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10 SUPERIOR COURT OF ARIZONA
11 YAVAPAI COUNTY

12 JOHN B. CUNDIFF and BARBARA C.
13 CUNDIFF, husband and wife; ELIZABETH
14 NASH, a married woman dealing with her
15 separate property; KENNETH PAGE and
16 KATHRYN PAGE, as Trustee of the
17 Kenneth Page and Catherine Page Trust,

18 Plaintiffs,

19 v.

20 DONALD COX and CATHERINE COX,
husband and wife, *et al.*, *et ux.*,

Defendants.

P1300
Case No. CV 2003-0399

Division 4

FINAL JUDGMENT

NUNC PRO TUNC IN
ACCORDANCE WITH THE
COURT'S APRIL 7, 2015 RULING

This matter having come before the Court on Plaintiffs' *Motion for Summary Judgment*, said motion having been joined by joined Plaintiff property owner James Varilek ("Varilek"), and following oral argument thereon on April 16, 2013, the Court finds as follows:

1. On March 18, 2004, Plaintiffs filed *Plaintiffs' First Amended Complaint*, asserting three counts for breach of contract (Counts I-III), one count for declaratory relief (Count IV) and one count for injunctive relief (Count V), all relating to an alleged violation of the Declaration of Restrictions of Coyote Springs Ranch (as recorded in Book 916, page 680, official records of Yavapai County, Arizona) by Defendants Donald Cox and Catherine Cox ("Defendants

AND
18 DEF (Hc)
FILED/ATTY
X Musgrave Drutz (e)
J. Coughlin (e) Arb w/ title
(+) P1 = Favour & Wilhelmsen (e) 5 (e)
(Y) Wilhelmsen (e) 18 (Hc)
(Y) property settlement
Haikaway (e)
Arbiter
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Cox”) on certain real property in Coyote Springs Ranch as legally described in paragraph 3 below.

2. The real property comprising Coyote Springs Ranch and to which said Declaration of Restrictions applies is legally described as follows:

Government Lots One (1) and Two (2) 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 Southwest quarter and the East half of the East half of the Northeast quarter and the Northwest quarter of the Northeast 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

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.

3. The real property within Coyote Springs Ranch owned by Defendants Cox as of the date on which *Plaintiffs' First Amended Complaint* was filed is legally described as follows:

All that portion of Section 25, Township 15 North, Range 1 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the East quarter corner of Section 25 marked with a GLO brass cap monument;

Then South 00 degrees, 04 minutes, 15 seconds East, 660.28 feet along the East line of Section 25 to a one half inch rebar and the TRUE POINT OF BEGINNING;

Thence South 00 degrees, 04 minutes, 15 seconds East, 660.28 feet to a one half inch rebar;

Thence North 89 degrees, 59 minutes, 02 seconds West, 1321.37 feet;

1 Thence North 00 degrees, 03 minutes, 08 seconds West,
660.32 feet;

2 Thence South 89 degrees, 58 minutes, 54 seconds East,
3 1321.15 feet to the TRUE POINT OF BEGINNING.

4 EXCEPT all oil, gas, coal and minerals as set forth in
instrument recorded in Book 192 of Deeds, Page 415.

5 4. On May 21, 2004, Defendants Cox filed their *Answer to Plaintiffs' First*
6 *Amended Complaint*, wherein they asserted the affirmative defenses of laches,
7 estoppel, unclean hands, waiver and abandonment.

8 5. *Plaintiffs' First Amended Complaint* alleged that a business enterprise
9 conducted by Defendants Cox on the real property legally described in
10 paragraph 3 above violates the following sections of said Declaration of
11 Restrictions:

12 2. No trade, business, profession or any other type of
13 commercial or industrial activity shall be initiated or
maintained within said property or any portion thereof.

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

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

20 6. On December 1, 2004, Plaintiffs filed *Plaintiffs' Motion for Summary Judgment*
21 *Re: Defendants' Violations of Restrictive Covenants; Affirmative Defenses of*
22 *Estoppel, Laches and Unclean Hands*. On April 4, 2005, the Court entered an
23 *Under Advisement Ruling* awarding partial summary judgment in favor of
24 Plaintiffs on the affirmative defenses of estoppel, laches and unclean hands as
25 asserted by Defendants Cox.

26 7. On June 24, 2005, Defendants Cox filed a *Motion for Summary Judgment Re:*
27 *Agricultural Activities*. On July 26, 2005, the Court awarded partial summary
28 judgment in favor of Defendants Cox on Count I of *Plaintiffs' First Amended*

1 *Complaint.* On February 10, 2006, the Court entered a *Partial Final Judgment*,
2 finding that the business enterprise conducted by Defendants Cox did not violate
3 section 2 of said Declaration of Restrictions and awarding summary judgment in
4 favor of Defendants Cox on Count I of *Plaintiffs' First Amended Complaint* and
5 on Counts IV and V to the extent they were predicated on a violation of section
6 2 of said Declaration of Restrictions.

7 8. On June 24, 2005, Defendants Cox filed a *Motion to Join Indispensable Parties*
8 *Pursuant to Rule 19(A), Ariz. R. Civ. P., or, in the Alternative, Motion to*
9 *Dismiss Pursuant to Rule 12(B)(7), Ariz. R. Civ. P., for Failure to Join*
10 *Indispensable Parties.* On July 18, 2005, the Court entered a *Ruling Re:*
11 *Motions* denying said motion.

12 9. Plaintiffs appealed the *Partial Final Judgment* to Division One of the Arizona
13 Court of Appeals; Defendants Cox cross-appealed the partial granting of
14 *Plaintiffs' Motion for Summary Judgment Re: Defendants' Violations of*
15 *Restrictive Covenants; Affirmative Defenses of Estoppel, Laches and Unclean*
16 *Hands* on their affirmative defenses of estoppel, laches and unclean hands, as
17 well the denial of their *Motion to Join Indispensable Parties Pursuant to Rule*
18 *19(A), Ariz. R. Civ. P., or, in the Alternative, Motion to Dismiss Pursuant to*
19 *Rule 12(B)(7), Ariz. R. Civ. P., for Failure to Join Indispensable Parties.* On
20 May 24, 2007, the Court of Appeals issued its *Memorandum Decision* in No. 1
21 CA-CV 06-0165. The Court of Appeals affirmed this Court's award of partial
22 summary judgment to Plaintiffs on the affirmative defenses of estoppel, laches
23 and unclean hands as asserted by Defendants Cox; reversed this Court's award
24 of partial summary judgment in favor of Defendants Cox on Count I of
25 *Plaintiffs' First Amended Complaint*, holding on the basis of the appellate record
26 and its interpretation of section 2 of said Declaration of Restrictions that the
27 business enterprise conducted by Defendants Cox clearly violated said section 2;
28 and reversed this Court's denial of the *Motion to Join Indispensable Parties*
Pursuant to Rule 19(A), Ariz. R. Civ. P., or, in the Alternative, Motion to

1 *Dismiss Pursuant to Rule 12(B)(7), Ariz. R. Civ. P., for Failure to Join*
2 *Indispensable Parties*, holding that all other property owners in Coyote Springs
3 Ranch were necessary parties, and remanded for a determination as to whether
4 the necessary parties were also indispensable under ARCP 19(b).

5 10. Upon remand, this Court on August 25, 2008 entered a *Ruling* finding the
6 necessary parties to be indispensable and ordering Plaintiffs to take substantial
7 steps to join all indispensable parties within 90 days. On April 18, 2011,
8 Plaintiffs filed a *Notice of Compliance with June 17, 2010 Notice Re: Service of*
9 *Property Owners*.

10 11. Served upon the indispensable parties, in addition to a summons and a copy of
11 *Plaintiffs' First Amended Complaint*, was a *Notice* by the Court dated June 15,
12 2010, notifying them, *inter alia*, that the Court would determine from the nature
13 of their responses whether they should be joined with the Plaintiffs or the
14 Defendants. Varilek was subsequently joined with Plaintiffs and the other
15 property owners who responded were joined with Defendants.

16 12. On December 28, 2012, Plaintiffs filed their *Motion for Summary Judgment* on
17 the affirmative defenses of waiver and abandonment asserted by Defendants
18 Cox. On January 7, 2013, Varilek filed *James Varilek's Joinder in Plaintiffs'*
19 *Motion for Summary Judgment*. Following oral argument on said motion on
20 April 16, 2013, the Court entered an *Under Advisement Ruling* on June 14,
21 2013, finding that Coyote Springs Ranch remains a rural residential
22 development and that no genuine issue of material fact exists with respect to the
23 affirmative defenses of waiver and abandonment of said Declaration of
24 Restrictions as asserted by Defendants Cox and granting Plaintiffs' and
25 Varilek's *Motion for Summary Judgment*.

26 13. According to the official records of Yavapai County, Arizona, Defendants Cox,
27 without notice to the Court or the other parties, transferred the real property
28 legally described in paragraph 3 above to High C's, LLC, an Arizona limited
 liability company of which Defendants Cox were the sole members, by a Quit

1 Claim Deed recorded in the Office of the Yavapai County Recorder in Book
2 4592, Page 104. Thereafter, High C's. LLC, without notice to the Court or the
3 other parties, transferred the real property legally described in paragraph 3 above
4 to Prescott Valley Growers, LLC, an Arizona limited liability company of which
5 Defendants Cox are members together with James Michael Cox, by a Quit
6 Claim Deed recorded in the Office of the Yavapai County Recorder in Book
7 4753, Page 820. The Court finds that these transfers should have been disclosed
8 to the Court and the other parties and that this *Final Judgment* should be binding
9 upon the Coxes' and any heir, successor or assign of their interest in the real
10 property described in paragraph 3 above in whole or part.

11 14. After Plaintiffs and Varilek had jointly lodged a proposed form of *Final*
12 *Judgment*, Defendants objected that Counts II and III of *Plaintiffs' First*
13 *Amended Complaint*, alleging violations of sections 7(e) and 15 of said
14 Declaration of Restrictions as set forth in paragraph 5 above, had never been
15 litigated. The Court finds that Plaintiffs have consistently taken the position
16 since at least the July 26, 2005 oral argument on the *Motion for Summary*
17 *Judgment Re: Agricultural Activities* filed by Defendants Cox that the violations
18 alleged in Counts II and III arise out of the violation of section 2 as to which
19 summary judgment has been granted in favor of Plaintiffs and Varilek and that
20 those alleged violations will be cured as part and parcel of the cure of the
21 violation of section 2 by Defendants Cox. Moreover, Plaintiffs have stipulated
22 to the dismissal of Counts II and III pursuant to Rule 15(b), Ariz. R. Civ. Proc.
23 Accordingly, the Court finds that there are no remaining issues and that the entry
24 of final judgment is proper.

25 15. After Plaintiffs and Varilek had jointly lodged their proposed form of *Final*
26 *Judgment*, Defendants also objected that before granting Plaintiffs' and
27 Varilek's *Motion for Summary Judgment* the Court had failed to rule on pending
28 motions by Varilek and Defendants as to whether all indispensable parties had
been properly served and joined. However, the Court of Appeals clearly

1 recognized in its *Memorandum Decision* described in paragraph 9 above that the
2 other property owners in Coyote Springs Ranch were necessary parties only
3 because of the possibility that the affirmative defense of abandonment asserted
4 by Defendants Cox might be successful. Because this Court's ruling in favor of
5 Plaintiffs and Varilek on their *Motion for Summary Judgment* disposed of the
6 abandonment defense asserted by Defendants Cox, any issue as to the joinder of
7 the indispensable parties, together with Varilek's and Defendants' pending
8 motions, became moot. The *Final Judgment* will bind only Plaintiffs, Varilek,
9 Defendants Cox and their successors and assignees as of the date of entry, and
10 those indispensable parties who have appeared and been joined as Defendants.

11 16. As the successful parties, Plaintiffs and Varilek are entitled to an award against
12 Defendants Cox of their costs incurred herein, as well as to an award against
13 Defendants Cox pursuant to A.R.S. § 12-341.01(A) of their reasonable attorney
14 fees incurred herein.

15 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
16 DECREED as follows:

17 A. Judgment is awarded in favor of Plaintiffs and against Defendants on *Plaintiffs'*
18 *First Amended Complaint* as follows:

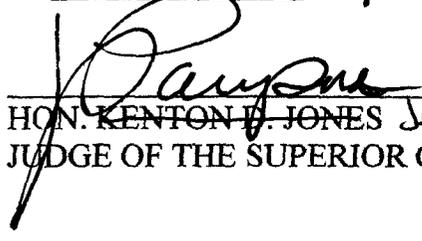
- 19 1. The Declaration of Restrictions of Coyote Springs Ranch, as recorded in
20 Book 916, page 680, official records of Yavapai County, Arizona, has not
21 been abandoned and is valid and enforceable against the real property
22 legally described in paragraph 3 above.
- 23 2. The business enterprise operated by Defendants Donald Cox and Catherine
24 Cox as described in *Plaintiffs' First Amended Complaint* on the real
25 property legally described in paragraph 3 above violates said Declaration of
26 Restrictions of Coyote Springs Ranch, and Defendants Cox and their heirs,
27 successors and assigns, specifically including those identified in paragraph
28 13 above, are permanently enjoined from operating said business enterprise
on said real property.

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3. Defendants Donald Cox and Catherine Cox or their heirs, successors and assigns shall promptly and diligently eliminate any and all conditions or activities on the real property legally described in paragraph 3 above that violate section 2 of said Declaration of Restrictions as set forth in paragraph 5 above, such work of elimination to be completed no later than 90 days from and after the date this *Final Judgment* is entered by the Clerk of the Court.

B. As against Defendants Donald Cox and Catherine Cox, Plaintiffs and Varilek are awarded their costs incurred herein, together with their reasonable attorney fees incurred herein pursuant to A.R.S. § 12-341.01(A), said costs and reasonable attorney fees to be set forth in a separate *Judgment for Costs and Attorney Fees* after the determination of the amounts to which Plaintiffs and Varilek are entitled.

DONE IN OPEN COURT on JUNE 23rd, 2017.5


HON. KENTON J. JONES Jeffrey G. Paupore
JUDGE OF THE SUPERIOR COURT