

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

**HONORABLE DEREK CARLISLE, SUPERIOR COURT JUDGE
DIVISION II
DATE: DECEMBER 11, 2018**

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COURT NOTICE / ORDER

NANCY KNIGHT,

Plaintiff,

CASE NO. CV2018-04003

and

GLEN LUDWIG, et al.

Defendant(s).

On October 22, 2018, the plaintiff filed a motion for leave to amend complaint which was subtitled “New Evidence for Setting Aside MSJ Rulings and Orders.” In the motion for leave to amend, the plaintiff requested permission to amend the complaint in this case and referenced Rule 15(a) of the Arizona Rules of Civil Procedure (“ARCP”). The plaintiff included a proposed amended complaint. However, the primary thrust of the plaintiff’s motion and requested amendment was that the Court erred in previously ruling that the plaintiff did not have standing to contest any violations of the CC&R’s for Tract 4076-A because she did not reside in that tract. The plaintiff argued that she resided in a master planned community or subdivision which included Tract 4076-A.

The defendants filed an objection to the motion for leave to amend on November 16. In the objection, the defendants argued that the motion to amend was actually a motion for reconsideration pursuant to ARCP Rule 59(d) and was improper.

The plaintiff filed a reply on November 19. In the reply, the plaintiff relied on ARCP Rule 59. The plaintiff argued that even if the motion was not timely pursuant to ARCP Rule 59, the time should be extended based on excusable neglect. Plaintiff stated that she discovered that the original creator of the Desert Lakes Golf Course and Estates by happenstance, which the plaintiff argued excusable neglect.

The plaintiff primarily requested the Court reconsider its previous decision that the plaintiff does not have the authority to seek enforcement for violations of the CC&R's which occur in tracts in which she does not reside. To the extent that the motion for leave to amend is a motion pursuant to ARCP Rule 59, it is not timely and the plaintiff has not established excusable neglect.

To the extent that the motion for leave to amend is a motion for reconsideration pursuant to ARCP Rule 7.1(e), the plaintiff has not presented any basis to seek relief for violations of the CC&R's beyond the CC&R's themselves. As the Court previously indicated, the CC&R's restrict who can seek relief, and the plaintiff cannot seek relief for violations of the CC&R's in tract 4076-A because she is not a property owner in that tract.

To the extent that the motion for leave to amend seeks amendment of the complaint, the Court previously dismissed count one because the plaintiff did not have standing to seek relief for violations in any tract other than tract 4076-B (or tracts which were previously a part of tract 4076-B). Although the proposed amended complaint includes some cosmetic changes, the primary purpose of the proposed complaint is to reassert the claims in count one. The Court finds the amendment would be futile.

IT IS ORDERED denying the motion for leave to amend complaint.

The defendants requested attorney's fees in responding to the motion. Although the defendants were successful in opposing the motion, the case is not final. In the absence of an allegation pursuant to A.R.S. § 12-349, the Court does not award attorney's fees piecemeal, but will determine the prevailing party at the end of the case and will determine the propriety of awarding attorney's fees at that time.

IT IS ORDERED denying, without prejudice, the defendants' request for attorney's fees.

cc:

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Plaintiff

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