IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

NANCY KNIGHT, Plaintiff,	)	
vs.	)	Cause No. CV-2018-4003
GLEN LUDWIG and PEARLE LUDWIG, Trustees of the Ludwig Family Trust; FAIRWAY CONSTRUCTORS, INC., MEHDI AZARMI. Defendants.	)	ORAL ARGUMENT

BEFORE THE HONORABLE LEE F. JANTZEN, JUDGE

May 11, 2020
1:31 p.m.
Kingman, Arizona

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the PLAINTIFF: (In Pro Per)

For the DEFENDANTS: DANIEL J. OEHLER, Esq.

Reported by: Kimberly M. Faehn
Official Court Reporter
Mohave County Superior Court, Div. 3
2225 Trane Road
Bullhead City, Arizona 86442

P R O C E E D I N G S

THE COURT: Good afternoon.

This is CV-2018-04003; in the matter of Nancy Knight, plaintiff, versus Glen Ludwig and Pearle Ludwig, et cetera, defendants.

Show the presence in the courtroom of Ms. Knight, representing herself.

Show the presence of Mr. Ludwig; is that correct?

MEHDI AZARMI: Azarmi.

MR. OEHLER: Mr. Azarmi.

THE COURT: Mr. Azarmi.

MR. OEHLER: Is one of the defendants.

THE COURT: One the defendants, sorry.

Mr. Azarmi?

MEHDI AZARMI: Correct.

THE COURT: Azarmi, A-z-a-r-m-i.

MEHDI AZARMI: Correct.

THE COURT: Show the presence of Mr. Oehler, representing the defendants in this matter.

This is the time set for oral argument on two pending summary judgment motions; one is from Ms. Knight, which is a motion -- a partial motion for summary judgment on the issue of signage.

The other is from Mr. Oehler, which is a motion for

summary judgment of the remaining issues in this case.

As I told you on the phone the other day, we have three hours set aside for this hearing. I have never once used three hours to do oral arguments in a motion for summary judgment, but I've allowed that in this case.

The way I anticipate this going is Mr. Oehler gets to go first and last on his motion for partial summary judgment; and Ms. Knight gets to go first and last on her motion for partial summary judgment on signage.

So, Mr. Oehler will go first. Ms. Knight will go second in responding and arguing her motion; and then Mr. Oehler will go third; and Ms. Knight will go fourth.

You have a combined hour and-a-half each. I will keep track of that to hopefully -- you don't have to use it. I'll go on the record now; if you don't to use the whole time, do not use it.

But you have a combined hour and-a-half each.

I will let you know when you're down to half an hour, in case you want to stop then and save it for the remainder of your budget; but if you're using your time wisely hopefully we'll get beyond that portion.

Since the last time we talked I've received three more pleadings from Ms. Knight. One is a motion

for clarification of plaintiff's right to be argued in today's hearing; and then two motions today were filed -- I'm not sure they've been filed, but -- yeah, one was filed this morning at 8:32; the other is unfiled. I'm assuming it has been filed.

And they are motions to dismiss defendants' motion for summary judgment for failure to join indispensable parties.

First of all, on the motion for clarification, Ms. Knight, you can argue the issues that relate to the pending motion for summary judgment.

You understand what has been dismissed already in this case; I hope you do.

And we're going to go forward today; in your time allotted you can argue those motions, and I'm sure you will.

With regard to the motions to dismiss, there's usually time to respond to these. I don't think time is necessary.

It is ordered denying both of the motions to dismiss defendants' motion for summary judgment for failure to join indispensable parties.

This is an issue -- you know, we can deal with that issue in a different forum if we get beyond today's hearings; but I'm not going to wait and -- wait for a

response from Mr. Oehler and then argue today whether or not we're dismissing the motions for summary judgment on some technical issue or some belief that the defendant had to join indispensable parties.

So, Mr. Oehler, are we ready to proceed on the motion for summary judgment?

MR. OEHLER: We are, your Honor.

THE COURT: All right. Go ahead; starting now.

MR. OEHLER: Thank you, your Honor.

Simply to be, I think, ultra-cautious, based on the history of this file, um, your Honor, I believe your Honor misspoke in regard to the defendants' pending motion for summary judgment.

It is -- it was filed, and it is being argued as a dispositive motion as opposed to a partial motion for summary judgment.

THE COURT: Well, I -- if I did misspeak, I think Ms. -- I thought I said Ms. Knight's motion was partial, and your's is --

MR. OEHLER: You did for Ms. Knight, but you did -- I understood you to say the same for defendants'; and again, you know, based on the history, I think the record needs to be absolutely clear that the defendants' motion is a dispositive motion for summary judgment on all issues.

THE COURT: That's absolutely clear to me; so if I misspoke, I apologize.

MR. OEHLER: Thank you.

THE COURT: But go ahead.

MR. OEHLER: Thank you, your Honor.

It seems to me that the best way to handle a file like this, and I can avow to the Court that we're probably at something in the range of 50,000-plus pages of documentation; cases, allegations, statements and items that have been generated in this file.

I think, you know, this -- as is the case in most pieces of litigation, whether they're civil or criminal, is to attempt to sort-of peel back the onion to its core, and deal with what otherwise could be considered incredibly complex matters, as really fairly simple matters.

And I can appreciate the fact, your Honor, -- if I might go to the podium here.

I can appreciate the fact that your Honor is, I believe, the third -- third of the fourth judge that has been involved in this proceeding, which obviously makes it difficult for the Court, for a multitude of reasons.

But, you know, in today's -- in today's matter we have a set of circumstances that are really intended to dismiss and to discuss, followed by a dismissal of

plaintiff's remaining count 2 of her complaint.

So, the first thing, I think, that a little bit of time needs to be spent on is indeed the plaintiff's complaint; and although there have been allegations submitted to the Court, historically and more recently, Plaintiff has alleged on numerous occasions that count 1 of her complaint was not dismissed by Judge Carlisle.

On several occasions she has alleged that -- well, just the Roberts, who were owners of a lot and a residence in Tract 4076-A were dismissed.

However, your Honor, as I'm sure the Court is aware and as I'm sure your Honor has reviewed the file, um, Judge Carlisle's order was very succinct, very clear; it dismissed count 1 of Ms. Knight's complaint.

That order, your Honor, was formally entered; the finding -- the finding occurred on June 11th of 2018, and the order, excuse me, was also entered with the June 18th minute order on the 11th day of June in 2018; almost two years ago.

What that order did is it left intact, at least portions, of count 2.

So, the first thing I believe we need to do this afternoon is examine what count 2 says.

First of all, it is captioned as an injunctive relief. Starting with paragraph 59 of the complaint.

Plaintiff alleges that she has a strong likelihood of success on the merits of the violations of the CC&Rs as were set forth in the complaint.

Plaintiff alleges she is entitled to a preliminary and permanent injunction enjoining the defendants from all current signage violations on unimproved lots.

She indicates that she's entitled to a preliminary and permanent injunction from any existing or future violations of CC&Rs, including but not limited to setback reductions and signage on unimproved lots.

She alleges that she's entitled to compensatory damages that do not exceed the jurisdictional limitation of this Court, plus filing fees, compensation for hours of research, emails, letters, postage, physical and emotional distress.

In other words, we're starting the case on a contract basis, and we're somehow morphing to damages for emotional distress. All flowing out of alleged violations of various CC&Rs.

That is the second count that exists today as a result of the Carlisle ruling.

Throughout my presentation today, your Honor, I'll be referring to the Carlisle findings. The Carlisle, in effect, statement of law that allowed us to get here before this Court today; and in that respect

it's the law of the file, at least up until today.

Originally we filed a motion to dismiss; fairly simple motion, a motion alleging that Ms. Knight, who along with her husband, who's here in court today, lived in a subdivision called Desert Lakes Golf Course & Estates, Tract 4163; and as such, she was not allowed to or did not have standing to argue alleged violations in two different tracts; namely 4076-A where the Roberts defendants, former defendants, used to reside or where they owned a home, nor did she have authority to argue any issues that occurred in 4076-B.

Only, only was she or should she be allowed to argue violations in 4163, a subdivision which had no independent separate CC&Rs recorded against them.

I was unsuccessful in that argument, your Honor. We alleged that the lands which were the subject matter of the Knight residence, and that were originally in Tract 4076-B, had been abandoned.

They had been abandoned from that tract, from that subdivision; that subdivision no longer existed.

Judge Carlisle thought differently, and has allowed, as a result of that finding, this matter to proceed exclusively in regard to count 2.

Now, because of the -- because of the wording, because of the form of the complaint in count 2,

we have one paragraph in count 2 that discusses anything germane to this matter, other than signage; and that particular paragraph alleged setback violations.

So, what we will be presenting to, your Honor, today is despite the fact we believe there was an abandonment, the law of the case is there wasn't, as it now stands; and how do we address the signage, which was the paramount interest of Ms. Knight in regard to her complaint.

THE COURT: Let me interrupt. You're saying you're -- you're not abandoning -- abandoning the argument of abandonment, just --

MR. OEHLER: No, I'm not, your Honor.

THE COURT: Okay.

MR. OEHLER: I'm not arguing it today. I'm just trying to give some history to your Honor as to -- as to how we got Tract 4163 involved in 4076-B.

THE COURT: No, let me finish. My question is 4163 did not have the CC&Rs. 4076-B had the original CC&Rs.

MR. OEHLER: Correct.

THE COURT: Your position is, even if Judge Carlisle is right and it carried to 4163, those particular CC&Rs have been abandoned through lack of enforcement; so, it's a different argument.

MR. OEHLER: That's correct.

When I talk about abandonment in my -- in my preamble here, I'm talking about the lands that were the subject matter of 4163 had been abandoned from the 4076-B subdivision; and as such, the fact that any CC&Rs were recorded didn't apply.

I lost that argument, your Honor.

So, we're here dealing with the Carlisle law, if you would; it is the law of the case as we are here before the Court today.

So, our position and the defendants' position is, your Honor, that even though -- even though the Tract 4076-B CC&Rs are, for today's argument, to be considered binding on Tract 4163, they are unenforceable as to Ms. Knight.

They are unenforceable as a result of their having been abandoned, practically speaking, 30 years ago.

How were they abandoned?

I think first, your Honor, we need to look at the law dealing with restrictive covenants; and then apply that law to the facts, and I think the reasonable way to proceed on that basis is to first discuss, albeit briefly, the law here in the state of Arizona and how it has transitioned from the 1940s, 50s, 60s into this century.

I think it is fair to say, your Honor, that when we're dealing with a set of CC&Rs, such as those that were recorded in Tract 4076-B, they included a non-waiver paragraph.

That, your Honor, to some extent changes the game plan when one is dealing with those CC&Rs.

The general law in Arizona -- and I think it is pretty clear; I don't think there's a lot of fuzzy gray areas -- is that if there is a non-waiver clause, which means that despite the fact there may have been one or two violations of one the covenants or two of the covenants or three of the covenants, that is not enough to push aside the non-waiver provision, which is involved in the 4076-B CC&Rs if they, in fact, applied to Tract 4163; and for today's argument we are considering the fact that they do based on the law of the case.

Your Honor, in my dispositive motion, I cited what I believed to be virtually every one of the current cases dealing with non-waiver issues.

In other words, where restrictive covenants included non-waiver provisions.

Those cases, your Honor, include I think most-importantly several court of appeals cases; and actually, a case that was argued up in this neck of the woods, Powell versus Washburn, which ultimately was a

supreme court case.

But they include -- and, I think, most-importantly, consist of pretty-much in decade-order, Whitaker versus Holmes, 1952 case. The Whitaker case dealt with what is described as four sections of ground.

There were, in that litigation, 7 violations. That was a 1952 case.

In 1954, your Honor, the court of appeals dealt with Condos versus Home Development Company. That was a case dealing with a liquor store that was attempted to be built in a residential subdivision.

In that particular case, -- let's take a look at the number of violations that were involved.

There were 5 minor violations. Those minor violations consisted of -- there was a prohibition against raising animals in the subdivision.

The proponent of the liquor store alleged, and I guess successfully proved, that there was a chicken farm; the Court drilled-down on that a little bit and found that the chicken farm consisted -- and I quote -- of 6 roosters that were for sale.

The proponent of the liquor store alleged that, um, there was a second-hand store. Well, the second-hand store, according to the reported outcome, was that somebody in a house was selling a few chairs and a stove.

This is an early 50s case, your Honor.

The set of CC&Rs, just like the CC&Rs for Tract 4076-B, prohibited the use of outhouses; so did the 1989 4076-B CC&Rs.

Anyway, the liquor store proponent appears to have successfully shown that there were a total of nine outside toilets in this subdivision.

So, that represented the potpourri, if you would, of restriction violations. Certainly very, very, very minor violations.

Then, perhaps, the sentinel case, Powell versus Washburn. That was a case where the CC&Rs restricted the property to manufactured homes.

The issue was whether or not a recreational vehicle would fit that criteria. There weren't prior violations there. It was purely a does-a-recreational-vehicle fit the norm of a manufactured home.

So, it is really not a case, although important, it is really not a case that is similar to this one nor that certainly deals with waiver, non-waiver matters.

A 1948 case, O'Malley versus Central Methodist Church; a home-only subdivision. Issue there was not prior violations; it was whether or not the proponent, the plaintiff, could build a church.

The Court found that a church fit within the purview

of that particular subdivision; despite the fact that it was homes-only.

But then we get to the, really, two important and almost on all-fours with the case that is before your Honor today.

Burt versus Voice Stream, a 2004 court of appeals case. The issue in the Burt case was whether or not -- whether or not the homeowner's association could stop the construction of a 50-foot cell tower that was being proposed by Voice Stream.

Voice Stream's defense in that matter consisted of allegations -- and I believe factual allegations, at least to some extent, of prior restrictions being violated; attempting, again, to avoid the non-waiver clause or to offset it, if you would.

When we drill-down on that particular case, your Honor, we find out what the prior violations were. They were one home had a 30-foot flag -- it was a homes-only subdivision, your Honor; a 30-foot flag pole.

There were two bell towers; and there was a 38-foot cross. Those were the violations; not set-back violations, not fencing violations, not color scheme violations, not gate access to open areas.

The Court found that those violations, your Honor, did not, in fact, throw out, if you would, the entire set

of CC&Rs because of the major change in the subdivision; and the Court found for the homeowners.

The next case, your Honor, was on a -- on a waiver issue was College Book Centers, and these were all cited, your Honor, in my memorandum.

THE COURT: I have three or four of them up here with me.

MR. OEHLER: Pardon me?

THE COURT: I have three or four of them up here with me.

MR. OEHLER: Oh, okay.

THE COURT: Okay, go ahead.

MR. OEHLER: College Book Centers is a 2010 case; probably the most recent and, really, technically-similar case; at least on the basis of non-waiver in this jurisdiction.

In College Book Centers, your Honor, we were dealing with the proponent, the defendant, wanted to build a road to access from one lot to another lot in the subdivision.

His basis for getting around the non-waiver clause was the fact that there had been two other roads that had been built within the subdivision previously.

So, the question was whether or not the non-waiver clause was no longer effective because two -- two similar violations had occurred.

The Court said that it was not adequate to pitch the non-waiver clause.

In College Book Centers, your Honor, the Court goes into pretty-graphic detail; and I think it's worth actually repeating live today.

The two roads in question that had previously been built were Thiele and Applegate Roads, but the Court said at the bottom -- and I quote, Thiele and Applegate roadways do not constitute frequent violations such that a jury might reasonably infer waiver.

And it quoted Sterling Cotton Mills, a case out of North Carolina, where finding 4 violations out of 62 lots in the subdivision was insufficient to constitute waiver.

4 out of 62. Here we're dealing with roughly 225 lots in the matter before your Honor, and we're dealing with hundreds, perhaps thousands, of restrictive covenant violations.

But let's go on and talk a little bit more about College Book Centers. The next case that our court of appeals quoted was Pebble Beach Property Owners Association, a case out of Texas, that prohibited mobile homes.

Here there were 14 similar violations in an 800-lot subdivision. 14 out of 800 lots.

I'll point out to the Court that in the case

before your Honor today we have a plaintiff whose own home has at least 7 covenant violations; just her home, to say nothing of the hundreds of other violations that we'll discuss further.

The next case that the Arizona court quoted was another Texas case; holding that five violations in a 56-lot subdivision was insufficient, as a matter of law, in number, nature and severity to bar enforcement of a waiver clause; and that was despite the fact that on one street there were several setback violations.

Actually, the jury determined that there were 15 setback violations involving a subdivision in Virginia; and found that -- excuse me; that was another Texas case; that it did not constitute adequate basis in severity to eliminate the non-waiver clause.

THE COURT: So, all these cases so-far are keeping the waiver clause intact?

MR. OEHLER: Pardon?

THE COURT: These cases are keeping the waiver clause intact?

MR. OEHLER: That's correct.

THE COURT: All right.

MR. OEHLER: The point that's important, your Honor, is the number of violations and the severity of the violations.

4 out of 62; 14 out of 800. Figure out the ratio. 5 out of 56. The Vir -- I guess it was the Wyoming case. Keller versus Brayton.

Again, quoted by our court here in Arizona; declining to find waiver of right to enforce, prohibiting front-yard fence where there were 20 fence violations out of a 157 lots. 20 out of 157.

The Court went on, you know, looking -- looking for the definition of a frequent happening because that was important in College Book Station; is this something that frequently has occurred. Frequently or continuously.

Quoted Webster's II New College Dictionary, defining frequent as happening or appearing often or at close intervals, habitual, or regular.

Indeed, your Honor, that's precisely what we have in the matter that is before the Court when we apply the facts to the law.

The College Book Centers court, your Honor, I think did the best that it could do as far as trying to set some non-fuzzy gray parameters for what it was dealing with; stated that so long as the violations did not constitute a complete abandonment of the CC&Rs.

And what is a complete abandonment; a complete abandonment of deed restrictions occurs when the restrictions imposed upon the use of the lot, in a

subdivision, have been so thoroughly disregarded so 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.

Quoting Condos versus Home Development; case that I earlier referred your Honor to.

So, we know then, your Honor, what -- under the law of the case, the burden is on an individual, such as my client, who is building within a 225 -- and because of joining together of multiple lots, perhaps originally 250 or 60 lot subdivisions.

It is a heavy burden to show, based on what I believe Arizona's case law to represent today, when we're dealing with a non-waiver clause, I think we have to meet the standard set forth that I just read to you in College Book Stations as quoted in Condos versus Home Development.

So, let's -- let's take a look then, your Honor, at -- assuming this is the law, and I'm sure Ms. Knight is sitting there saying wow, Mr. Oehler is making my case. Just like you observed, your Honor. That was -- that was my point. Just like you did, Judge.

These were all cases that the court, the appellate court level -- at the appellate court level, didn't feel there were adequate in-number, severity from a time

standpoint, standpoint to toss the complete set of restrictions that were originally placed against the property.

So, the question before you, your Honor, I think is a fairly simple one; we have submitted to the Court multiple affidavits; affidavits under oath, surveyor, engineer, other general contractor, two general contractors; the defendant and one other general contractor, a realtor, a specialty contract -- two specialty contractors that have been very close to this subdivision, literally since its birth in 1989; quite unlike Ms. Knight.

First of all, your Honor, this chart, which is really a blow-up, if you would, in slightly-different format from what's in -- what's in my -- directly in my motion. This is a starting point, your Honor.

This chart does not deal with the two items that are in count 2 of Plaintiff's complaint; but what it does deal with, your Honor, is we believe it meets the standard, if you would, of the fact that there are multiple, continuous, existing and significant covenant violations.

The set of CC&Rs in question, your Honor, 4076-B, have multiple paragraphs in the restrictions that really aren't applicable any longer.

They -- they restrict things that are restricted under county zoning requirements; like you can't raise pigs in the single-family subdivision. You can't have slaughter houses in the single-family homes-only subdivision.

So, you know, we have not delved into that aspect of this particular subdivision, your Honor.

What we do have is these are major covenant violations, and there's a couple of stars here; um, these -- these asterisks, if you would, are intended to say that this chart excludes rear-yard setback violations.

That's -- that's a violation that's set forth, along with the signs, in Ms. Knight's complaint.

They also don't involve existing violations regarding minimum size. There are minimum-size restrictions in these covenants, your Honor; and the affidavits that we have filed clearly show multiple violations in regard to minimum-size homes; where the homes that have been constructed do not reach the square-footage requirements of the CC&Rs.

So, this chart doesn't include those; but what it does include is here is the material used for side and rear wall. By side and rear wall, most graphic example is golf course.

There are 19.6 -- and these are all of the homes in

all three tracts that are involved.

4076-B; 4163 and 4076-D, as in delta. 19.6 percent of the homes, 19.6, are compliant. 91.4 percent don't comply.

Is that material?

Is that significant?

We believe it is.

The CC&Rs in this next category, paint color, requires black wrought iron fence on the golf course.

Where -- where does Ms. Knight's fence fall?

Right here in this 43 percent that aren't painted black.

The most successful category of these covenants is this one; the color of paint that was used on the wrought iron fence. 57 percent compliant, your Honor.

Next we go to gate access to the golf course.

The CC&Rs specifically, specifically indicate that there shall be no gate access to the golf course.

What has developed between 1989 and today?

42 percent don't have golf course access.

57.7 percent of the homes have golf course access.

Next category, your Honor. Lack of fence or height violation.

Now, the CC&Rs specifically indicate the maximum

height that this rear-yard fence on the golf course can be; and they indicate that there is no access to the golf course, which means, obviously, they got to have a fence.

How many do? 49 and-a-half percent. Not quite half, in fact, have vertical height-compliant fences.

50.5 percent, over half of the subdivision, is non-compliant.

Antennas on the roof. They were a covenant that was included.

I can hear Mrs. Knight chortle over there.

This particular covenant, your Honor, is very similar to the sign covenant that she's arguing about.

Now, Mrs. Knight has a dish antenna on her house. She's amongst the 71 percent of other homes in the subdivision that violate that covenant.

Can she do that? Well, yeah, she probably can because a governmental agency has indicated that that type of covenant is improper and is not going to be enforced; just like the signage issue that we will hear about in a few minutes.

Next, your Honor, this -- how does this data fit into College Book Station criteria. Total homes with one or more violations; 2.8 percent. 97.1 percent have one or more violation.

Your Honor, without -- without expending

upwards to an additional 30 or $40,000, it was im -- practically impossible for us to go home by home and inspect each home to determine the actual livable square footage; so, we don't have a percentage data chart for that, but you will note that the McKee affidavit, the Kukreja affidavit, and the defendant's affidavit would indicate that there are a multitude of homes that do not meet minimum square-footage requirements.

Indeed, in plaintiff's Tract 4153, 8 -- 8 of the homes in 4163 do not meet minimum square-footage requirements. 8.

And, of course, Ms. Knight, I'm sure, will have her neighbors, on lots that are too small to do it, build additional square footage on their homes if she is successful.

But 8 in her own small subdivision that I think have, what, 25 homes in it.

So, let's take a look at the first area that is complained of in Ms. Knight's complaint. There are two; once again, signage and rear-yard setback violations.

We were -- we weren't able to determine, your Honor, not a hundred percent of the rear-yard setbacks because without getting court orders allowing, you know, actual measurements, it's virtually impossible to determine on interior lots; but with Tract 4163 I would advise the

Court that 100 percent, Ms. Knight's subdivision, 100 percent violate the rear-yard setback requirements of Tract 4076-B. 100 percent.

And I'll show you in few moments, your Honor; Ms. Knight's own residence that she openly admits is 9 feet 9 inches from the rear property line; not -- not even 10 feet. 9 feet, 9. Let alone 20 feet, which is required in the CC&Rs.

So, here, your Honor, the first column, the first bar graph, deals with the plaintiff's tract; 4163. Zero percent compliance with the set-back requirements.

100 percent violation.

How does that fit College Bookstore's program? Question that the Court must ask itself.

Tract 4076-D, 20 percent. 20 percent are compliant with a 20-foot setback. 80 percent violated.

How does that fit the program?

Overall, Tract 4076-B, 43 percent, 43.1 comply. 56.9 percent do not.

When you combine all of the three tracts together, you have 64.1 percent that have constructed into the rear-yard setback. 64 percent. 35.9 do not.

What is the plaintiff's?

What's the plaintiff's resolution about those numbers? About these numbers?

Well, very simple. I'll have those people cut down the portion of their house, these 64.1 percent; the hundred-percent, which of course, would have to include her own house. They'll cut down the encroachment, or she's actually come with a remarkable idea that she has espoused to the Court; the golf course a few years ago was purchased by the Fort Mohave Indian Tribe.

So, to cure these violations, to cure these violations, she is proposing that the owners go to the Fort Mohave Indian Tribe and buy a 10-foot chunk of the golf course.

So, their house, then, would be 20 feet back from the golf course, and compliant.

And I suppose she believes that that will cure what she argues about the violation of her view corridor.

Obviously, your Honor, it will have no impact whatsoever on her view corridor.

One of the items that all of the cases talk about, your Honor, is amongst other things the Court has to be aware and apply, as it should in literally every case to some extent, the equitableness of what's being proposed, and the cleanness of the hand of the proponent.

This is a record of survey, your Honor; a record of survey prepared by Mr. and Mrs. Knight. It shows her house. Here's the golf course. This is her covered

patio, the dotted line. The distance between .5, this corner, and that corner of her house, by her own admission and by her own document that has been submitted to this Court, is 9 feet, 9 inches.

So, she's got a 9 foot, 9-inch setback in a 20-foot setback-required residence.

Then it goes -- it goes further than that, your Honor. How clean are this -- this plaintiff's hands.

Here, your Honor, this is called a side setback that I'm sure your Honor is familiar with.

How close can you build to a side property line? Under the CC&Rs, your Honor, the answer to that question is 5 feet.

What is Mrs. Knight's side setback at this point? 4.25 feet according to her surveyor.

At this location, 4.6 feet for a side setback.

So, let's see what the -- let's see what these translate to.

When we take it from a survey -- if I can get that off. A survey to vertical depiction.

Here's some photographs that were attached to the motion of Plaintiff and Mr. Knight's residence.

Remember, the covenants require wrought iron fencing on the golf course.

THE COURT: You can just lay it down there.

I can see it.

MR. OEHLER: Okay. Require wrought iron fencing on the golf course. This is not the plaintiff's home. The plaintiff's home is over here behind the chain-link fence. But what do we have; this is her property.

So, they require wrought iron fencing, and what we have is some wrought iron, some concrete block. The CC&Rs require black. Ms. Knight painted it white.

And here, your Honor, the lower photograph, this -- this is a photograph from her neighbor's home; and I think --

THE COURT: I can see.

MR. OEHLER: -- it's very important, your Honor; and I think it's very telling, and I'll try this one more time because I think it's difficult to see when it's on the floor.

NANCY KNIGHT: Mr. Oehler, would you like me to hold it up for you?

THE COURT: Just put it out here would be fine. I can see it.

MR. OEHLER: I'm sorry. Where do you want it?

THE COURT: That's fine. That's just right. That's fine.

MR. OEHLER: Okay. This is the all-important view corridor that she complains of.

She doesn't want a house closer than 20 feet because that's what the CC&Rs say; because if there is a house, I don't know, half-mile away, a quarter-mile away, it's going to block her view corridor.

Yet, here is what she has done in violation of the CC&Rs, in regard to her next-door neighbor's view corridor.

Chain-link fence, 15 feet high. You can see well above the top of her roof the view corridor that is of such great import to the plaintiff.

So, after all is that work getting that to stick there, I got to take it down one more time.

This one I don't think I have to put up on the easel.

Here is a close-up of her neighbor's view corridor; standard chain-link fence tubing, chain-link fence. But this is an issue within the CC&Rs that the plaintiff likes. She likes it because she calls it chain-link cloth or fabric. She likes it because she has decided that it is a safety factor, and her safety is more important than the CC&Rs.

So, the CC&Rs clearly are important to her when she likes them. They're pretty irrelevant to her; in fact, they don't even require discussion, when she doesn't like them.

And finally, I have one more, your Honor.

This is a chart that specifically addresses the quantity of Ms. Knight's violations.

Now, you know, what she's going to tell you is gosh, I bought this house, and somebody else created all these violations.

Well, somebody else didn't create the white fence. She built it. Somebody else didn't create the partial block that included some wrought iron. She built it, your Honor; and she built it knowing specifically what the CC&Rs required.

So, here we are; these are Plaintiff's residence violations. Rear-yard setback, 20-feet required. We believe, at least in the Morris affidavit, his estimate was 8.5 feet.

Ms. Knight's estimate is 9.1 feet. We'll go -- because we did, we did not have -- we did not have a court order allowing us to go on her property to make these measurements; we'll go with her 9.1 feet. 5 feet required. 4.2 feet actual. This is side yard.

Okay. I showed you her own surveyors' data. Wrought iron only required for rear-yard fence. Block used. Admittedly, there was some wrought iron. Chain-link fence is prohibited in the CC&Rs.

We don't call this chain-link fence. We call it chain-link fabric for protection; and so, therefore, it's

okay, according to the plaintiff.

Rear-yard fence color, black required. White installed. There it is right there.

Exposed antenna, prohibited. She installed it.

That data, your Honor, is specifically set forth in the memorandum that was originally filed back in December.

So, let's talk about the second item in the second cause of action; signage. Signage really consists of two totally-separate items.

First of all, there is a covenant restriction that's in many of these types of subdivisions where the original developer is selling the bare lots.

The reason that they install a prohibition against for-sale signs on those lots is because they don't want people who purchased the lot to be reselling it in competition with them.

But it's really irrelevant as far as -- for purposes of this discussion, what the underlying reason for that very common paragraph is.

In this instance, your Honor, you will find affidavits of the defendant stating, beginning in the mid-1990s and consistently thereafter a significant number of realtors, owners, owner-builders installed for-sale signs, will-build and other marketing signage

throughout tract 4076-B, and tract 4076-D.

The practice continues today, without objection, until the present litigation. This practice has occurred continuously for at least 25 to, perhaps, 29 years.

Statement under oath.

Statement under oath. Douglas McKee. A licensed general residential contractor holding a B general license.

To whom, I might add, Ms. Knight sent a letter of caution advising him that effectively he was going to be getting in trouble because he knows what the CC&Rs say, and as a general contractor when he's building for somebody and they order this house and the County issues a permit, and there is nobody to review the permit, the house is built; but he's going to be in trouble now.

In any event, Mr. McKee, in regard to the signage issue, under oath -- and he's got no skin in this game, in reality, your Honor, because we're talking about signs now.

By the way, Mr. McKee also testified in his, under-oath statement, that for multiple clients he has built homes that are less than 1400 square feet of living area in the B tract.

Anyway, he said in regard to signs -- and I apologize for getting off-track. Your affiant

consistently recalls, since at least 1994, that there have been many signs from both contractors and single-lot owners throughout all of the various Desert Lakes Golf Course & Estates subdivisions, including 4076-B, offering to build custom homes or simply for-sale offerings on unimproved lots they either owned or for which they represented the owners.

THE COURT: Mr. Oehler,

MR. OEHLER: Gentlemen --

THE COURT: Mr. Oehler, I just want to point out you have now passed one hour on your argument.

MR. OEHLER: I have one?

THE COURT: You've gone one hour. You have 30 minutes left. Okay.

MR. OEHLER: Thank you, your Honor.

THE COURT: You're welcome.

MR. OEHLER: We were ultimately able to contact a gentleman by the name of Kukreja, I think, is how he pronounces his name.

His company bought approximately 183 lots from the original subdividers in 1998, including multiple lots in Tract 4076.

What does he say, your Honor?

What does he say about the signage issue?

Under oath, your Honor, I mean he now, I

believe, resides someplace in Florida or New York. The availability of unimproved lots with for-sale signs or construction of a future home was used not-only by our home building company, but by many of the local builders and lot owners through Tract 4076-B, marketing via signage of this type was the marketing custom used by all.

Under-oath statement, of which I would point out to your Honor there is not a single under-oath statement in any motion in favor of an action of this Court, or in opposition to those that we have presented.

So, Ann Pettit, a realtor; a realtor against whom Ms. Knight would appear as a result -- um, as a result of her involvement on a very-marginal basis in this matter, filed a complaint with the Arizona Board of Realtors.

In any event, Ann Pettit, a long-timer realtor in Bullhead, a broker since 1988, a realtor since 1984; so, even before the creation of this subdivision, has 50 current licensees in her office.

She states, in regard to signage, that from at least the early 1990s your affiant, and your affiant's licensed realtors have advertised their clients unimproved lots and -- unimproved and listed lots in all Desert Lakes Golf Course & Estates tracts, including 4076-B.

They've consistently used standardized real estate

sales signs, with and without riders, and posted the subject signs on our customers' clients lots all in conformity with other real estate office listings in the Desert Lakes Golf Course & Estates areas.

She goes on; that your affiant and your affiant's office has, for not-less-than 20 years, last/past, utilized signs in many residential projects, including most, if-not-all, of the various Desert Lakes Golf Course & Estates tracts, including Tract 4076-B.

The subject signage were the -- where the lot owner is the builder, and/or developer, who provides their will-build-to-suit sign of appropriate size, and your affiant's real estate firm provides a rider for additional contact information.

Such signs, including riders, are within the standard regarding signage measurements allowed by applicable Mohave County or Bullhead City code ordinances.

And it says see Exhibit B.

Letter to plaintiff from ADRE regarding signage issue, being a Mohave County sign ordinance issue. They've referenced see Mohave County interpretation of Mohave County's ordinance; Exhibit C to Ann's affidavit.

And why do I believe Exhibit C is worth spending a couple more moments of my fast-going time is because Ms. Knight filed a complaint with the State Board

of Real Estate; and then alleged -- alleged to Mohave County that the sign in-question that says will build to suit violates county sign ordinances because it's off-site advertising; and indicates that the County is corrupt; the planning director is corrupt; the inspectors are corrupt; everybody is corrupt.

That the Department of Justice is investigating me. That the Department of Justice is investigating my client. That the Attorney General's Office is investigating my clients as a result of their egregious -- I think that's her word, her favorite word, perhaps, -- conduct; and that County had better do something about these sign violations.

So, we have two issues here, your Honor. We've got multiple past -- literally since the birth of the subdivision, continuous signage issues that have been established in contradiction of the restrictions.

Then, your Honor, the legislature here in Arizona, under Title 33, outlawed the prohibition of property owners from advertising for sale, for lease indications, inappropriate-sign signs on their properties.

In other words, they've basically gutted the restriction.

So, now what the plaintiff is alleging is that because Title 33, just like this antenna situation that

she likes, you know; the feds said you can't do this, so she did it, even though the restrictions say she can't; she likes it, and she's not complaining; but the signs, she doesn't like it, and she has, as the documents indicate, has filed several requests with the state legislature, filed complaints with the legislative body about her constitutional right to be protected from these signs; and that is the basis for the signs have to go away.

So, number one, the restrictions, your Honor, are not enforceable; and number two, we believe and obviously the County believed that the signs of my client, and there are not a multitude of them, but the couple of signs that are out there that say will build to suit are not off-site advertising; they are allowed under the ordinance; and the state real estate department told the plaintiff that, you know, if you have an issue you have to deal with the County; this case is closed, and it is not appealable. Quote/unquote.

Your Honor, just on the happenstance that Ms. Knight might say something that I would like to speak about at the conclusion, I will end my initial presentation at that point.

Thank you very much.

THE COURT: All right. Just for the record,

you've used an hour and 9 minutes. You have 21 minutes left.

MR. OEHLER: Thank you.

THE COURT: All right. What I'm going to do, for the court reporter's sake, Ms. Knight, is let you go until about 5 of 3:00; then we're going to take a 10-minute recess. All right?

NANCY KNIGHT: About 5 till 3:00?

THE COURT: So, you're going to go 12 minutes right now.

NANCY KNIGHT: 12 minutes.

THE COURT: I just don't want to -- if I take too early, she's going to be back in here for --

NANCY KNIGHT: Do you think I can go 24?

THE COURT: Just -- just go.

NANCY KNIGHT: I've scripted this.

THE COURT: Okay.

NANCY KNIGHT: It's about -- I'm going to speak quickly, and -- but I've got a script, so that if you get behind.

THE COURT: Well, so, you're just going to read?

NANCY KNIGHT: My opening statement.

THE COURT: Okay.

NANCY KNIGHT: With all due respect --

THE COURT: All right. Go ahead.

NANCY KNIGHT: Your high -- I mean, your Honor's high position, there exists a peremptory challenge under A.R.S. 12-409; that the plaintiff bring allegations of bias to the forefront before a lower court enters a final judgment.

There exists a real possibility that bias is a affecting court rulings. I understand the Court's close ties to attorneys and Mohave County judges.

In the case of State versus Ellis, I quote: Judges are by no means free from the infirmities of human nature; and therefore, it seems to us that a proper respect for the high positions they are called upon to fill should induce them to avoid even a cause for suspicion of bias or prejudice in the discharge of their judicial duties, end quote.

As you may recall, you declared me a vexatious litigant on August 16, 2018, with your failure to understand the difference between the settlement and the agreement in case number CV-2016-04026 that Mr. Oehler and his cohorts Mr. Gregory, now Judge Gregory, and Mr. Gregory's former law partner Ms. Elias, kept mixing up as if they were one-and-the-same.

Even though you declared me a vexatious litigant and awarded attorney fees to the law firm of Gregory and Elias, and to the joindered Mr. Oehler, I continued to

place trust in the justice system and in the high position you hold.

I believed at the time that you were just confused. You even admitted so in court.

Because Mr. Oehler and Mr. Gregory kept clouding the Court's view by calling the agreement the settlement, I opened my oral argument in that vexatious litigant hearing by attempting to clear up the confusion between the settlement and the agreement, but you and the defense attorneys continued to consider them one-and-the-same.

You admitted you were confused as to why I didn't file an appeal for the settlement; and I told you I was not opposed to the settlement. Again, I am telling you the settlement was the binding mediated settlement that was reached on May 17, 2017, and on page 9 --

THE COURT: Ms. --

NANCY KNIGHT: -- Line 22 of the transcript, --

THE COURT: Ms. Knight, --

NANCY KNIGHT: -- Judge Gurtler states --

THE COURT: Ms. Knight, I don't mean to interrupt you; but are you really going to spend the limited time that you have in this case to relitigate --

NANCY KNIGHT: I need to get it into the record. I'm sorry, your Honor.

THE COURT: To relitigate, and you haven't filed anything.

NANCY KNIGHT: We're not relitigate -- no, I'm just getting it into the record for -- in case there's an appeal.

THE COURT: Okay.

NANCY KNIGHT: Anyway, Judge Gurtler states: It is ordered adopting the settlement of the case.

The agreement was a surprise. Brought up, as we see on page 10 of the transcript, with attorney Moyer and attorney Gregory deciding to extend the case with a formal written agreement.

Worse, the agreement was revised at the request of attorney Gregory for terms that did not conform to the adoptive settlement.

Terms, in my eyes, that attempted extortion and fraud. There is a huge difference between the adopted mediated settlement and the written agreement.

Due to my own attorney Moyer being complicit in accommodating Mr. Gregory's request to have me pegged for restoration of Mr. Gregory's clients entire rear-yard fence, Mr. Moyer was asked to withdraw.

As a pro per plaintiff I asked both Mr. Oehler and Mr. Gregory what they did not like about the language in the original written agreement for paragraph 2 that

conformed to the binding mediated settlement, and they both ignored me.

Instead, Mr. Gregory and Mr. Oehler set a course to force me into signing an agreement against the terms of the settlement with a joindered motion to compel that was filed on July 20th.

Judge Carlisle agreed that Mr. Gregory's written agreement revision to paragraph 2 did not conform to the binding settlement, and stated that the language of restoring the entire fence needed to be changed to a portion of the fence.

But nonetheless, ruled that I pay attorney fees to the two attorneys.

Apparently pro per plaintiffs do not get fair rulings.

There were elements of surprise and fraud defined as a clear misrepresentation -- misrepresentation of the opposing party in that agreement; and plaintiff attempted to correct the injustice of attorney feeds by filing a rule 60 motion to set aside the judgment for attorney fees.

Judge Carlisle awarded more attorney fees to the two attorneys. Adding salt to the wound, the two defense attorneys filed a motion to declare the plaintiff a vexatious litigant.

Judge Carlisle was promoted to criminal court; you became the judge, and you claimed my rule 60 motion was harassment. It is not harassment when a party attempts to protect themselves from the injustice.

I should not have been subjected to attorney fees for a motion for compel me to sign an agreement that did not conform to the parties mutually-agreed upon binding mediated settlement, so that all three attorneys in the case could bilk me for more money. My own attorney billed me $1200 for his complicit authoring of the agreement.

Nonetheless, you declared me a vexatious litigant and awarded the two attorneys more attorney fees. Your warning that if I appealed I could end up with more attorney fees awarded to the defense attorneys was taken seriously. I had to accept your orders to pay the full amount that the two attorneys requested.

The mediated settlement had been heard by Judge Gurtler. Mr. Oehler's business partner and former associate in his law practice. Judge Gurtler's court order had serious -- had serious error that had to be corrected to remove the words no fraud. That entire case was rife with fraud.

It is unknown why Judge Gurtler attempted to enter the words no fraud in the record when it was never raised

by the judge. The correction to remove the words no fraud was finally done after numerous requests and complaints to the clerk of the court.

You have apologized for your errors on your documents, but refuse to correct the errors and omissions on two documents that are part of the court record.

I did not file a fifth motion to amend the complaint, as Mr. Oehler led to you believe. This disingenuous and deceptive claim is not only reflective in his response header, but throughout his memorandum, in an apparent intent to make me look vexatious again; and it apparently worked.

You attributed his inflammable header and the date of his response to me; and then you refused to correct the error in your court order claiming that if someone reads my motion for corrections they will have the information. That is a big if.

If they, being an appeals court, reads the court orders first and never reads minute entries, they will never know you agreed with the language I rewrote in the -- to set the record straight. They will be inclined to deny to even hear the appeal. Your refusal is wrong. The language is inflammable, and it reflects badly on on me.

Now, I have a impression of bias, and this time it's

not because you are confused. I do not take the perception of being perceived a vexatious -- vexatious litigant lightly.

The third incident of bias is not yet final. I'm going to give you an opportunity to reconsider this incident of bias in order to prevent you from making a grave error that affects 673 indispensable parties in my subdivision.

All of the confusion in this case and the thick file was avoidable; but for Mr. Oehler and his clients' repeated deception upon the Court that the alphabetically suffixed tract names created separate subdivisions. They do not.

And I given -- I've given you that documentation from the County about final plats what those alphabetically suffixed tract names mean.

The county land division regulations have now been made a part of the record, and you still refuse to give me full rights to prosecution in the subdivision, and want to limit me and every other property owner, to limited right to prosecution, and alphabetically suffixed said tract.

An alphabetically-suffixed said tract is for a final plat for a phase of development. Subdivision Tract 4076, as a whole, was created by the approved preliminary plat

in 1988 for 300-plus acres to be built in phases.

I do not know why the Court refuses to address my real and compelling preponderance of evidence that proves a purposeful and deliberate language differentiation in the CC&Rs between the restrictions for said tract lots and the prosecution rights for property owners in the entire subdivision.

Courts are not endowed with the high position they hold to rule on assumptions. Court are supposed to rule on law.

In the 1961 case of David Lillard and -- versus Jet Homes it is cited, I quote: Where restrictive covenants are imposed upon an area included within a -- within a single subdivision or plan of development the restrictions are characterized as real rights running with the land. The inure to the benefit of, and are subsequently enforceable by, all grantees of property in the subdivision which come under the same plan of development.

The single subdivision Tract 4076 was created by Desert Lakes Development, L.P. The intent on the part of Desert Lakes Development is found in both the language in the CC&Rs that differentiates covenants for lots in a said tract and covenants for the subdivision as a whole, and in the conduct that established special development

zoning for 20-foot setbacks, front and rear, and 5 feet on the sides in 1989, and clarified again in 1993.

The single developer did not have to go back to the County for special development zoning for each said tract. The CEO was approved for special development zoning setbacks for the entire subdivision Tract 4076, from inception and before approval, for the Final Plat for Phase I, Tract 4076-A.

And I would like to point out that Mr. Oehler is deceiving the Court because that's what happened to my tract; CEO of Desert Lakes Development had nothing to do with that. The CEO of Desert Lakes Development had planned Parcel VV for 22 lots.

They would have had plenty of space for 22 lots to have front and back setbacks, according to the special development zoning, but somebody got greedy and decided they were going to squeeze 32 lots into the 5 acres, and that's what happened; and that's what caused most of this problem.

Five-foot setbacks were consistent; not only in the subdivision Tract 4076, but throughout Mohave County. In contrast, the 20-foot setbacks in subdivision Tract 4076 was not consistent throughout Mohave County.

In 1989, the county-wide front-and-rear setback was 25 feet. In 1989 and '93, resolutions were a part of the

existing court record.

Ignoring all of the evidence creates a perception of bias on the Court.

The architectural committee guidelines in the declaration provides evidence of intent to provide for protections that assured development did not, in any way, detract from the appearance of the premises, and are not in any way detrimental to the public welfare or to the property of other persons located within the tract.

That's on page 8 of Tract 4076-B CC&Rs.

The intent is for each said tract to be protected. The intent was for any person in the subdivision to prosecute violations. The intent was not for any person in a said tract to prosecute violations.

The differentiated language is clear for prosecution rights.

The defendants' deteriorated sheet metal advertising signs is a clear conflict of the intent for public welfare. Their signs -- their signs are everywhere; not just in my alphabetically suffixed Tract-B.

The defendants setback violations, front and rear, is a clear conflict with the intent for the rights of other property owners on adjacent lots in a said tract to have unobstructed golf course views; not views of my patio.

He is clouding the Court's view by showing you my patio. This is not the corridor. The golf course corridor is from the back yard fences, and you can see up and down the fairways

On adjacent lots in said tract to have unobstructed golf course views; and also for the public welfare of travelling our streets with unobstructed views.

The intent for the minimum 20-foot long driveways back in 1989 was sufficient for standard automobiles and pickup trucks. Today pickup trucks can be 19 feet long according to GMC.com. The 20-foot driveway not sufficient -- not as sufficient as it was 30 years ago.

The 15-foot driveway that Defendant Azarmi attempted to get passed by the Board was clearly insufficient for unobstructed views, as is the 18-foot setback in the subject home in Tract-A that the plaintiff wishes remedied by the jury in this lawsuit.

A taking of my right to prosecute violations in said Tract-A amounts to a Court taking the rights of all property owners against the intent of the developers who created the language in the CC&Rs.

This is a grave error and reflects badly as a perception of bias.

The original developers purpose for wrought iron fencing, front and rear, is also for views.

Regarding the defendants' attorney arguing that setbacks are not intended for use, and argues for the Court to disregard Supervisor Johnson's statement on protected views as stated during the hearing on Defendant Azarmi's attempted violation of Desert Lakes front/rear setbacks, Mr. Oehler would also have to argue for the Court to disregard entire Judge Langford's successful mediation to protect my views of the golf course and surrounding area in case number CV-2016-04026.

Further, views are part of the pertinent language in a 1995 California Supreme Court case.

Citizens for Colorado Covenant Compliance is an unincorporated association that appealed their case for rights to prosecution all the way to the California Supreme Court, who reversed the appeals court decision in favor of Citizens.

The Supreme Court discussion on restrictions is relevant to our case both for commercial advertising signs and for views. I quote: These subdivision restrictions are used to limit the type of buildings that can be constructed upon the property or the type of activity permitted on the property, prohibiting such things as commercial use or development within the tract, limiting the height of buildings, imposing setback restrictions, protecting views, or imposing similar

restrictions.

County Development Services has proven to do their best to ensure their employees follow the special development zoning for 20-foot front/rear setbacks.

Mohave County Development Services' efforts were proven in the denial of a permit for the subject home currently owned by the Roberts in Tract A.

That permit denial was circumvented, by Misters Azarmi and Roberts, with a variance.

Mr. Azarmi's attempted violation of the CC&R setbacks was in-progress at the time of the permit denial. He convinced the volunteer Board of Adjustment members to give him a variance on May 16, 2016, for the setbacks, front and rear, claiming in words and by inference that his attempted Board of Supervisors resolutions 2016-125 and 2016-126 would soon be approved.

He stated, according to the minutes of the meeting, and I quote: These setbacks would be in full compliance based on the new 15-foot setbacks, end quote.

Little did anyone know at the time that in less than 5 months his reduced setback attempt would be denied by the duly-elected honorable Board of Supervisors.

Denying plaintiff's right to prosecute the attempted violation as a count 1 violation in her complaint is further perceived as bias favoring the defendants.

In Powell versus Washburn, it is stated that the Arizona Supreme Court adopted the Restatement approach for interpreting restrictive covenants holding that a restrictive covenant must be interpreted to give the effect to the intention of the parties and to carry out the purpose for which it was created.

The Supreme Court noted that the Restatement approach reinforces a contemporary judicial trend of recognizing the benefits of restrictive covenants. The overriding aim of the Restatement is to keep the original parties' bargain in place.

It is not the job of the Court to misinterpret the covenant that grants prosecution rights to all property owners in the subdivision.

The Court has done just that. The Court wants to interpret the covenant on prosecution rights as limited to a property owner in a said tract. That isn't how the declaration is written; nor does it conform to the county land division regulations that assigns an alphabetical suffix to subdivision tract number for the final recorded plat for a phase of development in the whole subdivision.

Ignoring all of the evidence is perceived as bias favoring a powerful and influential developer who refuses to follow the rules in a self-serving interest for profits.

Unfair competition profits from the development services advertising; and profits from a larger building footprint when setbacks are violated.

Interpretation of a contract is a question of law. The plain and ordinary meaning of the word subdivision is synonymous with tract. Whether we look to Arizona Title 9 for municipality definitions, or statutes section 11-806.01 for rules the county must use in regulating approved preliminary plat that creates a subdivision with a subdivision tract number, as a precedent to submitting a final plat that is assigned an alphabetical suffix to the subdivision tract number.

The State even has language that allows the Board of Supervisors a waiver from procedure. Section 11-806.01(f) states, I quote: For any subdivision that consists of lots, tracts or parcels, each of which is of a size as prescribed by the Board of Supervisors, the Board may waive the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plat.

The Court -- end quote.

The Court -- the Court has a copy of my subdivision's approved preliminary plat. You have copies of final plats. You have the County's certificate signed by three county officials certifying that they checked

the approved preliminary plat before the Final Plat was sent to the Board for approval.

You have the County Land Division Regulations, page 37, section 3.8, that defined how the Final Plat would be named with an alphabetically suffixed tract number associated with the subdivision tract number. That is what a said tract number is.

Tract 4076-A, Tract 4076-B, Tract 4076-C, et cetera, are the recorded Final Plats in subdivision Tract 4076 that are referred to in the CC&Rs as said tracts.

Prosecution rights are granted to property owners in the subdivision; not to property owners in a said tract, as this Court wishes to claim. It is wrong and it is unjust. It is a taking of rights from 673 current property owners, excluding the three primary defendants in this case, and potentially a taking of rights of a total of 759 lot owners when all the parcel numbers are sold to separate individuals.

The burdens are benefits to the entire subdivision; but only if every property owner has a right to protect his investment, regardless of his said tract designation.

The intent of the developers was protection of their entire project into perpetuity. The Court suggested that if I didn't like his decision I could file a special

action appeal for this matter. That is a very expensive action for me to do. Even if I could find any evidence that supports the suggestion.

In the interest of public policy for the contract, as written in explicit language and in the public interest, I need you to focus on the evidence without prejudicial view favoring the defendants or their attorney.

I intend to file one last attempt for reconsideration of the dismissal of count 1. The new evidence is the entrance sign to my street. My expectations are clear. I bought a home in a subdivision named Desert Lakes Golf Course & Estates; and the expectation was that a golf course master planned community has rules established that are to be followed.

Courts have no right to abandon those rules with an improper interpretation of the contract. Judge Carlisle erred. You do not have to follow suit. I plead with the Court to set aside any clouding of the Court's view on this case and follow law, precedent, and intent of the original developer for all property owners to have prosecution rights in the entire subdivision.

Defendant Roberts should not be dismissed. His actions were just as egregious as the other principal defendants in this case.

Prosecution serves justice only when the Court is not biased.

Regarding the advertising signs, all three judges on this case to date had an opportunity to evaluate real evidence in support of declaring these signs off-premises advertising.

On August 24, I believe it was, Judge Carlisle wrote in his court order that he could have ruled on the controversy over statute 33-441 if he had a photo of the sign. I did provide a photo, as Exhibit 1, on July 31.

Is someone now tampering with evidence?

This is the sign. Wind-rusted, wind-blown, and now these signs are coming apart and off the rider; who knows where they ended up.

The two subsequent judges in this matter read the complete file to know they could rule with photographic evidence, and the plaintiff submitted a preponderance of additional real evidence that included more photos including dilapidation, a determination from the Department of Real Estate's investigation and the County ordinance on signage.

It has been shown that the County definition of an unlawful sign is if it becomes dangerous to public safety by reason of dilapidation.

There exists no real evidence to support a claim that

the signs are for sale signs. We now know, based on the March 21, 2018 building permit, on land owned by Jordan and Gina Grice in Tract 4076-B, that setback violations continued and build-to-suit advertising signage results in jobs on land not owned by the Ludwigs.

This fact is evidence that the advertising signs in subdivision Tract 4076 provides a competitive advantage to Fairway Constructors, Inc. An unfair competitive advantage since they are the only developing company with development services signs on lots in the subdivision.

The Court does have constitutional authority to correct the ambiguity in the language of statute -- sign Statutes 33-441, 33-1808 and others. I think there's four altogether.

The ambiguity is that the statute does not specify if for sale signs on improved lots are prohibited from restrictions. All statutes related to for sale, for rent and for lease signs are easily interpreted for an intent on developed lots. You can't have an indoor sign on an undeveloped lot. You can't have an open house on an undeveloped lot. There would be no purpose for renting or leasing an undeveloped lot.

Plaintiff understands the Court may prefer avoidance of a political controversy in correcting a legislative action.

Whatever the reason, for not attempting to correct this ambiguity, it has no impact on the subject case. The defendants signs are not for sale signs.

Any interpretation that the defendants' signs are for sale signs is refuted by Plaintiff's real evidence that includes documents and photographs. The county regulations on signage proved these signs are off-premises advertising, county regulations.

The photographs proved dilapidation and risk of harm to persons or property. The County ordinance defined illegal signs as dilapidated signs.

All of the plaintiff's foundational real evidence is relevant, material and competent in accordance with the state codes and federal rules of evidence.

The defendants provided no real evidence to support the claim that their signs are for sale signs. Any ruling favoring the defendants on signage is a biased view considering all of the evidence in the record to the contrary.

These are my closing arguments on my motion for summary judgment on signs.

Now we can take a break, your Honor. I've got to get some water.

THE COURT: Well, let's just make a record before we do that.

You used, I think -- 1:42; so, you used 30 minutes of your hour and a half.

NANCY KNIGHT: Okay, good.

THE COURT: Okay. So, Mr. -- so, you're sitting down now and letting Mr. Oehler do his response; and then you'll respond to him? Is that what -- when we come back? Is that what your plan is?

NANCY KNIGHT: As far as signs, I'm done. You know, I'm -- my motion for the thing on signs, that was it. That was encapsulated.

THE COURT: Okay. I've got -- I've got your motion. I've got that part.

NANCY KNIGHT: Okay.

THE COURT: But you weren't done arguing the motion for summary judgment?

NANCY KNIGHT: Yeah, that's coming next, after break. I think you wanted to break.

THE COURT: Yeah, I want to break. And, more importantly, the court reporter needs a break. I could keep going, but we're going to take 10 minutes. We'll come back at 3:25. You have used 30 minutes.

Mr. Oehler has used an hour and 9 minutes.

So, as you can tell, we're going to be pushing here to get done by 5:00. So, let's do that.

All right. 10 minutes.

(The proceedings recessed from 3:13 p.m. until 3:24 p.m.)

THE COURT: We're back on the record in CV-2018-4003. Show the presence of parties.

Ms. Knight, you've used 30 minutes. Go ahead.

NANCY KNIGHT: I was going to start off with the indispensable parties, so I guess I'll read it anyway.

Indispensable parties that have not been joined for Tract 4076-B, Tract 4132, which I recently discovered is a fourth tract involved in the CC&Rs for Tract B, those lots in Tract 4132 are defined in -- on one of the pages of the CC&Rs.

So, there's all of the Tract B, 4132; all of Tract D because that is also in the CC&Rs. It was -- it was developed with the frontage road, even though the new CC&Rs for Tract D didn't -- didn't specify a frontage road.

It's very -- this development is very confusing.

But anyway, so, and then, of course, my tract runs with the land because Parcel VV runs with the land for Tract B.

There's a total of 252 property owners; and in my opinion it is necessary to join these parties before dismissal of this case can be granted by the Court.

I've made every effort to assist the defense attorney with a list of owners of all lots in subdivision Tract 4076. The defendants have made no effort to join indispensable parties, as is necessary, for their intent to abrogate the CC&Rs.

I had to file a motion to dismiss defendants' motion for summary judgment for failure to join the indispensable parties today.

In Gila Bend versus Walled Lake Door Company, an Arizona case, I quote: In Arizona, the test of indispensability is whether the absent person's interest in the controversy is such that no final judgment or decree could be entered, doing justice between the parties actually before the Court and without injuriously affecting the rights of others not brought into the action, end quote.

In Karner versus Roy White Flowers, Inc., I quote: It is only necessary to join other lot owners in an action to abrogate, not to enforce CC&Rs, end quote.

I plead with the Court to dismiss the balance of the oral argument. But I've lost that complaint because I think you opened your hearing today by saying you dismiss my motion for --

THE COURT: I denied those motions.

NANCY KNIGHT: Correct?

THE COURT: That's correct, yes.

NANCY KNIGHT: Okay.

THE COURT: But I will tell you that they were untimely; and I've just denied them. We're going forward with it.

NANCY KNIGHT: I think your court order will explain why, right?

THE COURT: I hope so, yes.

NANCY KNIGHT: Okay. So, material facts for the jury. I have been adjudicated rights to prosecute violations in Tract 4076-B. Count 1 setback violations occurred in Tract B prior to the June 11, 2018 court order signed by Judge Carlisle.

And someone has written in court orders that anything that occurred is prosecutable violation; and violations are count 1.

Count 1 setback violations continued to occur in Tract B during litigation.

Causes of action common to all counts in the original complaint include signage on unimproved lots, building and projection setback violations; and attempted building setback violations.

Violations occur when a party decides to circumvent or ignore the provisions cited in the CC&Rs. The defendants both ignored and circumvented the provisions

of the CC&Rs.

It can be shown by plot plans that setbacks were violated. Setback violation is a material fact for the jury.

And I noticed I have had no real evidence confirming any of this bar graph data that the defendants have provided.

The causes of action for count 1 of the plaintiff's original complaint included the proposed setback resolution amendment that has been proven to be orchestrated by Defendant Azarmi as the proponent.

It can be shown by video recording and by emails that the attempted setback violations were committed by Defendant Azarmi.

It can be shown that Mr. Azarmi's attempted violation of the CC&R setbacks was in progress at the time of the permit denial for the subject home in Tract A. He convinced the volunteer Board of Adjustment to give him a variance on May 16 for the setbacks, front and rear, claiming in words and by inference that his attempted Board of Supervisor resolutions would soon be approved.

And I already told you what he -- what was quoted out of the -- out of the minutes.

Financial compensation for me to prevent this attempted violation is warranted. Financial compensation

is a material fact for the jury.

I fully expect that the Court will reconsider dismissal of count 1 for Tract-A given the preponderance of evidence that there exists one subdivision, namely subdivision Tract 4076, and that final plats are given alphabetically suffixed tract numbers appended to the approved preliminary plat's legal name of the subdivision such as 4076-A through 4076-F.

A single developer, Desert Lakes Development, created a declaration for said tract lot restrictions and conditions; and the responsibility for prosecution of violations, threatened and attempted, was left in the hands of all property owners in the subdivision Tract 4076, regardless of what phase of development their lot is situated in.

It can be shown through the plot plan for the home in Tract A that front and rear setbacks were violated. It can be shown that Mr. Roberts was complicit in circumventing the permit denial from Development Services.

It can be shown that Mr. Azarmi and Mr. Roberts convinced the volunteer Board to approve a variance.

It can be shown that disingenuous claims were made to the volunteer Board of Adjustment. Violations are material facts for the jury.

Remedy for setback violations is available.

Remedy is a material fact for the jury.

It can be shown that real estate advertising espouses no HOA, which the plaintiff alleges creates a perception that no CC&Rs exist.

Escrow does not provide a copy of the CC&Rs during or after close of escrow. Abandonment, therefore, cannot be adjudicated for lack of knowledge. Abandonment, without knowledge of the CC&Rs, is a material fact for the jury.

Complete abandonment does not exist. It can be shown that about 25 percent of the lots in the subdivision remain vacant. Therefore, complete abandonment of the CC&Rs in the subdivision is impossible to claim at this time.

Complete abandonment is a material fact for the jury.

Subdivision Tract 4076 is desirable. No reasonable person would judge our subdivision CC&Rs so thoroughly disregarded that their effectiveness has been destroyed and defeated the purposes for which they were intended.

The existing violations have available remedies to substantially achieve the intent of the purpose of the covenants.

The visual appearance of our homes is attractive and maintained. Our wrought iron fences are aesthetically attractive regardless of paint color. The golf course

that was a part of the original general plan of development still exists. The entire image of the subdivision is harmonious, aesthetic and appealing.

It can be shown that investment in private ownership continues in the subdivision. It can be shown that home prices have risen substantially between 2018 and 2019. Home prices rose an average of 24.63 percent in the subdivision as a whole. 24.61 percent in Tract A. 19.55 percent in Tract B. 18.58 percent in Tract C. 16.55 percent in Tract 4132; and a whopping 43.88 percent in Tract 4163 for lots adjacent to the golf course.

Thorough disregard for the CC&Rs such that their effectiveness has been destroyed and defeated the purposes for which they were intended is a material fact for the jury.

Another material fact for the jury is whether available remedies exist to substantially achieve the intent of the purpose of the covenant.

Undersized lots only the exist in Tract 4163.

Frank Passantino had no direct hand involved in what happened to 4163.

The 6,000 square-foot minimum lot size approved by the County for all lots in subdivision Tract 4076 was violated; however, due to purchaser's combining lots only 13 out of the 759 buildable lots in the entire

subdivision Tract 4076 are outliers. That's 1.7 percent of the buildable lots. These outliers affected the average home price for the period between 2018 and 2019.

So, those lots, small lots, they only rose about 9 percent.

The special development minimum 20-foot rear-yard setback was only violated by the County in Tract 4163. Due to purchasers combining lots, only 25 out of the 759 lots are in a County-approved state of violation. That's 3.3 percent, subdivision-wide.

A material fact for the jury is whether the percentage should be calculated for an effect on the entire subdivision or only for the 290 lots in the limited adjudication -- adjudicated area, and that would be 8.6 percent.

What percent constitutes frequent violations is a matter of fact for the jury. It can be shown that setback violations, front and rear, on my property are due to no fault of my own.

A jury needs to rule on remedy for violations due to no fault of my own, and consequently no fault of any property owner with violations due to no fault of their own.

It can be shown that when clustering occurs, as is the case in Tract 4163, where all homes have a 10-foot

rear-yard setback, the purpose of golf course views for lots adjacent to the fairways has not been defeated.

Views and a ruling on any defeated purpose are material facts for the jury.

Setbacks are the primary violations in this case to date. Attempted setback violations and actual building and projection setback violations, front and rear.

There is no evidence to conclude that the setbacks have been violated to the extent that any reasonable person would be able to consider the existing violations as abandonment of the setback restrictions.

What constitutes frequency violations, complete abandonment of the setback restrictions, and a change in the character of the subdivision due to setback violations are material facts for the jury.

Defendants claim that count 2 is the remainder of the complaint. That is false; and was already ruled as an inaccurate claim made repeatedly by the defendants.

Judge Carlisle corrected the defendants in his court order, and Judge Carlisle's words in the April 2 of 2018 transcript exclusively gives the plaintiff the right to preserve count -- pursue count 1 violations in this same complaint; albeit for only Tract 4076-B violations.

Judge Carlisle only dismissed count 1 with respect to the Roberts home. The Roberts and the other defendants

are subject to the causes of action in count 1 for the Roberts home.

The entire fiasco limiting plaintiff's right to prosecute violations in only Tract B has been found to be an error of the Court in misinterpreting the difference in the language of the declaration for said tract and subdivision. They are not one-and-the-same as has been the position of the Court to date.

The subdivision is Tract 4076, and the said tract is an alphabetical suffix appended to the subdivision name for the final plat that is recorded before construction begins.

I've limited my complaint to the alphabetically suffixed said Tracts A and B for this matter.

I fully expect dismissal of the Roberts to be reversed. I have no intention of searching Development Services records to seek out additional violations in Tract A.

I do expect the Court to grant my rights to prosecute violations for this one home in said Tract A, as was the intent of covenant 20 in Book 1641, page 897, for prosecution rights in the subdivision known as Tract 4076.

I will be filing a motion for reconsideration with one more piece of new evidence for my rights and

expectations for my purchase in this master planned community.

I'm not prosecuting violations in two said tracts. Tract C, which is a Phase IV, which is Phase IV on the approved preliminary plat and it's situated on the easterly side of a main road; and Tract 4159, which is not even a part of this approved preliminary plat for subdivision Tract 4076. Tract 4159 is comprised of a few lots that had been a part of a Mohave Mesa Acres.

The cause of action for part 2 is preliminary and permanent injunction -- injunctions enjoining Defendants from all current signage violations on unimproved lots, for preliminary injunctions enjoining defendants from any existing or future violations of the CC&Rs, including but not limited to setback violations and signage on unimproved lots.

Reasonable monetary compensation that does not exceed the jurisdictional limit of the Court, including but not limited to filing fees, compensation for hours of research, emails, letters, postage; and the physical and emotional distress from the battle to protect my Desert Lakes Community from CC&R violations which, in turn, threatened my property values and enjoyment of home.

Injunctive relief is a matter of material fact for the jury.

The defendants claim that the CC&Rs have been abandoned; and that there is no issue of material facts in this case. There exists a multitude of material facts for the jury in this case.

Regarding Plaintiff's standing. The defendants' continuous false claims of abandonment of Tract 4163 from the subdivision includes bad faith affidavits acquired in their rally for support.

I have had to repeatedly defend that Parcel VV, where my lot is situated, was not abandoned. The truth is that Parcel VV's zoning for multi-family housing was abandoned, and the abandoned zoning reverted Parcel VV back to residential acreage for 22 single family lots by the original developers, Desert Lakes Development.

I was going to give overheads, but I don't think I'm going to have time. So, the resolutions are 90-362, 91-98 and 91-185.

Defendant Azarmi served on the Planning Commission for nearly 15 years and, therefore, knew or should have known that it was the multi-family zoning that was abandoned.

He and attorney Oehler chose to deceive the Court with the repeated reference to the abandonment of a sliver of Parcel KK from the golf course as abandonment of both Parcel VV and Parcel KK from the subdivision.

Parcel VV land was an original part of Phase II in the 1988 preliminary plat that created subdivision Tract 4076.

The second phase of development was labeled Tract 4076-B, and since the CC&Rs run with the land, Parcel VV is subject to Tract 4076-B CC&Rs recorded in 1989.

This matter of law has been adjudicated and reuttered in court records.

This case against the subject defendants has a potential to establish a new precedent, by jury or by appeal, for a very large subdivision with a frequency of specific violations to be determined by jury or an appeals court.

Rule 56. I filed a motion on February 28th for clarification of what part of Rule 56 I did not follow in my response, stating in the conclusion, I quote: Plaintiff pleads with the Court to clarify what part of the rule was not followed, and to grant Plaintiff leave to amend her complaint for errors and/or omissions.

The 60-day time limit, according to the Arizona Constitution for the Court to respond, has passed; with no opportunity to amend errors and/or omissions, nor any clarification from the Court on what part of the procedure I did not follow.

In Wigglesworth versus Mauldin, I quote:

Generally, before granting a motion to dismiss on the pleadings a Court should give a defendant a chance to amend if that would cure the defect, end quote.

In Haines versus Kerner I quote: 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, end quote.

The American Bar Association has standards that allows courts to help pro se litigants with regard to the pleadings they file.

This case should not be dismissed due to any error or omission in Plaintiff's response to the motion for summary judgment.

A preponderance of factual allegations, supported by real evidence, exists in the record for relief from the Defendant's plea for dismissal.

Plaintiff expects the Court to respect -- I mean, to respond to my plea for knowledge as to what I did not follow.

I expect this is not the last motion for summary judgment that the defendants will file; and I do not want to keep making the same mistakes they claim that I made.

The Court needs to address my motion for clarification.

Plaintiff has suffered substantial emotional and physical distress; who found herself having to spend hours of sleepless nights conducting research and sending requests for public information to the County in order to finally prove her original complaint was valid for prosecution rights in Tract A, and that the defendants and Mr. Oehler are suspect of fraud upon the Court.

Compensation is warranted. When matters of fact exist for the jury, the case must go to trial.

Affiant statements are suspect of fraud. Cross-examination of the affiants requires a jury trial. A class 4 felony or perjury are punishable offenses.

Necessary and interested parties. Plaintiff has served all necessary and interested parties in the lawsuit to date.

An amended complaint will be forthcoming to name additional defendants who violated the CC&Rs during litigation, and the current owners of homes who will have an interest in the lawsuit.

While the case of Standish versus White Mountain Vacation Village Subdivision does not establish legal precedent, discussion is food for thought upon which Plaintiff relies, especially given that remedy for setback violations includes a cutting-away of the violating building projections.

In the Standish case lot owners were approved for violations by the subdivision's homeowners association. In our case, the County approved the offending improvements.

According to the CC&Rs, the more restrictive setback governs over any County variance or County ordinance.

The pertinent part of the supreme court discussion, I quote: Lot owners who had previously received approval from the HOA would be required to remove the alleged offending improvements, end quote.

I repeat for emphasis. Required to remove the alleged offending improvements. Remedy is a matter of fact for the jury to decide.

Plaintiff is following the rules of procedure by joining the necessary and interested lot owners, as well as those who committed the setback violations; such as Fairway Constructors, who is a party to the CC&Rs as owners of the lot in the subdivision.

A material fact for the jury is who is the responsible party who is required to remove the alleged offending improvements.

In this matter, Mr. Roberts was complicit in the approval for the variance to violate the CC&Rs.

Abandonment of a party's right to enforce a violation. Lot owners must be able to see a violation in

order to enforce a CC&R.

For example, livable space is not visible from the exterior of a home. In a subdivision of 571 built homes, it would be a prohibitive burden to do a search of every Development Services plot plan to see if a livable space violation had occurred.

However, if a violation has been identified for a subject home, and the property owner does nothing about it, abandonment can be claimed in the future.

Therefore, Plaintiff is obligated to add Does for livable space violations to her future proposed amended complaint.

The Court is required to grant such an amendment in order to prevent prejudicing this case and any future case in relation to livable space.

The plaintiff can see wood fence materials in a property owner's yard and, therefore, a wood fence violation is another potential amendment to the existing complaint.

The potential new defendants' attorney costs could be avoided by compliance; and therefore, a registered letter to the potential defendants asking for removal of the wood fence is preferred.

Plaintiff remains in this state of defense against dismissal of the case and must await the court order on

this dispositive motion before proceeding with a potential mailing of a registered letter asking for compliance.

The defendants claim that 75 percent of the subdivision's homes have been built in contradiction of the CC&Rs is not a relevant nor plausible claim.

First, each restriction must be evaluated independently. You cannot bundle all of the various possibilities of violations in 4076 for one calculation due to the non-waiver clause that is consistently cited in all versions of the alphabetically suffixed said tract declarations.

It states: Invalidation of any of these restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.

That's clause 19 in 4076-B CC&Rs.

For example, even if the defendants found 75 percent of the fences to be painted some color other than black, it would not affect the small frequency of setback violations that would remain in full force and effect.

Secondly, the law provides for remedy such that any violation can be restored to the intent of the declaration. Wrought iron fences can easily be painted

black.

Setback violations have a cutting away remedy just as I had to cut away my side-yard fence and my adjacent neighbor's rear-yard fence to restore compliance for fence height and steel rail restoration for views.

And, by the way, it was the County that required T&N Development, who built my home, to file -- to file an assurance and even take out a loan that he would build a block -- a cement block bottom part and steel rails above it; as part of the County assurance for fences.

Secondly, the law provides for remedy. Oh, I did that already.

While the motion for dismissal at this time is futile, in my opinion, I take this time to address the appeals court authority.

An appeals court has authority to rule on both law and fact; and therefore, in an effort to be proactive in attempting to prevent defendants from a futile appeal, I will cover areas of law and fact here.

In Condos versus Home Development Company, I quote, complete abandonment of deed restrictions occurs when the restriction imposed upon the use of lots in a subdivision have been so thoroughly disregarded as to result in a change in the area as to destroy the effectiveness of the restrictions and defeat the purposes

for which they were imposed.

It can be shown that as of March 18, 2020, the subdivision still had nearly 25 percent of the 759 buildable lots still unimproved.

Thorough disregard and complete abandonment of the CC&Rs for setbacks, therefore, has not occurred.

It can be shown that the defendants' setback violations have remedy; therefore, the long-term effectiveness of the restriction and purposes for which these front and rear setbacks were imposed will not be defeated.

Regarding any court order that may invalidate a CC&R. Even if an appeals court could find a restriction that is deemed abandoned, this case could not be dismissed for the other restrictions that cannot be deemed abandoned, such as the setbacks that shall remain in full force and effect.

The original developers did not have unclean hands in the creation of Tract 4163, unit E, for a 32 lot subdivision in Parcel VV.

Ludwig Engineering is the culpable -- is culpable for this re-subdivision, and possibly for the flooding of 2 of those 32 lots in Tract 4163.

Remedies upon breach of a CC&R.

Plaintiff's ongoing research into CC&Rs revealed,

in April, 2020, a difference in remedies available to the injured party between a restriction and a condition.

A breach of a condition allows a property owner the right to entry for removing the offending violation without risk of a claim of trespass or -- and to recover costs for removal of the offending violation.

An example is weed removal. This violation does not require a $300 filing of a civil complaint.

THE COURT: Mr. Oehler?

MS. KNIGHT: My time is up?

THE COURT: No, no. Mr. Oehler is talking too loud. He can't whisper very well.

So, go ahead. Keep talking.

MR. OEHLER: I apologize, your Honor.

THE COURT: You are now 3 minutes away from being at 30 minutes left.

NANCY KNIGHT: Oh, I've got a lot of time.

THE COURT: So, you have 33 minutes left.

Yeah, don't use it all if you don't have to. So, go ahead.

NANCY KNIGHT: The costs of clearance of weeds could be recovered in small claims court.

With breach of a restriction, the lot owners in a subdivision, who are similarly bound by the restriction, can seek relief by either an action for money damages or

an injunction terminating the breach of the restriction.

Money damages, to me, for setback violations is inappropriate in this matter; therefore, the remedy for terminating a breach of setbacks is to cut away the offending building projections just as I won the right to have CC&R fence restrictions of height and solid block on the side and rear-yard fences cut away in case CV-2016-04026.

And I'd like to clarify that chain-link is not a fence. It is open-ended, and it is a barrier for golf -- air golf balls that are hit because I'm adjacent to a fairway. It is not a fence. I have one fence.

With a breach of a restriction the lot owners in a subdivision -- oh, I think I did that.

Cutting away violating building projections fulfills the intent of the restriction in accordance with Restatement 3rd on property.

Plan of restrictions. In Murphy versus Marino, it is stated that, I quote, in order to create a binding covenant running with the land in a subdivision which is is enforceable by any purchaser of property therein, there should be a uniform plan of restriction applicable to the subdivision as a whole or to a particular part of the subdivision known to each purchaser; and thereby, by reference or implication, forming a part of his contract

with the subdivider, end quote.

Every said tract declaration of CC&Rs is consistent for the plan of restrictions imposed by the original single developer Desert Lakes Development, L.P.

The uniform setback restrictions were imposed by the original developer upon all lot owners for the improvements to be constructed on the lots in the entire subdivision Tract 4076.

Each lot owner is granted the right to protect his investment through enforcement of the plan of restrictions against other lot owners within subdivision Tract 4076.

The consistent plan of development, together with the plan of restriction, accomplished the intent for burdens and benefits afforded to all property owners, including the consistent language for their enforcement rights in the entire subdivision.

As cited in Lillard versus Jet Homes, I quote: Where these principles must be applied to determine one's right to enforce a covenant, it becomes necessary to: 1. Define a plan of development. 2. The basic nature of the rights acquired; and 3. A grantee under such plan of development, end quote.

These principles have been shown to exist; and therefore, I have a right to enforce covenants through

prosecution of CC&R violations.

The issues of abandonment and waiver. In College Book Centers versus Carefree Foothills Homeowners' Association, I quote: Deed restrictions may be considered abandoned or waived if frequent violations of these restrictions have been permitted.

Frequent violations is a material fact for the jury. It goes on; but when the CC&Rs contain a non-waiver provision, a restriction remains enforceable despite prior violations, so long as the violations did not constitute a complete abandonment of the CC&Rs.

25 percent of our lots are still undeveloped; there cannot be a determination of complete abandonment. However, that is another material fact for the jury.

As shown and can be shown to the jury we do not have complete abandonment of any of the violations, and the plaintiff intends to enforce -- that I intend to enforce in this lawsuit.

Due to the non-waiver clause, no failure of any person to enforce violations in the past shall impact my right to enforce in this lawsuit.

A non-waiver clause, the non-waiver clause is consistent in all alphabetically suffixed said tract declarations as follows: From the third sentence in clause 20, in Book 1641, which is for Tract B, no failure

of the trustee or any other person or party to enforce any of the restrictions, covenants or conditions contained herein shall, in any event, be construed or held to be a waiver thereof, or consent to any further or succeeding breach or violation thereof, or consent to any further succeeding breach of violation thereof.

Due to limited time for this oral argument, I refer the Court to look up, if you need verification, it's in -- on Page 899, Book 1631.

THE COURT: All right. Let me clarify. You're now down to 27 minutes left.

NANCY KNIGHT: Okay.

THE COURT: That includes your rebuttal; so, if you use it all up your don't have any rebuttal, but just to --

NANCY KNIGHT: I only -- I've got maybe --

THE COURT: I'm just telling you how much you have left.

NANCY KNIGHT: I have 3 minutes.

THE COURT: All right. Go ahead.

NANCY KNIGHT: Before I get to my closing argument or rebuttal whatever.

THE COURT: All right.

NANCY KNIGHT: Now I lost my place. Let's see.

From the first sentence in clause 20 this

lawsuit is my implied duty to prevent violations and attempted violations.

It can be shown that the attempted violations to reduce setbacks in the entire subdivision has been factually determined to have been committed by Defendant Azarmi both in the recorded video of September 25, 2016, at the planning commission meeting, and the email from direct -- the director of Development Services, Tim Walsh.

Plaintiff alleges that the jury needs to rule on the remedy for $12,500 in misappropriation of government funds to benefit this defendant's proposed setback reduction.

Plaintiff prevented the attempted setback violation orchestrated by Defendant Azarmi through her successful efforts in achieving denial of the Board of Supervisors resolutions 2016-125 and 2016-126.

County Planning and Zoning approved the 20-foot setback, front and rear, for the -- front and rear for the entire subdivision in 1989, and Frank Passantino went back and had them clarified in 1993.

Those are resolution 89-116, resolution -- resolution 93-122; and it's resolution 93-122 that is clearly cited in the supervisors' denial for resolution 2016-125, and it's clearly cited in the supervisors' denial that the

name of the subdivision is Tract 4076.

Remedies are available, and remedies are valuable. Remedies are valuable.

A visually graphic cutting-away remedy is a deterrent to any future violations; front and rear setback violations perpetrated by the defendants in Phase I, Tract 4076-A through a Board of Adjustment setback variance, has a cutting-away remedy.

All exist -- existing front and rear setback violations in Tract B, that is pending a motion for leave to amend the complaint, has a cutting-away remedy.

Remedy has a potential to bring the CC&Rs into a hundred percent compliance for front-yard setbacks.

And it has the additional benefit for all of the people who have no idea that we even have CC&Rs to finally learn that they better get a copy of them and follow the rules.

Existing rear-yard setback violations in Tract 4163 amounts to 25 of 759 lots, or less than 5 percent of the lots in the entire subdivision Tract 4076.

There is just no remedy today for these violations that are adjacent to the golf course; and as I think the defendant said my creative idea to get the Indian tribe to sell parcels, the Indian tribe has responded back to me that because it's Indian reservation land they cannot

sell any part to an American citizen.

So, we are stuck with what we have.

Potential does, in Tract 4076-B, for other violations have available remedies. Livable space violations can be remedied through adding square footage to these homes. Wood fence materials can be remedied through taking down the wood fence.

In other words, the possibility of realizing, to a substantial degree, the benefits intended through the covenants exists.

And I reserve the balance of my time; whatever the word is.

THE COURT: All right. Let me just clarify that. You still have 23 minutes when it's your turn.

NANCY KNIGHT: Thank you.

THE COURT: All right. Mr. Oehler, you have 21 minutes; beginning now.

MR. OEHLER: Thank you, your Honor.

My initial comment would flow along the lines or the stream of what would appear to be the fourth, fifth, sixth, seventh, maybe eighth -- I'm sure I'll find out what the exact number is later -- motion to reconsider.

That's basically what we have been hearing for the last hour and-a-half. A motion to reconsider what the plaintiff believes was Judge Carlisle's mistaken finding

that 4076-B was a sole and separate subdivision.

I mean, that is the law of the case.

The plaintiff doesn't like it. So, she ignores it. The plaintiff's talking about 700-and-some lots that are apparently involved in x-number of different separate subdivisions.

Despite the fact that the law of the case is we're talking about 4076-B, and its two derivative subdivisions; the 4076-D and 4163.

But the plaintiff doesn't like it.

This is not a motion for reconsideration. Roberts are not defendants in this cause of action. Roberts have been dismissed.

Count 1 has been dismissed. At some point in time Plaintiff has to realize what the law of the case is.

I have spent quite a few minutes before your Honor today certainly indicating that I don't necessarily agree with the law of the case; but that is what we are arguing today.

I don't like the fact that the burden, in effect, as a result of court of appeals and supreme court law says that to avoid a restriction in a non-waiver case it is the opponent's, in effect, obligation to show that there has been an abandonment of the scheme that was orchestrated by the developer.

Since there has been, indeed, an abandonment and have we shown that; have we shown that through Rule 56 required documentation.

I think the clear answer is absolutely and unequivocally in the affirmative.

If you have subdivision restrictions that have been -- that there have been more violations of than there have been commitments to, does that show there has been an open disregard for what those restrictions have, apparently at one time, -- in this case, early-on, hoped to have been.

If, in fact, we have, perhaps a hundred percent of the homes that have been built in the tracts that are the subject matter of this litigation, with one or more violations, does that show a disregard for the codes, covenants and restrictions.

THE COURT: Is that a jury question under College Book?

MR. OEHLER: No, I don't believe it is, your Honor. I believe it is under Rule 56; the quality and the state of the documentation and evidence supporting, in this case, the dispositive motion for summary judgment.

It sounds as if the plaintiff wants to argue that her filing a motion for what she's supposed to argue

in a Rule 56 matter, and not having the Court respond to the motion or not having the opposing party give her direction, is supposed to be some kind of, what, inappropriate or unethical conduct. I think not.

I don't think that is my obligation. I don't think it's the Court's obligation.

But, you know, I think the Court has to take a look at Rule 56. Was there compliance in the plaintiff's motion. Was there compliance in her response; or indeed was the plaintiff's response to the actual issue -- not a motion to reconsider today, but a motion for summary judgment.

Was it appropriately and properly opposed. What are the provisions of Rule 56. Rule 56; what is it, um, E under subparagraph 5.

When a summary judgment action is made and supported, as provided by this rule -- I suggest to the Court it was -- an opposing party may not rely merely on allegations of denials of its own pleadings.

The opposing party must, by affidavits or otherwise, provided in this rule, set forth specific facts showing a genuine issue for trial.

If the opposing party does not so respond summary judgment is appropriate, and it shall be entered.

So, your Honor, in the couple of minutes I

have left, or remaining, I mean let's -- let's take a look, just for a moment, at Plaintiff's response.

She sets forth, I believe it's 15 separate alleged material facts; and what are those material facts in the 15 categories she's outlined.

Many of them have no application. They're irrelevant to the issue that's before this court. In fact, it might be fair to say most of them are irrelevant to the issues that were raised in the motion.

Material fact 1. Condensed from multiple pages basically says Judge Carlisle didn't really dismiss count 1. That's on page 2, line 13. That's her argument. He didn't really dismiss count 1.

Material fact 2. It's irrelevant to this action. The defendant, here she's complaining, as we've spent many minutes with your Honor here in the last hour, talking about an application that was filed by the defendant to the planning commission.

That's not the issue that's before this Court. The planning commission denied the application. The County followed its ordinance as far as notification. It's irrelevant to anything that is before your Honor.

Material fact number 3. Here the plaintiff is talking about it's her intention to prevent the defendants, not others, from violating the restrictions

that have been violated consistently and conclusively for 30 years.

Number 4. Nuisance signs. Business advertising. She's unhappy, and alleging corruption within Mohave County because they don't agree with her off-premise advertising assessment; because she doesn't agree with title 33, eliminating the covenant regarding no signage on unimproved lots.

Number 5. An action to recover zoning expense contrary to the County ordinance.

One or more of the judges that have heard this case already have clearly found that Plaintiff does not represent Mohave County; is not in a position to attempt to reclaim zoning expense that was incurred as a result of Mohave County's zoning ordinance that requires notification.

It is irrelevant to anything that's before the Court.

Material fact number 6. Realtor email, miscellaneous documents, apparently intended as evidence, which she says, which the plaintiff says in her own material fact paragraph, is snapshots of thoughts of the plaintiff.

Where does that fit within Rule 56.

Material item 7. Mohave County's obligation and their right to issue permits. Plaintiff believes that the County, the permitting entity, has the duty and

obligation, apparently, to be aware of and enforce CC&Rs.

They do not. Where is it relevant or germane in anything that is in the motion before the Court. That was item 7.

Item 8. Antennas and signage. With antennas she says it must be ignored because the law changed saying you can't prohibit them, as if it had not been inserted.

Same thing applies for the signs.

Different jurisdiction. The State of Arizona versus a federal court decision. But maybe the State of Arizona and the legislative body that passes the laws don't have the authority that is acceptable to the plaintiff.

It's irrelevant.

THE COURT: Mr. Oehler, what was the mechanism if, in fact, these original covenants and restrictions were to be enforced back in 18 -- '89 and '93. Who was to enforce them; the other users of the property?

MR. OEHLER: Well, ultimately, yes, if they chose to do so. The codes were set up that there was a named committee that was to serve for a period of one year from the date of issuance of the public report.

That one year terminated, as I recall, in January of 1991. As is indicated by the plaintiff in a multitude of her pleadings, she has been unable to find, I've been unable to find that there ever was a meeting of that

architectural committee, even for the one year of its existence.

It terminated one year after the date of issuance of the public report. It has not been seen nor heard from since.

THE COURT: I heard some reference to the escrow; when people buy property or buy houses does not reflect the CC&Rs.

MR. OEHLER: Some of them do and some of them do not. Some of them, in regard to transactions occurring in 4163, have gone back and picked up the 4076-B regulations, which of course, should advise the prospective purchaser immediately, as it did Mrs. Knight, that her house was out of compliance when she bought it.

That it was within 9 -- according to her, 9.19 feet of the rear-yard setback; that it was within 4.-something feet of the side-yard setback.

THE COURT: All right. That was --

MR. OEHLER: There was a block wall on both sides, but those were violations that were open and obvious; but she purchased them.

THE COURT: You have about --

MR. OEHLER: Other title companies have not, and I think correctly, incorporated the 4076-B CC&Rs in dealing with 4163, including Chicago Title.

THE COURT: You have 3 minutes, Mr. Oehler.

MR. OEHLER: Sorry, you got me off --

THE COURT: Sorry; my bad.

MR. OEHLER: In any event, your Honor, I mean, they're open, obvious, consistent; they're universal.

There have been far-more violations than there have been compliance.

But let's go back. I think we were on number 8.

Number 9. CC&Rs were recorded. No enforcement for over 30 years. Hundreds, if not thousands, of violations have occurred.

Material fact number 10. Enforcement proven. Her enforcement proven as a material fact is that the tribe, the Mohave Indian tribe, bought the golf course.

That's a material fact proving there has been enforcement? What else did she say about it. The plaintiff complained to the tribe that she saw an ATV on the golf course. That's enforcement according to the plaintiff. That's in material fact number 10.

And finally, in material fact number 10, the Fort Mohave Indian Tribe, who owns the golf course, needs to be protected; and the plaintiff is providing that protection.

Material fact number 11. Enforcement has been proven by the Edwards-Chase case. She incurred $14,000 worth of

fees. A specific finding and statement -- excuse me.

A specific agreement in that case is that if Plaintiff wanted to tear down the block wall between her house and the Edwards house, formerly the Chase house, and install wrought iron, she could do it.

Not because there was an agreement that the CC&Rs mandated it, or even required it; but if she wanted to do it she was allowed the right with the specific inclusion in that agreement that the Court has made and no one has made any finding of applicability of the CC&Rs in 4076-B to the 4163 tract in which she lives.

And no matter how many times she wants to say different, that's exactly what the agreement in the Chase-Edwards case says.

She alleges in number 12 that Tract 4163 developers violated the 4076-B CC&Rs, re: fencing; and she's exactly right. As they did, in most every other respect, when they developed 4163; and I hasten to point out, although it has not be been said, your Honor, my client was not the developer of this property.

My client developed 9.1. something -- excuse me. Developed .091 percent of the homes in 4076-B. 9 percent of them over 30 years.

No houses in 4163. Zero, of which 100 percent violate the covenants she's attempting to enforce.

THE COURT: All right. Your time is up if you -- that's why she was standing; and I'm going to cut her off when her time is up, so ...

MR. OEHLER: I understand.

THE COURT: Your time is up.

MR. OEHLER: Your Honor, the plaintiff has not complied, even remotely, with rule 50 -- with Rule 56.

We are entitled to a determinative ruling from this Court, including attorney fees --

THE COURT: Thank you.

MR. OEHLER: -- that have been incurred as a result of the actions.

The question before the Court, finally, your Honor, is is the plaintiff in a position -- is the plaintiff in a position to enforce the covenants against the defendants she has named, and the answer is clearly no.

THE COURT: All right. Thank you.

Ms. Knight?

NANCY KNIGHT: I don't even, I don't -- I think he was --

THE COURT: Ms. Knight, just talk to me --

NANCY KNIGHT: I'm sorry.

THE COURT: -- and argue your case. All right.

NANCY KNIGHT: You have a copy of my response?

THE COURT: You have 23 minutes.

NANCY KNIGHT: So, I think he was twisting the words to cloud your view again.

The thing I mentioned about --

THE COURT: Ma'am, Mr. Oehler can argue just like you're arguing your case.

NANCY KNIGHT: I'm arguing. I'm arguing his claims.

THE COURT: So, go ahead.

NANCY KNIGHT: The sign is clearly not a for sale sign; that is a material fact for the jury to look at that sign and make a determination.

The Supervisor Johnson, regarding the $12,500, I am not asking on behalf of the County. What I'm doing is giving the jury the opportunity to recover tax dollars. My tax dollars. Their tax dollars.

Because even Supervisor Johnson, at the meeting, said with all this labor and -- to the director, at the time, Director Hahn (phonetic), the proponent is paying for this, right; and the answer was no.

So, normally, it looks like proponents pay when they want a change in the zoning or the setbacks, whatever -- whatever the proposal was going to be, they pay for it. And the taxpayers should not be burdened with so much. I mean, it was outrageous.

Let's see. Regarding, um, the golf course.

Regardless of who owns it, we don't need to have these CC&Rs terminated so that some developer who wants mobile homes in Desert Lakes can now go before the Board of Supervisors and get approval to have mobile homes and wood fences put in our yards because the economic -- there's economic value to the property owners, to the golf course that are running a business there, that it remains attractive.

It is attractive now, and what I'm trying to do is protect my property value because I've got an acrimonious neighbor -- and by the way, that wood -- that block that I had to cut away was because a neighbor, that was a prior owner, went to the County, got a permit to build on my property.

That's why I had to spend $1400 on a survey, and it came up with a setback of the -- less than 5-foot setback, which according to the County, as long as you have a total of 10 feet between two structures it's okay because the purpose of a 5-foot setback on both sides of a fence is for light, air and fire protection.

My 5-foot setback -- and that's probably another thing for the jury if you want to counterclaim; that the jury could determine whether this is an issue. It was not my fault. Somebody at the County didn't do inspection properly, I assume.

But, the distance between two structures is over 25 feet. There is no issue of light, air or fire. And there was when -- when my adjacent neighbor decided he's going to take out the steel rails, which are required by the CC&Rs, the block wall is not -- not required; it's okay to have partial block wall and partial -- as long as you've got the steel rails that create the view.

What was I saying?

Anyway, I had to cut away the blocks because it was a -- it was an infringement on my -- a trespass on my property, and it was a CC&R case.

That's part the record. You've got a copy from the Arizona -- what is it that when attorneys go the bar -- state bar. I got a letter from the state bar.

It was a CC&R case, which is why a lis pendens wasn't in place to protect the new owner, who now wants to take his view back; and he got the Court to quash my rights to get an adjudication that that fence belongs to me based on the -- based on the survey.

So, they quashed my thing to quiet title. Action to quiet title.

Anyway, I did -- what I was doing is saying in defense of these oral arguments for a dismissal, indispensable parties, there's a lot of -- I mean, there's a multitude of property owners who will be

affected if these CC&Rs are considered abandoned.

I gave material facts. The words were twisted as far as I could see, when he recited back to you; so I hope you go back and look and see what I actually said.

There -- the signs are definitely not -- not for sale signs, and even the Department of Real Estate who did the investigation claimed no, those are -- and it's Development Services; U.S. Southwest, it's their development services, boutique of services, out of their U.S. Southwest business.

And even Ann Pettit's own testimony in the affidavit that when she -- she would append a rider onto somebody's development services to put for sale on it. That made it a legal sign. Yours have -- the defendant has nothing on his signs that claim that --

THE COURT: Yeah, just talk to me; don't --

NANCY KNIGHT: Yes, they do.

To claim that they are for sale signs.

Okay. So, the setbacks bestow a substantial benefit to property owners.

Conditions inside the subdivision have not changed drastically.

The covenants provide value to the property owners.

Material facts exist for the jury.

And I don't -- I need to wait for your -- I may

have written the motion wrong about indispensable parties; but according to law it looks like that when you're going to abrogate CC&Rs there are indispensable parties that need to be joined.

And the affidavits in the record are subject to cross-examination. That can only happen at trial.

Then we talked about relevance. Evidence is relevant when it has a tendency in reason to make the fact that is offered probable proof or probable disproof of claims.

So, yes, every one of my arguments is real evidence, unlike your bar graph that has no real evidence.

THE COURT: Ms. Knight.

NANCY KNIGHT: I'm sorry.

THE COURT: Argue your case.

NANCY KNIGHT: I did it again. I'm sorry. I'm sorry.

Anyway, real -- I gave real evidence. Evidence is material if it's offered to prove a fact that is at issue in the case, and evidence is competent if the proof is reliable.

It can be shown that the affiants have not submitted relevant material nor competent evidence.

Affidavits submitted with false statements of

material facts, such as claiming my fence is 4 -- 5 feet, 4 inches high. It is not. It is 5 feet exactly according do the -- what was written in the CC&Rs.

In Swain versus Bixby Village Golf Course the developer had to prove that fundamental or radical changes defeated or frustrated the covenant's purposes.

The homeowners established their harm would continue without an injunction and enforcing CC&Rs preserves public policy and is in the public interest.

I also need to have, um, protection from harm from an acrimonious neighbor who bought a house thinking he's going to have a privately-located pool and spa, and he is -- he is adamant about trying to get that -- those steel rails taken out; and if the CC&Rs are abandoned, considered abandoned by the Court, they can retake -- all the money I invested to restore the CC&Rs to comply -- the fence to compliance with CC&Rs is lost, and my views will be lost again.

As in our case, developer defendants, Ludwig, Ludwig Trust, and Fairway Constructors have not proven that fundamental or radical changes have defeated or frustrated the covenant’s purposes.

In 2014 they began the process of offering 10 lots in Tract 4076-A for sale as developed lots. One of the those lots is a subject home in this case, currently

owned by defendant Roberts.

The defendants' violations and the indisputable attempted violations by defendant Azarmi, which is in count 1 of my original complaint, -- I don't know why I should lose that part -- remain prosecutable, in my opinion, and have remedies that will serve to preserve public policy and serves public interest.

Public policy of the peoples' expectations for the benefits and burdens of the contract, and the public policy of protecting people from harm, the safety from these wind-bent and deteriorated sheet metal signs and sign riders, which you have photographic evidence of, public policy in protection from tax dollars being spent inappropriately to benefit a politically well-connected developer who served on the planning commission for 15 years; you think they want to tell him no, take your signs down?

I think there is a conflict of interest; and the reason they refuse to enforce their own ordinance.

Public interest in fair competition. Off-premises, advertising signs are prohibited. Consistent application of the rules for equity, and the economic value of protecting the aesthetic appeal of the subdivision serves the public interest of economic growth of property values.

Plaintiff is entitled to compensation in law and in equity from a court of competent jurisdiction.

Let's see. I think I'll -- I will give up the balance of my time.

THE COURT: All right. That will be it.

NANCY KNIGHT: My throat's sore.

THE COURT: That will be a conclusion of our arguments then.

NANCY KNIGHT: Except that I plead to the Court to deny it.

THE COURT: Okay. And you're asking to grant your motion and deny Mr. Oehler's motion; is that correct?

NANCY KNIGHT: Yeah. My motion is based on evidence that the signs are not for sale signs, and that's something for you to rule on.

THE COURT: All right. I'm just clarifying what you said then.

NANCY KNIGHT: Yeah.

THE COURT: You're not just asking me to deny both. You're asking to deny Mr. Oehler's motion for summary judgment; and not grant --

NANCY KNIGHT: Deny dismissal of his dispositive motion about CC&Rs, and approve my motion --

THE COURT: For summary judgment.

NANCY KNIGHT: -- to take down the signs.

THE COURT: All right.

NANCY KNIGHT: I'll redirect.

THE COURT: And you mentioned earlier that you have written copies for the court reporter.

Do you have -- have you given those to her already, or --

NANCY KNIGHT: Yeah, this one -- this one I went a little bit off-script, the final one; but I do have my beginning one that I can -- I gave her the original beginning, and then opening argument.

THE COURT: Yeah, give her what you can to help her put this together in case it ever needs to be put together.

Okay. I just want to make a couple clarifications. One, you know, I have not told anybody to do a special action.

I suggested on the record that that's one of the options if you talk to a lawyer or if you don't talk to a lawyer. But one of the options is a special action.

I cannot give legal advice. I think special actions are hard to win, and I've made that record, as well.

So, the point is it's just an option if you don't like the Court's ruling. The other option, of course, is to wait till the final ruling or to have our jury trial if I -- if, you know, we can ever get to that part; and

then appeal whatever rulings both sides don't like.

Mr. Oehler doesn't like one of Judge Carlisle's rulings either.

So, that's the issues that we have to deal with as we go forward here; and so, I kind-of, despite this being more than 3 hours today, I did get a good feel for both sides' issues; and I did some reading.

I obviously have to go back and apply this to some of these cases that are cited, but Mr. -- you know, Mr. Oehler doesn't disagree; I don't think anybody disagrees that covenants, CC&Rs are legitimate in cases that he has to show, based on the case law, that they've been abandoned by the numerous violations that have taken place over the last 30 years.

That's his argument. Nobody's disagreeing that CC&Rs are valid and enforceable when they're not -- when they're not abandoned.

So, that's where I have to come -- that's step one, and then we start dealing with the legitimacy of each and every argument as we go forward; but we haven't got to that part yet because I have rule on this.

The one thing I -- you know, I find myself concerned about, Ms. Knight, is you mentioned today that you're going to file two new motions during the middle of your argument in this motion.

I don't know what those -- I mean, I do know what you said they're going to be; but I don't know why you're considering filing more motions.

And when you've argued stuff, I'll address what you've argued today in my rulings that I make in this case. But you have a right.

You have not been declared a vexatious litigant in this case; and if you recall that case I wasn't the judge.

I was asked to review what was going on at the time, as the plethora of filings that kept coming, and I made that ruling. We made that record when you first -- when this case first came to me.

So, I -- you know, ruling against you, ruling on things you disagree with, is not evidence of bias.

It's, you know, ruling against Mr. Oehler is not evidence of bias. Ruling for you against Mr. Oehler will not be evidence of bias against Mr. Oehler. Ruling for Mr. Oehler against you will not be evidence of bias.

So, I just want that that's -- that's clear case law. That's a history. There has to be some other indication of bias besides the rulings.

So, you've brought that up -- and Ms. Knight, do not raise your hand. You're done talking today. Time is up.

I'm just making that record just to say, when I'm

addressing this, I don't -- even being accused of bias doesn't make me biased against you.

I'm going to go read the case law. You've accused multiple people today of multiple crimes; but I'm going to go read the case law and do the things that I need to do in this case; and it's not -- not going to be easy.

This is a complicated -- I allowed both of you to file lengthy pleadings, lengthier than I -- as I look back at it, than I should have. But I allowed it. You both did it. I've reviewed those pleadings. I'll now have to go review them again.

But that's where we're at.

It is ordered taking under advisement both of the pending motions for summary judgment, and I'll get a ruling out.

We'll stand at recess.

NANCY KNIGHT: Can I just answer the question? You posed a question to Mr. Oehler about the CC&Rs, and he isn't even not a part of the CC&Rs; the answer to your question about architectural committee; like who is supposed to enforce --

THE COURT: Ms. Knight?

NANCY KNIGHT: Can I answer it?

THE COURT: No, you may not.

NANCY KNIGHT: Okay.

THE COURT: You had a chance.

NANCY KNIGHT: I just wanted to say if he could --

THE COURT: You had time. You've stopped arguing.

I did pose that; that's why you had the last word.

And we're done today. All right.

So, that’s it. I'm taking this matter under advisement; and I’ll get that out to you.

We’ll stand at recess.

(The proceedings recessed at 4:39 a.m.)

CERTIFICATE OF REPORTER

I, Kimberly M. Faehn, Official Court Reporter for the Superior Court of the State of Arizona, in and for the County of Mohave, do hereby certify that I made a shorthand record of the proceedings had in the foregoing entitled cause at the time and place hereinbefore stated;

That said record is full, true and accurate;

That the same was thereafter transcribed under my direction; and

That the foregoing one-hundred eleven (111) typewritten pages constitute a full, true and accurate transcript of said record, all to the best of my knowledge and ability.

Dated this 19th day of March, 2023.

/s/
_____
Kimberly M. Faehn
Certificate #50427