

YJP

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FILED  
 BY:                           
 2019 MAY 13 AM 8:45

WALTER TINNELL  
 SUPERIOR COURT CLERK

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 DISMISSAL OF COUNT ONE**  
**DATED APRIL 26, 2019**

**Honorable Judge Eric Gordon**

21 Comes now Plaintiff pro per Nancy Knight respectfully requesting the Court to  
 22 consider the following Memorandum of Points and Authorities and references of Law  
 23 prior to entering an Order/Directive as requested in the Defendant's Response and to  
 24 deny any award of attorney fees.

25                   **MEMORANDUM OF POINTS AND AUTHORITIES**

26                   Good cause shown by the Plaintiff to reverse the Dismissal of Count One  
 27 (Violations of Covenants, Conditions, and Restrictions) are violations, threatened and  
 28 attempted violations, in Tract 4076-B. The CC&Rs for Tract 4076-B runs with the land



1 and the Plaintiff's lots are within the boundaries of Tract 4076-B as was adjudicated by  
2 the Court on April 2, 2018. The threatened and attempted violations, cited in paragraph  
3 20 of the CC&Rs are for the BOS Resolution setback reductions that had a financial  
4 impact on the Plaintiff in 2016 and placed the Plaintiff at risk of litigation had she opted-  
5 in for Defendant Azarmi's proposed BOS resolutions for her RV garage; existing setback  
6 violations in Tract 4076-B that are known by the Plaintiff to date includes three homes  
7 that have been built by the Defendants after the MSJ Oral Argument decision of the  
8 Court on April 2, 2018; advertising signage on unimproved lots have been an ongoing  
9 violation of the CC&Rs both prior to and after the MSJ Oral Argument decision of the  
10 Court on April 2, 2018.

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14 Correction from the April 26, 2019 filing on page 6, line 18: The Complaint was  
15 filed in 2018 and not 1998.

### 16 17 LAW

18 1. As has been the case in many landmark decisions of the Arizona Supreme  
19 Court, lower courts often make erroneous judgments especially when a lack of timely  
20 evidence exists at the time of the Court Order/Ruling. In the case of Cundiff v. Cox (Dec.  
21 28, 2012) P1300 CV 2003 0399 on page 3, STANDARD FOR GRANTING SUMMARY  
22 JUDGMENT, it is cited that summary judgment is proper when "there is no genuine  
23 issue as to any material fact and the moving party is entitled to a judgment as a matter of  
24 law". Ariz. R. Civ. P. 56 (c)(1). Violations, or threatened, or attempted violations are  
25 material facts and therefore the moving party (defendants) are not entitled to dismissal of  
26 Count One with prejudice.  
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1           2. A mere scintilla of evidence or a slight doubt as to whether a material factual  
2 dispute exists is not sufficient to overcome summary judgment. When the material facts  
3 are not disputed, a trial court may decide the issues as a matter of law. The major material  
4 fact that was in dispute during the MSJ Oral Arguments was whether Desert Lakes Golf  
5 Course and Estates was one Subdivision. Plaintiff has shown that the material fact of  
6 “one subdivision” known as Desert Lakes Golf Course and Estates Tract 4076 designed  
7 by Bella Enterprises in 1988 is not disputable at this time. Also, undisputable at this time,  
8 is evidence from Mr. Walsh of Development Services that Defendant Azarmi was the  
9 proponent for the threatened and attempted violations for the 2016 BOS setback  
10 reduction Resolutions for all lots in the entire Tract 4076 Subdivision. Also undisputable  
11 at this time, are the Defendants own admission from their Initial Disclosure and plot  
12 plans from Development Services that the Defendants have continued to violate setbacks  
13 for Mr. Sanaye’s and Ms. Rovno’s homes in Tract 4076-B. The Defendants also violated  
14 the setbacks on the home built for Mr. and Mrs. Grice at 1839 Lipan Blvd. in Tract 4076-  
15 B. A preponderance of evidence exists to overcome the MSJ summary judgment of  
16 dismissal of Count One with prejudice.  
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22           3. The Arizona Supreme Court wrote in the case of Orme School v. Reeves  
23 “Summary judgment procedure is not a catchpenny contrivance to take unwary litigants  
24 into its toils and deprive them of a trial, it is a liberal measure, liberally designed for  
25 arriving at the truth. Its purpose is not to cut litigants off from their right of trial by jury if  
26 they really have evidence which they will offer on a trial, it is to carefully test this out, in  
27 advance of trial by inquiring and determining whether such evidence exists.” Evidence  
28

1 exists and the Plaintiff's right to trial was violated by the Defendant's "with prejudice"  
2 addition to the Court's oral dismissal of Count One. The Plaintiff's April 4, 2018 attempt  
3 to right the wrong through a Stay of Execution of the court decision was denied. All  
4 attempts by the Plaintiff to Amend the Complaint and recover some semblance of a right  
5 to trial were denied. The time has come for the Court to right the wrongs.  
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8 4. In *Whitaker v. Coleman*, 115 F.2d 305, 307 (5th Cir.1940) it is further cited that  
9 Rule 56 is carefully drawn to effectuate this purpose. Subdivisions (a) and (b) provide for  
10 the institution of the procedure. Subdivisions (c) and (d) provide, the one for complete,  
11 the other for partial determination of the existence of genuine issues as to material facts.  
12 Subdivision (e) provides for affidavit and other forms of proof while Subdivision (f),  
13 making it further clear that the judgment is to be rendered only where it clearly appears  
14 that there is no issue, provides for the granting of a continuance to obtain proofs which  
15 appear to be existent but not then available." Plaintiff was refused a continuance (see  
16 page 15 lines 8-12 of the Oral Argument Transcript - Supra Exhibit A). It is clear today  
17 that additional evidence existed to prove the one subdivision claim made by the Plaintiff  
18 during Oral Arguments. That evidence is the reason the County referred to the  
19 subdivision as Desert Lakes and not as separate and distinct subdivision tracts. A  
20 continuance would have been proper but the Court pressed ahead, and erroneously, to a  
21 summary judgment decision that favored the Defendants.  
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26 5. In the absence of complete evidence that has now been provided to the Court  
27 that Desert Lakes Golf Course and Estates Tract 4076 is one subdivision as argued  
28 profusely in the Transcript of the Oral Argument (Supra Exhibit A), and denied by the

1 Defendant's attorney, an error occurred and the Plaintiff is being deprived a right for a  
2 jury to rule on Count One violations of the Covenants, Conditions, and Restrictions  
3 including the threatened and attempted violations in the Defendant's proposed BOS  
4 Resolutions for setback reductions throughout the entire Subdivision. There exists  
5 numerous "genuine issues" of material fact in this case.  
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8 6. The Arizona Supreme Court decision in Peterson v. Valley National Bank, held  
9 that "summary judgment ... is not a substitute for a trial" and "litigants are entitled to the  
10 right of trial where there is the slightest doubt as to the facts." The sole question  
11 presented on this appeal was whether the trial court erred in granting the summary  
12 judgment. The Conclusion was "We think the judgment of the lower court should be  
13 reversed and the case remanded for a new trial on all of the issues properly pleaded. It is  
14 so ordered."  
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17 7. Rule 8(f) FRCP, holds that all pleadings shall be construed to do substantial  
18 justice. The federal rules accept the principle that the purpose of pleading is to facilitate a  
19 proper decision on the merits. In 2007, the United States Supreme Court overruled  
20 *Conley*, creating a new, stricter standard of a pleading's required specificity. Under the  
21 standard the Court set forth in *Conley*, a complaint need only state facts which make it  
22 "conceivable" that it could prove its legal claims—that is, that a court could only dismiss  
23 a claim if it appeared, beyond a doubt, that the plaintiff would be able to prove "no set of  
24 facts" in support of her claim that would entitle her to relief. In *Bell Atlantic Corp. v.*  
25 *Twombly*, the court adopted a more strict, "plausibility" standard, requiring in this case  
26 "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of  
27 illegal agreement." The *Twombly* reading was upheld in *Ashcroft v. Iqbal* in 2009.  
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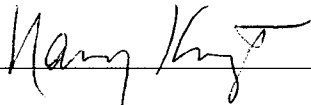
1 8. Time has proven that discovery has revealed plausibility of enough facts to  
2 warrant reversal of the dismissal of Count One. Further, Mr. Rinaldi, a partner in Desert  
3 Lakes Development who claimed to have the boilerplate for all of the CC&Rs appears to  
4 be the subject of witness tampering as he is refusing correspondence by email and has  
5 refused postal delivery of the Court Subpoena for the Architectural Committee files. Post  
6 Office Box delivery for his personal mail, such as Assessor property tax bills, is the same  
7 as the PO Box cited in Tract 4076-B CC&Rs. Contemporary developments have a  
8 plausible expectation of additional violations affecting Tract 4076-B and the annoying  
9 plausible reality that corruption is negatively influencing the Plaintiff's discovery.  
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13 Plaintiff pleads for direction from the Court in how to serve the Subpoena to  
14 Angelo Rinaldi when his home address is unknown.  
15

16 Plaintiff pleads for justice and a right to present the case of the Defendant's  
17 violations of covenants, conditions, and restrictions at trial. Reversal of dismissal of  
18 Count One is appropriate in the eyes of the law and is warranted.  
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20 Plaintiff pleads for denial of Defendants attorney fees.  
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22 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of May, 2019

23  \_\_\_\_\_

24 Nancy Knight  
25 Plaintiff Pro Per

26 Copy of the foregoing was emailed on May 13, 2019 to:  
27 djolaw@frontiernet.net  
28 Attorney for the Defendants  
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