NANCY KNIGHT 1803 E. Lipan Circle Fort Mohave, AZ 86426 (928) 768-1537

nancyknight@frontier.com

FILED

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VIRLYNN TINNELL GUPERIOR COURT CLERK

Plaintiff Pro Per

IN AND FOR THE COUNTY OF MOHAVE

NANCY KNIGHT.

Plaintiff,

VS.

GLEN LUDWIG AND PEARL LUDWIG, TRUSTEES OF THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC.; MEHDI AZARMI; JAMES B. ROBERTS AND DONNA M. ROBERTS, HUSBAND AND WIFE; JOHN DOES 1-10; JANE DOES 1-10; ABC CORPORATIONS 1-10; AND XYZ PARTNERSHIPS 1-10.

Defendants.

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

REPLY TO DEFENDANT'S
RESPONSE TO MOTION FOR
SUMMARY JUDGMENT TO
FORGIVE SPECIFIC VIOLATIONS
OF DESERT LAKES GOLF COURSE
AND ESTATES' COVENANTS,
CONDITIONS AND RESTRICTIONS

(Assigned to Hon. Judge Jantzen)

COMES NOW Nancy Knight, Plaintiff Pro Per, replying to the Defendant's July 8, 2020 Response/Objections on forgiveness of setbacks and steel rail paint color due to no fault of the current owners of homes with a time element for violations predating the year ending 2015. The Court previously informed the Plaintiff and opposing counsel that MSJ Responses are due within 30 calendar days (December 4, 2019 Status Conference). The Defendant's Response is past the deadline. A request for attorney fees associated with a late filing of a Response is inappropriate and should be denied by the Court.

REPLY TO DEFENDANT'S RESPONSE ON FORGIVENESS OF SPECIFIC CC&R VIOLATIONS - 1



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Regardless of any due consideration of the timing of the Defendant's Response, Plaintiff submits the following Reply.

The time element for violations predating the year ending 2015 was established pursuant to the Mohave County Board of Supervisors' Resolution 2016-125 that began circulation to all lot owners in Desert Lakes Golf Course and Estates Subdivision Tract 4076 on or about June 25, 2016. The Resolution was denied by the Board on October 3, 2016. All setback violations post this denial are expected to be subject to prosecution by the Plaintiff in Tract 4076-B, at a minimum, and in Tract 4076-A as well if the Court rules in favor of the Plaintiff's preponderance of evidence that Subdivision Tract 4076 exists and that the language of subdivision in the Covenants, Conditions and Restrictions (hereinafter "CC&Rs") applies to the definition of subdivision in Arizona law whereas the alphabetical suffix "A", "B", "C" applies to phases of development in accordance with the 1988 approved Preliminary Plat for the recorded Final Plats. Phase I is Tract 4076-A, Phase II and Phase III were combined for Tract 4076-B, and Phase IV is Tract 4076-C.

Plaintiff is not attempting to practice law. Plaintiff is attempting to achieve justice in the court system as a Plaintiff Pro Per who reads the statutes, researches case histories and reads briefs, requests public information regarding her Subdivision Tract 4076 that has proven to provide the Court with evidence to reverse a Court error that is a taking of CC&R prosecution rights from the Plaintiff in this matter and from other property owners over time if this precedent by the Hon. Judge Carlisle is allowed to stand, and the

Plaintiff continues even today to work toward providing the Court with additional real evidence in support of her rights to prosecute CC&R violations. More appropriate than the Defendant's citing Rule 31 on the Regulation of the Practice of Law are the following supporting precedents and standards by which the legal system has served Pro Per Litigants in achieving justice:

- a. The American Bar Association has standards where courts are allowed to help pro se litigants with regard to the pleadings they file.
- b. Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938) "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."
- c. In *Haines v. Kerner*, 4040 U.S. 519-20 (1972) "A pro per litigant should be given a reasonable opportunity to remedy defects in his pleadings if the factual allegations are close to stating a claim for relief". And in finding plaintiff's complaint legally sufficient, the Supreme Court found that pro se pleadings should be held to "less stringent standards" than those drafted by attorneys.
- d. Wigglesworth v. Mauldin, 195 Ariz. 432, 439, ¶¶ 26-27, 990 P.2d 26, 33 (App. 1999) "Generally, before granting a motion to dismiss on the pleadings, a court should give the defendant a chance to amend the complaint if that would cure the defect.
- e. Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233. "Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers."
- f. Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA) It was held that a prose complaint requires a less stringent reading than one drafted by a lawyer.

It remains unknown at this time if the Hon. Judge Jantzen will deem that the owners of parcel numbers in the entire Subdivision Tract 4076 are indispensable parties in any dispositive motion. The Carlisle Court did not require the Defendants to include

the owners of 759 lots in Subdivision Tract 4076 as indispensable parties nor did he evaluate the Tract 4076-B CC&Rs to determine that the owners of 290 lots cited in Tract 4076-B CC&Rs were indispensable. The Plaintiff's motion for forgiveness and the Defendants' motion for dismissal alleging a claim of abandonment of the CC&Rs are subject to a Court ruling and legal opinion on indispensable parties in these matters.

In regards to the matter of abandonment, real evidence of the frequency of any violations approved by the County is pending. Refer to Exhibit 1.

In regards to forgiveness, in the Joint Report dated November 19, 2018, Plaintiff conceded that she would not file a Declaratory Judgment on forgiveness as was intended pursuant to her January 2018 Complaint; however, she since learned from a consult attorney that a Motion for Summary Judgment (hereinafter "MSJ") allows the Court to rule on law and fact. Hence, this MSJ for forgiveness.

Other matters in the Joint Report that needs amendment is elimination of the potential purchase agreement remedy for setback shortfalls to mitigate the rear yard setbacks in Tract 4076-B. Tribal representative, Mike Cortes, has informed the Plaintiff that Tribal land cannot be sold to Desert Lakes property owners.

Regarding recovery of taxpayer dollars from Defendant's attempted setback violations, it is the Plaintiff's position at this time that the jury should have a right to decide the remedy for this matter and therefore an amendment to the Joint Report is needed. This rezoning action was not limited to any alphabetically suffixed Final Plat within Subdivision Tract 4076. It was intended to reduce the front and rear setbacks in REPLY TO DEFENDANT'S RESPONSE ON FORGIVENESS OF SPECIFIC CC&R VIOLATIONS - 4

the entire Desert Lakes Golf Course and Estates Subdivision Tract 4076. Zoning change Resolution 2016-125 was proposed by Defendant Azarmi and generally would carry fees that should be borne by the proponent and not borne by the Plaintiff as a Desert Lakes' taxpayer. Plaintiff is not acting on behalf of the County or as a representative of the County.

The Joint Report has errors in the Defendant's Description of the Case as well that alleges abandonment of Parcel VV that has been recently proven to be an abandonment of the multifamily zoning and reversion to acreage for single family homes in Desert Lakes Golf Course and Estates around the year 1991. In 1993 Resolution 93-122 clarified that all lots are subject to the Special Development zoning setbacks of twenty feet front and rear. The Supra exhibit of the BOS Denial of Resolution 2016-125 clearly confirms the said Subdivision is "Tract 4076" and clearly cites Resolution 93-122 as being Denied for setbacks to be reduced to fifteen feet.

It has also been recently found that the Tract 4076-B CC&Rs subject 290 APNs to the provisions of the CC&Rs and that Tract 4076-D is not a derivative of Tract 4076-B as the Defendants had claimed. Tract 4076-D lots are included in the Tract 4076-B CC&Rs (paragraph 6, Book 1641, Page 897) together with the lots in Tract 4132. The Court has already ruled that the CC&Rs for Tract 4076-B is the language to be evaluated for rulings on these lots. Servitude 6, on Setbacks, clearly cites the lots in "Tract 4076-B" that includes the lots approved for Phase II and Phase III of the 1988 Preliminary Plat that created subdivision Tract 4076. Contrary to the Defendant's claim, Subdivision Tract

4076 exists. Desert Lakes Golf Course and Estates Subdivision Tract 4076 has three pertinent alphabetically suffixed labels on the CC&Rs (Tract 4076-A, Tract 4076-B, and Tract 4076-C) that are inclusive for the four phases of development outlined in the approved 1988 Preliminary Plat that created Subdivision Tract 4076.

Defendants had no concern for the legal rights of property owners in Subdivision Tract 4076 when their attorney submitted a ruling for the Carlisle Court to sign that effectively limited prosecution rights to sections of the subdivision. Defendants have no concern for the legal rights of property owners in Subdivision Tract 4076 by claiming abandonment of the CC&Rs. Defendants have repeatedly failed to include indispensable and interested parties in their efforts at dispositive motions and now have objected to the Plaintiff requesting court direction on her MSJ regarding indispensable parties and method of service on the matter of forgiveness. On May 11, 2020, the Court denied Plaintiff's pleading for Defendants' to serve indispensable parties in their MSJ regarding abandonment of the CC&Rs. Written rationale for the denial is pending a legal decision and opinion of the Court.

The Joint Report had proposed that this case would be ready for trial by May 15, 2020 which is long past.

The Proposed Scheduling Order dated November 19, 2018 and agreed to by the Court on December 11, 2018 is obsolete at this time and requires amendment / modification due to contemporary events and ongoing discovery in this matter.

The Court has the right to rule in favor of extending the time for disclosures, motions, and trial. As was the case under the Hon. Judge Gordon who ruled on June 17, 2019 as follows:

IT IS ORDERED amending the current Scheduling Order, section 2. B., in that the parties shall simultaneously disclose the identity and opinions of experts by August 31, 2019.

Complete discovery was due no later than January 31, 2020 and yet remains ongoing due to the Defendant's May 11, 2020 Oral Arguments for Dismissal of the case that requires real evidence for determination of the frequency of violations at the hands of County officials. Forgiveness is in dispute. Plaintiff believes forgiveness has the potential to uncomplicate many matters in this case including the number of defendants, the frequency of violations to be used as a calculation by the Court in his ruling, and the frequency of violations of individual servitudes. These issues are properly before this Court as pertinent considerations in law and in the language of the CC&Rs. There exists reasonable questions of material facts in this case as they relate to the Defendants' Affiant's allegations. These allegations have been included in the Plaintiff's July 2, 2020 email to County Deputy Attorney Taylor together with six (6) Requests for Public Information. **Exhibit 1** – Email to the Deputy County attorney with six Requests for Public Information (RFPIs).

Plaintiff intends to file a Motion for Leave to Amend the Joint Report and Proposed Scheduling Order in the near future. Opposing counsel has been offered to confer in accordance with rules of civil procedure.

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The Plaintiff's "Breach of Contract" Complaint, filed on January 22, 2018, was not groundless nor filed in bad faith. Count One and Count Two of the Plaintiff's Complaint have been proven to be valid. Subdivision Tract 4076 exists. Plaintiff was put at risk for the Defendant's attempted violation of reduced setbacks. Prosecuting Defendant Azarmi for the attempted violation of reduced setbacks, front and rear, has merit. Plaintiff suffers from deceptive allegations that she must continually defend against including fraud upon the court in perpetuating the error and undisclosed truth that one subdivision exists and that the alphabetically suffixed tracts are merely names given to Final Plats as phases of development are submitted to the Board of Supervisors to begin home construction. The Court is justified in denying any and all motions for Defendant's attorney fees in accordance with ARS 12-349 in the interest of justice and in accordance with contract law.

Plaintiff pleads for the Court to Order the Defendants to stop harassing the Plaintiff with threats of attorney fees.

RESPECTFULLY SUBMITTED this 9th day of July, 2020.

Plaintiff Pro Per

COPY of the foregoing emailed on this 9th day of July, 2020 to:

djolaw@frontiernet.net

Attorney for Defendants

Daniel J. Oehler, Esq.

Law Offices of Daniel J. Oehler

2001 Highway 95, Suite 15

Bullhead City, Arizona 86442

Exhibit 1

Email to County Deputy Attorney Taylor Six Requests for Public Information (RFPIs) Total seven pages.

From: "nancyknight" <nancyknight@frontier.com>

Thursday, July 02, 2020 3:36 AM Date:

"Robert Taylor" <Robert Taylor@mohavecounty.us> To:

"Matt Smith" <Matt.Smith@mohavecountv.us>; <buster.johnson@mohavecountv.us>; "Gary Watson" <Gary Watson@mohavecountv.us>; "Christine Ce

Ballard" < Christine. Ballard@mohavecounty.us>

RFPI FenceDesignMaterialsImposed.pdf; RFPI FenceHeightPermits.pdf; RFPI LivableSpace.pdf; RFPI SetbacksFrontRear.pdf; RFPI Signage Attach:

Permits.pdf; RFPI TemperedGlassImposed.pdf

Subject: RFPIs related to County permits and impositions in Desert Lakes Golf Course & Estates

Dear Deputy Attorney Taylor.

Christine Ballard once told me that your legal department had advised her that since the County was not a party to Desert Lakes Golf Course and Estates CC&Rs they did not have to follow them. That was not the opinion of Supervisors Johnson and Watson on October 3, 2016. It is my hope that if your office did indeed inform her of this position in the past you will advise her otherwise at this time since that understanding by Development Services has placed the County in a risky position of prosecution if the permits issued by the County causes the Counts to rule that the CC&Rs have been abandoned and all property owners have lost their rights to prosecute violations of our CC&Rs.

Frequency of violations to cause a ruling on abandonment has yet to be determined by the Court and as of March 2020 approximately 25% of the lots in Desert Lakes Golf Course and Estates were still undeveloped. It is this reason that the County should stop issuing permits in violation of our CC&Rs rather than exacerbate the numbers and place the County at an even higher risk of prosecution especially given the Special Development Zoning setbacks that have already been violated and has caused considerable harm here.

The attached six RFPIs are intended to determine the extent that the County has been complicit in causing a frequency that the Court will judge as an abandonment of the CC&Rs.

A list of the Assessor Parcel Numbers is available on request if needed. There exists 759 residential lots in Subdivision Tract 4076.

Nancy

pg 2dT



MOHAVE COUNTY DEVELOPMENT SERVICES

P. O. Box 7000 Kingman, Arizona 86402-7000 3250 E. Kino Ave, Kingman <u>www.mohavecounty.us</u> Telephone (928) 757-0903 FAX (928) 757-3577

Timothy M. Walsh, Jr., P.E.

Michael P. Hendrix, P.E. County Manager

Department Director			County Manager
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Michael P. Hendrix, P.E. County Manager

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Timothy M. Walsh, Jr., P.E. Department Director

Michael P. Hendrix, P.E.
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Timothy M. Walsh, Jr., P.E. Department Director

Michael P. Hendrix, P.E. County Manager

PUBLIC RECORDS REQUEST FORM

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Timothy M. Walsh, Jr., P.E. Department Director

Michael P. Hendrix, P.E. County Manager

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Timothy M. Walsh, Jr., P.E. Department Director

Michael P. Hendrix, P.E. County Manager

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