

FILED
3:40 O'Clock P M
MAR 18 2004
JEANNE HICKS, Clerk
BY Deputy

1 FAVOUR, MOORE & WILHELMSSEN, P.A.
Post Office Box 1391
2 Prescott, AZ 86302-1391
928/445-2444
3 David K. Wilhelmsen, 007112

4 Attorneys for Plaintiffs

5 IN THE SUPERIOR COURT OF ARIZONA
6 COUNTY OF YAVAPAI

8 **JOHN B. CUNDIFF** and **BARBARA C.)**
CUNDIFF, husband and wife; **ELIZABETH)**
9 **NASH**, a married woman dealing with her)
separate property; **KENNETH PAGE** and)
10 **KATHRYN PAGE**, as Trustee of the Kenneth)
Page and Catherine Page Trust,)
11 Plaintiffs,)
vs.)
12 **DONALD COX** and **CATHERINE COX**,)
husband and wife,)
13 Defendants.)

Case No. ~~CV~~ 2003-0399
Division 3

Plaintiffs' First Amended Complaint
Breach of Contract
Declaratory Judgement
Request for Injunctive Relief

14
15 Plaintiffs, for their first amended complaint against Defendants allege as follows:

16 **I. General Allegations Common to All Counts**

17 1. Plaintiffs are owners of real property located in Coyote Springs Ranch, Yavapai County,
18 Arizona, more particularly described as:

19 Government Lots One (1) and Two (2) and the south half of the Northeast quarter
20 and the Southeast quarter of Section one (1); all of Section Twelve (12); the East
21 half and the East half of the Southwest quarter and the East half of the East half
22 of the Northeast quarter and the Northwest quarter of the Northeast quarter of
23 Section thirteen (13); the East half of Section Twenty-four (24); the East half of
24 Section Twenty-five (25), all in township Fifteen (15) North, Range One (1) West
25 of the Gila and Salt River Base and Meridian; and,

26 All of Section Six (6); all of Section (7), Government Lots One (1), Two
(2), Three (3), and Four (4), and the Southeast quarter of the Southwest
quarter and the South half of the Northeast quarter of the southwest
quarter of Section Nineteen (19), all in Township Fifteen (15) North,
Range One (1) East of the Gila and Salt River Base and Meridian.

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said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

* * *

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing or to recover damages or other dues for such violations. No failure of any other person or party to enforce any of the restrictions, rights, reservations, limitation, covenants and 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. The violation of these restrictive covenants, condition or stipulations or any or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

9. Plaintiffs relied upon the Declaration of Restrictions in the purchase of their land, acquiring said land with notice thereof.

10. Defendants had notice of the Declaration of Restrictions, and the covenants contained therein, at the time of purchase of their real property, said Declaration of Restrictions having been recorded.

11. Defendants have breached the covenants and restrictions by initiating and maintaining a commercial enterprise on their property in violation of the recorded Declaration of Restrictions.

12. Further, Defendants have breached the covenants and restrictions by having more than one single family residence on the property in violation of the recorded Declaration of Restrictions.

13. Defendants have breached the covenants and restrictions by having an outdoor toilet and/or sanitary facility on their property in violation of the recorded Declaration of Restrictions.

14. Upon information and belief, Defendants have evidenced an intent to expand or increase the nature and extent of their current business enterprise on their land, in violation of the recorded Declaration of Restrictions.

...
...

1 **II. Jurisdiction and Venue**

2 15. This Court has jurisdiction over this action pursuant to A.R.S. §12-123, and venue is proper
3 in this Court pursuant to A.R.S. §12-401.

4 **III. Count I – Breach of Contract**

5 16. Plaintiffs reallege those allegations contained in paragraphs 1 through 15 above as though
6 fully set forth herein.

7 17. Defendants initiation, maintenance and/or expansion of their business enterprise on said real
8 property constitutes a violation and breach of the recorded Declaration of Restrictions.

9 18. Said breach by Defendants has resulted in damage and irreparable harm to Plaintiffs in the
10 destruction of the rural and residential nature of the real property subject to the recorded covenants and
11 restrictions.

12 **IV. Count II – Breach of Contract**

13 19. Plaintiffs reallege those allegations contained in paragraphs 1 through 18 above as though
14 fully set forth herein.

15 20. Defendants installation and continued maintenance of an outdoor toilet and/or sanitary
16 facility on said property is a violation and breach of the recorded Declaration of Restrictions.

17 21. As a result of said breach by Defendants, Plaintiffs have been damaged and suffer
18 irreparable harm in the destruction of the rural and residential nature of the real property subject to the
19 recorded covenants and restrictions.

20 **V. Count III – Breach of Contract**

21 22. Plaintiffs reallege those allegations contained in paragraphs 1 through 21 above as though
22 fully set forth herein.

23 23. Defendants conduct in constructing, installing and maintaining more than one single family
24 residence on said real property is in breach of the recorded Declaration of Restrictions.

25 24. As a result of said breach by Defendants, Plaintiffs have been damaged and suffer
26 irreparable harm in the destruction of the rural and residential nature of the real property subject to the

1 recorded covenants and restrictions.

2 **VI. Count IV – Claim for Declaratory Relief**

3 25. Plaintiffs reallege those allegations contained in paragraphs 1 through 24 above as though
4 fully set forth herein.

5 26. A controversy exists between the parties as Plaintiffs contend that the Declaration of
6 Restrictions constitute covenants and restrictions running with the land to ensure the continuing rural
7 and residential nature of the use of the property to which said Declaration of Restrictions apply, and are
8 enforceable by any landowner against any other landowner whose conduct or activity constitutes a
9 violation thereof.

10 27. Defendants have refused or otherwise declined to cease and desist from their commercial
11 business enterprise, installation and maintenance of outdoor toilet and/or sanitary facilities, and
12 installation and maintenance of more than one single family residence on their property, by their
13 continued activity constituting violations of the recorded covenants and restrictions. Further,
14 Defendants have refused or otherwise declined to comply with said covenants and restrictions by
15 evidencing their intent to expand or increase their current business enterprise on said real property.

16 28. By reason of the foregoing, a declaratory judgment is both necessary and proper in order
17 to set forth and determine the rights, obligations and liabilities that exist among the parties as owners
18 of real property subject to the recorded Declaration of Restrictions.

19 **VII. Count V – Request for Injunctive Relief**

20 29. Plaintiffs reallege those allegations contained in paragraphs 1 through 28 above as though
21 fully set forth herein.

22 30. Defendants current and continuing violations of the restrictions and covenants do, and will
23 continue to, pose a serious threat of irreparable injury to Plaintiffs in the protection afforded their land,
24 as well as every other landowner in Coyote Springs Ranch, provided by the recorded Declaration of
25 Restrictions to maintain the rural, residential nature of the area.

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WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

A. Declaring that the recorded Declaration of Restrictions is valid and enforceable;

B. Declaring the rights and other legal relations of Plaintiffs and Defendants arising from the recorded Declaration of Restrictions;

C. Declaring that Defendants conduct constitutes a breach of said recorded Declaration of Restrictions;

D. Permanently enjoining Defendants from initiating, maintaining or expanding their current business enterprise on said property as violative of the recorded restrictions and covenants pertaining to the real property;

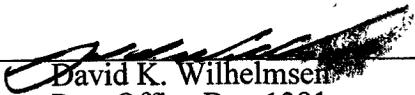
E. Ordering Defendants to remove any and all conditions or activities on said land that violates any restriction or covenant as provided in the recorded Declaration of Restrictions;

F. Awarding Plaintiffs their reasonable attorney's fees and costs as provided in the recorded Declaration of Restrictions, and pursuant to A.R.S. §12-341.01; and,

G. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 18th day of March, 2004.

FAVOUR, MOORE & WILHELMSSEN, P.A.

By 
David K. Wilhelmssen
Post Office Box 1391
Prescott, AZ 86302-1391
Attorneys for Plaintiffs

1 ORIGINAL of the foregoing
2 filed with the Clerk of the Superior
3 Court this 18th day of March, 2004

4 and a copy hand-delivered this same date to:

5 Jeff Adams
6 Musgrove, Drutz & Kack, P.C.
7 1135 Iron Springs Road
8 Prescott, Arizona 86302

9 By: Marguerite Kirk
10 Marguerite Kirk

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I do hereby certify that the within instrument was filed and recorded at the request of to Lynch
on June 13 A.D. 1974 at 1:35 o'clock p Book 916 Official Records
Page 480-481-682 Records of Yavapai County, Arizona.

WITNE'S my hand and official seal the day and year first above written.

PATSY C. JENNEY, County Recorder

By Mary E. Hampton Deputy

COYOTE SPRINGS RANCH

200

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anne Conlin, dealing with his sole and separate property, being the owners of the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status or national origin are deleted unless and only to the extent that said covenant (c) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status or national origin are deleted unless and only to the extent that said covenant (c) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

All of Section Six (6); all of Section Seven (7), GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.
2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.
3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.
4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.
5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.
6. All residence buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction. Residence buildings shall have concrete foundations and hardwood or concrete floorings.

square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level;

(c) Travel Trailers or campers may occupy homesites during vacation periods, not [REDACTED], or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more 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.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but exclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 35 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bonafide construction or a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

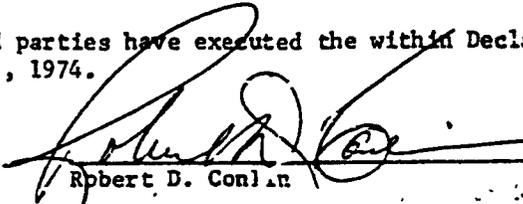
[REDACTED] garage or trash containers, oil tanks, bottled gas tanks and other such facilities shall be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

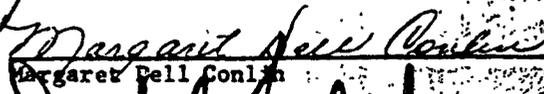
17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

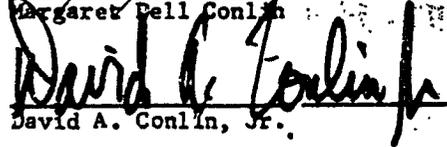
18. Invalidity of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing. The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.


Robert D. Conlin


Margaret Bell Conlin

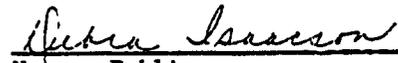

David A. Conlin, Jr.

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Bell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-20-77

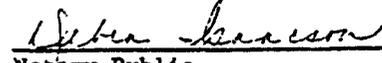

Notary Public

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-20-77


Notary Public