

Handwritten initials in the top left corner.

Handwritten initials in the top right corner.

FILED
BY: [Signature]
2019 MAY 13 AM 8:52
VERLINA TINNELL
SUPERIOR COURT CLERK

1 NANCY KNIGHT
2 1803 E. Lipan Circle
3 Fort Mohave, AZ 86426
4 928-768-1537
5 nancyknight@frontier.com

6 Plaintiff Pro Per

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 NANCY KNIGHT

10 Plaintiff,

11 and

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

20 Defendants.

Case No.: **CV 2018 04003**

**REPLY TO DEFENDANT'S
RESPONSE TO PLAINTIFF'S
MOTION FOR RECONSIDERATION
OF DECLARATORY JUDGMENT
DATED APRIL 12, 2019**

Enforced Violations

Honorable Judge Eric Gordon

21 Comes now Plaintiff Pro Per Nancy Knight respectfully requesting the Court to
22 rule in favor of the Plaintiff for a Declaratory Judgment regarding enforcement of CC&R
23 violations by multiple parties and for multiple types of violations in Tract 4076-B and
24 therefore no abandonment of the CC&Rs exists. No good cause for denial has been
25 presented by the Defendants. In fact, the Defendants cannot possibly prove that there has
26 been a total disregard of the CC&Rs. The master planned community is beautiful and the
27 intent of the CC&Rs is to keep it that way through enforcement of setbacks, views,
28 fencing materials, and signage restrictions.



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff seeks adjudication and relief from uncertainty and insecurity with regard
3 to enforcement rights in accordance with Arizona Law Sections: 12-1845 (Uniformity of
4 interpretation); 12-1835 (Enumeration not exclusive); 12-1831 (Scope). And the
5 following with pertinent parts quoted; 12-1832 (Power to construe, etc.) “Any person
6 interested under a deed, will, written contract or other writings constituting a contract, or
7 whose rights, status or other legal relations are affected by a statute, municipal ordinance,
8 contract or franchise, may have determined any question of construction or validity
9 arising under the instrument, statute, ordinance, contract, or franchise and obtain a
10 declaration of rights, status or other legal relations thereunder”.; 12-1843 (Words
11 construed) “The word “person” wherever used in this article shall be construed to mean
12 any person... of any character whatsoever”.; 12-1842 (Construction) “This article is
13 declared to be remedial; its purpose is to settle and to afford relief from uncertainty and
14 insecurity with respect to rights, status and other legal relations; and is to be liberally
15 construed and administered”.

16
17 In regards to the Plaintiff’s pro per pleadings, Plaintiff cites quotes from case law
18 that the Court is already well aware of but for the benefit of the Defendants and a
19 reminder to the Court, herein are a few quotes: "... the right to file a lawsuit pro se is one
20 of the most important rights under the constitution and laws." “Pro se pleadings are to be
21 considered without regard to technicality; pro se litigants' pleadings are not to be held to
22 the same high standards of perfection as lawyers.” “Pleadings are intended to serve as a
23 means of arriving at fair and just settlements of controversies between litigants. They

1 should not raise barriers which prevent the achievement of that end. Proper pleading is
2 important, but its importance consists in its effectiveness as a means to accomplish the
3 end of a just judgment." "A pro se litigant should be given a reasonable opportunity to
4 remedy defects in his pleadings if the factual allegations are close to stating a claim for
5 relief." "pro se pleadings are held to 'an especially liberal standard'; Fed.R.Civ.P. 8(f)
6 "All pleadings shall be so construed as to do substantial justice".
7
8

9 But for the Court's citing on March 8, 2019 that the Declaratory Judgment would
10 be "inappropriate at this time", Plaintiff pro per Nancy Knight would not have had to file
11 a Motion for Reconsideration. Plaintiff understands the Court, as a newly elected Judge,
12 may have been inundated with a case load due to assuming the files of the former
13 Honorable Judge Carlisle sometime in January 2019. In an effort to abide in the Arizona
14 Constitution for a ruling within 60 days of the filing, Plaintiff reminded the Court's
15 assistant on March 7 of the upcoming deadline. Apparently the Court was in need of
16 additional time for review of this case as no specific verbiage of why the Court cited the
17 matter as "inappropriate at this time". March 8, 2019 was the 60 day deadline for a
18 ruling. The Declaratory Judgment had been filed in December 2018 and the Plaintiff's
19 Reply was filed on January 7, 2019. It is clear that the Arizona Constitution would have
20 been violated if the Court did not rule or seek additional time on March 8, 2019.
21
22
23
24

25 The Court and the Defendants were made aware of the Plaintiff's need to exhaust
26 all administrative remedies in this matter as stated in a Status Conference on April 11,
27 2019.
28

1 The relief from uncertainty and insecurity with respect to the Plaintiff's rights,
2 status, and other legal relations arises from the Defendant's allegations that prior to this
3 action no efforts to enforce the CC&Rs were undertaken. These allegations are patently
4 false. Evidence known to the Plaintiff of enforcement and imposition of CC&Rs was
5 presented to the Court for 1998 (multifamily rezoning), 2005 (builder's imposed upon
6 steel rail fencing), multiple matters in 2016 (golf course fill-dirt pile; CV 2016 04026
7 side yard fence height and steel rail restoration; CV 2016 04026 adjacent neighbor's rear
8 yard steel rail fencing.) Enforcement of CC&Rs in CV 2016 04026 was by amiable
9 mediated settlement. Plaintiff also reported to the Court that the Mohave County Road
10 Department assisted for pipe contractor debris removal on more than one occasion. A
11 subsequent voice mail in 2018 from the road department informed the Plaintiff that pipe
12 contractors had been told to "never do it again". Oath/Affirmation attached.

13
14
15
16
17 Plaintiff alleges, based on the above evidence, that the CC&Rs have not been
18 abandoned and they have been actively enforced by the Plaintiff and others with authority
19 and/or imposition.

20
21 The Plaintiff has been adjudicated the legal right to prosecute CC&R violations in
22 Tract 4076-B and needs the Court to afford relief from uncertainty and insecurity with
23 respect to Plaintiff's rights due to the Defendant's allegations that the CC&Rs have never
24 been enforced and therefore have been abandoned.

25
26 No ambiguity exists in the CC&Rs for twenty foot front and rear setbacks that
27 have been violated by the Defendants. Paragraph 20 of CC&Rs cites the non-waiver
28 provision (Supra- book 1641, p. 899). Non-waiver and non-abandonment, and no

1 ambiguity are legal issues that have been resolved by the Arizona Supreme Court in
2 multiple cases. Plaintiff cites the Arizona Supreme Court in *Powell v. Washburn*, 211
3 Ariz. 553, 125 P. 3d 373 (2006) for support of a Court ruling in favor of the Plaintiff.
4

5 Pertinent excerpts follow:

6 Paragraph 1: "...restrictive covenants should be interpreted to give effect to the
7 intention of the parties as determined from the language of the document in its
8 entirety and the purpose for which the covenants were created."

9 Paragraph 7: "We accepted review because of the widespread use of restrictive
10 covenants in planned communities and the accompanying need for a clear
11 statement of how to interpret such covenants. We have jurisdiction under Article
12 6, Section 5(3), of the Arizona Constitution, Arizona Revised Statutes ("A.R.S.")
13 section 12-120.24 (2003), and Arizona Rule of Civil Appellate Procedure
14 ("ARCAP") 23.

15 Paragraph 9: "In Arizona, the traditional rule has been that when a restrictive
16 covenant is unambiguous, it is enforced so as to give effect to the intent of the
17 parties. *Biltmore Estates*, 177 Ariz. at 449, 868 P.2d at 1032 ("[T]he cardinal
18 principle in construing restrictive covenants is that the intention of the
19 parties to the instrument is paramount.")..."

20 Arizona Court of Appeals Division 1, Department B
21 *College Book Centers, Inc. v Carefree Foothills Homeowners' Association*
22 225 Ariz. 553, 241 P.3d 897 (App. 2010).

23 Paragraph 18: "On appeal, we recognized at the outset that absent a
24 non-waiver provision, deed restrictions may be considered abandoned
25 or waived "if frequent violations of those restrictions have been permitted"
26 *Id.* at 398 para. 21, 87 P.3d at 86. But when CC&Rs contain a non-waiver
27 provision, a restriction remains enforceable, despite prior violations, so long
28 as the violations did not constitute a "complete abandonment" of the CC&Rs.
Id. at 399, para. 26, 87 P.3d at 87. Complete abandonment of deed restrictions
occurs when "the restrictions imposed upon the use of lots in [a] subdivision
have been so thoroughly disregarded as to result in such a change in the area as
to destroy the effectiveness of the restrictions [and] defeat the purposes for
which they were imposed [.] *Id.* (quoting *Condos v. Home Dev. Co.*, 77 Ariz.
129, 133, 267 P.2d 1069, 1071 (1954).

1 The purpose of consistent setbacks is for views. In the words of Supervisor
2 Johnson on October 3, 2016 he states on page 2 of the BOS minutes (Supra Exhibit),
3 “Okay I guess I mean if I was somebody that lived in this subdivision and I bought in
4 there and I don’t know if there’s protected views or not but I knew that the setbacks were
5 right along the road here and - I would do it now - if somebody comes in and builds five
6 foot farther in front of me and we are allowing that, it seems to me that we can be liable
7 for some kind of a take on that. He then stated, “I mean I can’t imagine. I can tell you in
8 Lake Havasu they would lynch you for doing something like that. That would not go over
9 at all.” He stated, “I don’t see why that’s becoming an issue now, in that subdivision, and
10 why we’re getting involved in it.”
11
12

13
14 Desert Lakes Subdivision Tract 4076 and all phases of development for various
15 subdivision tract numbers within the master planned 300+ acres has never had a
16 Homeowner Association. No individual property owner has a fiduciary duty to enforce
17 the CC&Rs but individuals do have a legal right to enforce through prosecution as duly
18 noted in the CC&Rs and by the Court on April 2, 2018 for the Plaintiff’s right to
19 prosecute violations in Tract 4076-B citing “the CC&Rs run with the land”.
20
21

22 Under Contract Law, the Statute of Limitations is six years from the time a
23 property owner finds out about the violation. The issue of CC&R violations was first
24 discovered by the Plaintiff in 2015 due to a neighbor’s construction violations when
25 Mohave County Development Services Director Hont sent a copy of the CC&Rs to the
26 Plaintiff that resulted in case CV 2016 04026. Attorney Moyer was recommended by
27 Attorney Waters for expertise in CC&R matters. Attorney Moyer together with retired
28

1 Judge Langford as mediator (who sits on the Board of an HOA and recognized the value
2 of our views that had been lost by the removal of steel rails and replaced with solid block
3 filler) were successful in reaching a mediation settlement between the parties on or about
4 May 17, 2017. The CC&R fencing conditions were restored by cutting away the solid
5 block and reinserting steel rail panels on the adjacent neighbor's rear yard fence and on
6 the Plaintiff's side yard fence. Enforcement effected fulfillment of the intent of views of
7 the golf course and surrounding area.
8

9
10 The Plaintiff would suffer substantially if the Court should deny this Declaratory
11 Judgment. Another adjacent neighbor could impede her views again if this uncertainty
12 and insecurity regarding past enforcements is not adjudicated in the Plaintiff's favor.
13

14 The Defendant's threatened and attempted violations for setback reductions
15 throughout Desert Lakes Golf Course and Estates Tract 4076 exposed the Plaintiff to risk
16 of litigation had she opted-in for the setback and built an RV garage (Supra exhibit of
17 email with Planner Scott Holtry). On October 3, 2016 the Board was informed of their
18 lack of full disclosure regarding the CC&Rs and the BOS Resolutions for setback
19 reductions was denied by the Board.
20
21

22 The existing matter is an ongoing suffering for the Plaintiff. The Defendants have,
23 since April 2, 2018, continued to violate the CC&R setbacks. Defendants have claimed
24 that "hundreds of individual defendants exist who have not been named as parties to this
25 action". The Defendant's Initial Disclosure made the Plaintiff aware of only two other
26 setback violations (Sanaye and Rovno) and Mohave County Development Services has
27 provided evidence of fact. Defendants continue to taunt and harass the Plaintiff. There
28

1 may be three homes that need to be named as parties if the owner/builders can be located.
2 Two homes to date are within the Plaintiff's view or in her regularly travelled path (the
3 Grice home and the Sanaye home). Realtor Rovno's construction is not in Plaintiff's view
4 nor in Plaintiff's regularly travelled path and Rovno refuses to respond to the Plaintiff's
5 plea for remedy before the home is sold.
6

7
8 Defendants will continue to abuse the rules that are intended to be a mutuality of
9 burden and benefit to all lot owners in Desert Lakes Golf Course and Estates Tract 4076
10 until the matter of uncertainty and insecurity is resolved.
11

12 Defendants will continue to ignore the Plaintiff's offer to settle amiably if the
13 Court denies the Plaintiff's Declaratory Judgment.

14 Declaratory Judgment on the issues of enforcement and no abandonment that is
15 before this Court is appropriate at this time and should not be denied once again. Relief
16 from uncertainty is not an abuse of process and is supported by Arizona Law section 12.
17

18 The Complaint is justified. The Motion for Declaratory Judgment is justified. A
19 request for Defendant attorney fees is unjustified and intended to intimidate and harass
20 the Plaintiff and should be denied.
21

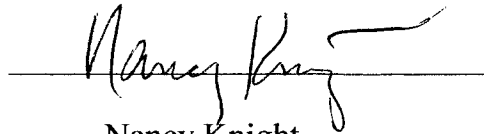
22 With regards to the ongoing and extensive dilatory practices of the Defendants to
23 date, the Plaintiff cites the following case law quote: "Due to sloth, inattention or desire
24 to seize tactical advantage, lawyers have long engaged in dilatory practices... the glacial
25 pace of much litigation breeds frustration with the Federal Courts and ultimately,
26 disrespect for the law."
27
28

1 Plaintiff pleads for a speedy end to this controversy and expects that the Court
2 now has sufficient time to comply with the Arizona Constitution of no later than 60 days
3 from this filing.
4

5 Plaintiff pleads for a ruling based on the merits of facts and evidence in support of
6 a Declaratory Judgment that the CC&Rs have been enforced in the past and no
7 abandonment exists.
8

9 Plaintiff pleads for denial of Defendants attorney fees.

10 RESPECTFULLY SUBMITTED this 13th day of May, 2019

11
12 

13 Nancy Knight
14 Plaintiff Pro Per
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OATH OR AFFIRMATION

STATE OF ARIZONA)
) ss.
County of Mohave)

I, Nancy Knight, declare under penalty of perjury that the information provided herein regarding the Mohave County complaints to the road department and their assistance for pipe contractor debris removal and voice mail message to me in 2018 is true and correct to the best of my knowledge and belief.

Nancy Knight
Signature

5-13-2019
Date

Subscribed and sworn to (or affirmed) before me on this 13th day of May, 2019

By: Nancy Knight

My commission Expires: [Signature]
Deputy Clerk / Notary Public

1 Copy of the foregoing was emailed on May 13, 2019 to:
2 djolaw@frontiernet.net
3 Attorney for the Defendants

4 The Law Office of Daniel Oehler
5 2001 Highway 95, Suite 15,
6 Bullhead City, Arizona 86442

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28