

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MOHAVE**

**HONORABLE ERIC E. GORDON, SUPERIOR COURT JUDGE**

**DIVISION VI**

**\*HH**

**DATE: JUNE 13, 2019**

**COURT NOTICE / ORDER / RULING**

**NANCY KNIGHT,**

**Plaintiff,**

**CASE NO.: CV-2018-04003**

**vs.**

**GLEN LUDWIG, et al.,**

**Defendants.**

The Court has received and reviewed the following:

1. Plaintiff’s Motion for Reconsideration of Declaratory Judgment (filed 4/12/19)
2. Plaintiff’s Motion for Declaratory Judgment on Signage (filed 4/12/19)
3. Plaintiff’s Motion for Reconsideration of Dismissal of Count One (filed 4/26/2019)
4. Plaintiff’s Reply to Defendant’s Response to Plaintiff’s Motion for Declaratory Judgment on Signage (filed 5/13/19)
5. Plaintiff’s Reply to Defendant’s Response to Plaintiff’s Motion for Reconsideration of Declaratory Judgment
6. Defendant’s Response to Plaintiff’s Second Motion for Declaratory Judgment (filed 5/13/19)
7. Defendant’s Response to Plaintiff’s Motion for Reconsideration of Dismissal of Count 1 (filed 5/13/19)
8. Defendant’s Response to Plaintiff’s Motion for Reconsideration of This Court’s Denial of Plaintiff’s First Motion for Declaratory Judgment (filed 5/13/19)
9. Plaintiff’s Reply to Defendant’s Response to Plaintiff’s Motion for Reconsideration of Dismissal of County One (filed 5/13/19)

The Court has considered the arguments contained within the above.

Reconsideration of the Court’s Ruling on Plaintiff’s Request for Declaratory Judgment filed 12/19/18

Plaintiff requested the Court enter a Declaratory Judgment that the CC&Rs pertaining to Tract

4076-B are valid and enforceable. In this Court's ruling entered March 8, 2019, the Court found that "Declaratory Judgment would be inappropriate at this time." The reason for the Court's

finding was that there is a present controversy over whether or not the CC&Rs are enforceable at this time due to conflicting law and/or abandonment. While one of these is a question of law, the other is a question of fact. As such, at least one of the questions is appropriate for trial, not a declaration by the Court. Admittedly, the Court could address whether or not State law has rendered the CC&Rs unenforceable, as this is a legal question. However, whether the CC&Rs have become unenforceable as a result of abandonment is a question of fact and is consequently not appropriately addressed by declaration. Therefore, the Court found, and continues to find, that Declaratory Judgment is inappropriate.

**IT IS ORDERED** denying Plaintiff's Motion for Reconsideration of the Court's Ruling on Plaintiff's [1<sup>st</sup>] Request for Declaratory Judgment.

Motion for Declaratory Judgment on Signage

Plaintiff requests this Court enter a Declaratory Judgment that the CC&Rs specifically pertaining to signage are valid and enforceable. As with the Court's prior ruling on Declaratory Judgment in this matter, this request results in questions of fact and law. For the reasons stated above, the Court finds Declaratory Judgment to be inappropriate. Therefore,

**IT IS ORDERED** denying Plaintiff's Motion for Declaratory Judgment on Signage.

Motion for Reconsideration of Court's Order signed June 11, 2018

Plaintiff asks this Court to reconsider, pursuant to Rule 7.1(e) A.Z.R.C.P, its order entered over one year ago which dismissed count one of Plaintiff's Complaint. In addition to the documents above, the Court has listened to the audio recording of the Oral Argument which was held on April 2, 2018 which resulted in the decision of which Plaintiff now seeks reconsideration.

Review of the audio makes clear that the sole issue before the Court at that time was whether or not Plaintiff (whose property is located in Desert Lakes Tract 4076-B) could seek to enforce CC&Rs on Defendants whose property is located in Desert Lakes Tract 4076-A. At that time, the Court reasoned that because multiple Desert Lakes Tracts each had their own separate CC&Rs, the CC&Rs in any one tract were only enforceable against properties within that same tract and by someone owning property within that same tract. Therefore, the Court found that Plaintiff lacked "standing" to seek to enforce the recorded CC&Rs of Tract 4076-A against property in Tract 4076-A since she herself did not own property within Tract 4076-A. However, the Court found that Plaintiff did have "standing" to seek to enforce the recorded CC&Rs for Tract 4076-B

against properties located within Tract 4076-B since she owned property in Tract 4076-B. As the allegations as pled in Count 1 of Plaintiff's Complaint pertained to issues within Tract 4076-A only, the Court granted Defendants' motion to dismiss (treated as a motion for Summary Judgment) as to Count 1.

Plaintiff's Motion for Reconsideration of the Court's order dismissing Count 1 which was signed June 11, 2018 rehears the arguments already considered by this Court when entering its ruling. The Court does not find such to be persuasive; therefore

**IT IS ORDRED** denying Plaintiff's Motion for Reconsideration of Dismissal of Count One (filed 4/26/2019).

cc:

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