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O'Clock
MAY 16 2003
JEANNE HICKS, Clerk
CY TERESA MENDEZ
Deputy

ARIZONA SUPERIOR COURT
YAVAPAI COUNTY

7 JOHN B. CUNDIFF and BARBARA C.
8 CUNDIFF, husband and wife, ELIZABETH
9 NASH, a married women dealing with her
10 separate property, KENNETH J. PAGE and
11 KATHERYN J. PAGE, as Trustees of the
12 Kenneth and Katheryn Page Family Trust,

Plaintiffs,

v.

13 DONALD COX and CATHERINE COX,
14 husband and wife,

Defendants.

No.: 20030399

**MOTION FOR ORDER TO SHOW
CAUSE WHY PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

Division:

17 Plaintiffs, by and through undersigned counsel, hereby move the Court, pursuant
18 to the provisions of Rule 65, Ariz.R.Civ.P. for the issuance of an Order to Show Cause
19 why a preliminary injunction should not issue as prayed for in the above-entitled cause.
20

21 This Motion is based upon and supported by the verified Complaint in this action,
22 and the accompanying Memorandum of Points and Authorities, which are by this
23 reference incorporated herein.
24

25 RESPECTUFLY SUBMITTED this 15th day of May 2003

26 Law Office of Robert J. Launders, P.C.

27 By: Bob Launders
28 Robert J. Launders
29

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **FACTS**

4 1. Plaintiffs and Defendants own real property in the rural area known as
5 "Coyote Springs" in Yavapai County.

6 2. All real property in Coyote Springs is subject to, and contains certain
7 covenants, conditions and restrictions. These conditions are listed in the deeds to each
8 and every parcel in Coyote Springs. A copy of these restrictions is attached and labeled
9 Exhibit "A" to the complaint.
10

11 3. As owners of real property in Coyote Springs, Plaintiffs and Defendants are
12 subject to those restrictions.
13

14 4. The Declaration of Restrictions incorporated into the Plaintiffs and Defendants
15 deeds states (in pertinent part):

16 1. No trade, business, profession or any other type of commercial or
17 industrial activity shall be initiated or maintained within said property or any
18 portion thereof.

19 7. (e) No structure whatsoever other than one single family dwelling or
20 mobile home, as herein provided, together with a private garage for not more
21 than three (3) cars, a guest house, service quarters and necessary out buildings
shall be erected, placed or permitted to remain on any portion of said property.

22 15. No outside toilet or other sanitary conveniences or facilities shall be
23 erected or maintained on the premises.

24 5. On July 29, 2002, Defendant Catherine Cox prepared a "Letter of Intent"
25 that she faxed to Doug Reynolds at the Yavapai County Development Services, Land
26 Use Unit. A copy of that letter is attached as Exhibit 1.

27 6. The "Letter of Intent" was filed on behalf of Mr. and Mrs. Cox who were and
28 are doing business as "Prescott Valley Growers."
29

1 3. Ordering Defendants not to increase the inventory of plants and trees on the
2 property.

3 4. Order Defendants to cease any and all efforts and or plans to expand the
4 commercial operation on the property.
5

6 Unless this Court immediately grants the relief requested, Plaintiffs will suffer
7 irreparable harm. The Defendants will continue to operate and expand the commercial
8 use of this property. This conduct is in direct conflict with the conditions imposed upon
9 and accepted by Defendants when they acquired this land. The promised acceptance
10 will be meaningless to Plaintiffs and every other resident of this area if the commercial
11 use is permitted.
12

13 Plaintiffs justifiably fear that the operation of this commercial enterprise will open
14 the door to other business ventures that seek to invade this residential community.
15

16 Because the damages to Plaintiffs are difficult, if not impossible to determine,
17 they have no legal remedy available to enforce the covenants, conditions and
18 restrictions that are in place to protect their quality of life in this rural area. Heritage
19 Heights Homeowners Ass'n v. Esser, 115 Ariz. 330. The preliminary relief requested is
20 appropriate because it seeks to curtail, but not eliminate the commercial enterprise
21 involved.
22

23 There can be no dispute that the Defendant's property is burdened with the
24 prohibition of the operation of commercial activity and the Plaintiff's are the holders of
25 the reciprocal benefit of that prohibition.
26

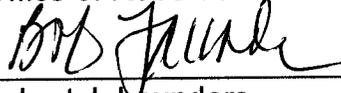
27 There is no dispute that the Defendants had knowledge of the prohibition when
28 they acquired the property. As a result of the recording of these restrictions,
29

1 Defendants had constructive notice of the restriction. Before they began the
2 commercial activity in question, they received actual notice of the restriction from Mr.
3 Reynolds. Because the Defendants chose to ignore restrictions about which they were
4 fully aware they left Plaintiffs with no other option besides the one taken here.
5

6 The preliminary relief prayed for in this motion would do nothing more than
7 maintain the status quo of this commercial operation until there is trial on the merits of
8 the case.

9
10 RESPECTUFLY SUBMITTED this 15th day of May 2003

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12 By: 
13 Robert J. Launders
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