreparable injury if the injunction is not granted; (3) a balance of hardships weighing
8 in Plaintiff's favor; and (4) that public policy favors the requested relief. See, Shoen v. Shoen, 167
9 Ariz. 58, 63, 804 P. 2d 787, 792 (App. 1990).

10 In this instance, there are, in the course of current construction in Desert Lakes Golf Course
11 and Estates Tract 4076-B, two single family residences. One partially completed home is owned by
12 Michael H. and Judith M. Rovno, husband and wife, who are the owners of Lot 11, Block F, Tract
13 4076-B. The Rovno residence is depicted in its current state of construction in the attached **Exhibit**
14 **A**, a photograph taken the week of November 26, 2018. The second residence is located at 1951 E.
15 Desert Drive. This particular lot is owned by Sanaye Siavosh. Depicted in **Exhibit B** is the status
16 of this single family residence as it existed the week of November 26, 2018. Note, that the Plaintiff
17 has not served nor brought into this action these owners each of whom will be irretrievably damaged
18 should the Court, for any reason, enter an injunction laying waste to their partially built homes.

19 Desert Lakes Golf Course and Estates Tract 4076-B consists of approximately 123 lots. In
20 1989, a set of CC&Rs were recorded covering the Tract 4076-B. Subsequently, a then unimproved
21 Parcel V-V within the tract was sold by the then owner of Parcel V-V to a third party developer.
22 Simultaneously, a portion of the actual golf course known as Parcel K-K that was owned by a third
23 party was also sold to the same developer. Parcel V-V, according to the original recorded plat (see
24 **Exhibit C**), was platted as a multifamily parcel as is reflected in the Final Plat Map for Tract
25 4076-B. Nonetheless, the developer owner petitioned for a zoning change contemporaneous with
26 expressing an intent to the Mohave County Planning & Zoning Commission to develop Parcels V-V
27 and a portion of K-K as single family residences. The requested zoning change was granted and the
28 Plat Map recorded (**Exhibit D**).

1 The CC&Rs dealing with all single family residences that existed at the time of filing the
2 CC&Rs in 1989 covering Tract 4076-B included specific setback requirements. No homeowners
3 association was ever formed. No efforts to enforce the CC&Rs were thereafter undertaken until or
4 about the time of Plaintiff's filing this action. More specifically, the setback limitations set forth in
5 the original recorded CC&Rs for Tract 4076-B prohibited structural development within 20 feet of
6 the rear property line of every single family residence. Thereafter, upon abandoning Parcels V-V's
7 and K-K's original limitations within Tract 4076-B, the ultimate developer some 10+ years after
8 Tract 4076-B was recorded, caused to be constructed and/or allowed to be constructed single family
9 residences on all but one of the Tract 4163 lots and such development resulted in every residence
10 constructed in Tract 4163 to be built within ten (10) feet from the rear property line. This
11 specifically includes the Plaintiff's residence located on Lots 8 and 9, Tract 4163, which encroaches
12 into the rear setback and the then remaining Desert Lakes Golf Course to a distance of approximately
13 nine (9) feet.

14 The majority of the Tract 4076-B lots have been improved with single family residences. See
15 **Exhibit E**. Attached to this Objection are copies of the tract residences as they existed within 24
16 months of the presentation of this objection, and subsequently several additional lots have been
17 improved, built upon and include structures that are within 10 feet of the rear property lines. For the
18 purpose of this Objection, the argument against the injunction will be supported by the homes
19 depicted on the satellite photographs attached as **Exhibit E**.

20 As is reflected in **Exhibit E**, page 1 of the constructed residences therein depicted, no fewer
21 than 12 of the 22 homes have been constructed to a distance of less than 20 feet from the rear
22 property line.

23 **Exhibit E**, page 2, graphically sets forth 13 single family residences located in Tract 4076-B,
24 and of those 13 residences, 8 encroach into and have been constructed over, across and into the
25 20-foot setback area.

26 **Exhibit E**, page 3, depicts 5 homes within the 20-foot setback out of a total of 20 homes.

27 **Exhibit E**, page 4, shows 2 out of 6 homes within the setback.

28 **Exhibit E**, page 5, depicts 33 residences and of this Tract 4076-B grouping, 13 homes are

1 within less than 20 feet from the rear property line.

2 **Exhibit E**, page 6, depicts 14 out of 32 homes within the 20-foot rear yard setback.

3 **Exhibit E**, page 7, indicates 6 out of 21 homes built within the 20-foot setback.

4 **Exhibit E**, page 8, depicts 26 of the 43 homes are located within the rear yard setback.

5 Attached and marked as **Exhibit E**, page 9, is Parcel V-V, Tract 4076-B, now known as Tract
6 4163. This exhibit consists of 24 single family residences. Of the 24 residences, 24 are built to a
7 distance closer than 20 feet to the rear property line, and in at least one instance, within less than 10
8 feet of the rear property line.

9 Out of a total of 181 single family homes of Tract 4076-B and Tract 4163, at least 97 are built
10 closer than 20 feet to their respective rear property lines.

11 These facts are anticipated to be submitted to this Court in the immediate future in a motion
12 for summary judgment in favor of Defendants and against the Plaintiff.

13 The law is clear that a party seeking a preliminary injunction must show a strong likelihood
14 of success on the merits and simultaneously must show the possibility of irreparable injury should
15 the injunction sought not be granted. The Court is also obligated to balance the hardships that must
16 weigh in favor of the party seeking the injunction if it is to be issued, and must also show that public
17 policy favors Plaintiff's request. See, Shoen v. Shoen, 167 Ariz. 58, 63, 804 P. 2d 787, 792 (App.
18 1990), as well as TP Racing LLLP v. Simms, 232 Ariz. 489, 307 P.3d 56 (Ariz.App. Div.1, Dept.A,
19 2013).

20 Effectively, there has been a complete abandonment of the deed restrictions covering Tract
21 4076-B and the portion thereof now referred to as Tract 4163. The restrictions have not been
22 enforced nor actively pursued for 30+ years. There has not been and there is no homeowners
23 association, nor are there any common areas in Tract 4076-B or Tract 4163.

24 "A complete abandonment of deed restrictions occurs when the
25 restrictions imposed upon the use of lots in [a] subdivision have been
26 so thoroughly disregarded as to result in such a change in the area as
27 to destroy the effectiveness of the restrictions [and] defeat the
28 purposes for which they were imposed." See, Burke v. Voicestream
Wireless Corporation, II, 207 Ariz. 393, 87 P.3d 81 (App. 2004), and
Condos v. Home Dev. Co., 77 Ariz. 129, 267 P.2d 1069 (1994).

28 ///

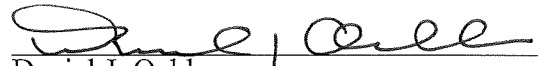
1 Signage throughout the tract has been utilized consistently throughout the entire history of
2 the subdivision as can be seen from the attached data (see **Exhibit F**) and, more recently, such a
3 restriction as originally included in the 1989 CC&Rs has for the most part been statutorily
4 invalidated through the legislation adoption of A.R.S. §33-1808.

5 It is respectfully submitted that the requested injunctive relief not be granted and the issue
6 be held until such time as the Court has ruled all dispositive motions or until a final judgment is
7 entered after trial on the merits.

8 The Plaintiff's damage, if any, is so slight and the Defendants and non-party potential damage
9 so extensive that no action at this early stage should be considered by the Court other than to award
10 the Defendants' their reasonable attorney's fees and costs.

11 RESPECTFULLY SUBMITTED this 3rd day of December, 2018.

12 LAW OFFICES OF DANIEL J. OEHLER

13 
14 Daniel J. Oehler,
15 Attorney for Defendants

16 **COPY** of the foregoing emailed
17 this 3rd day of December, 2018, to:

18 Honorable Derek Carlisle
19 Mohave County Superior Court
20 Division 2
21 2001 College Drive
22 Lake Havasu City, Arizona 86403
23 (928) 453-0739 Mary
24 making@courts.az.gov

25 Plaintiff Pro Per
26 Nancy Knight
27 1803 E. Lipan Circle
28 Fort Mohave, Arizona 86426
(928) 768-1537
nancyknight@frontier.com

By: 
Patricia L. Emond, Legal Assistant