

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

DIVISION 3

ETHEL BOUTON, Clerk

HON. JAMES B. SULT

By: Mary Slaughter, Deputy Clerk

CASE NUMBER: 4772

DATE: November 6, 1990

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TITLE:

COUNSEL:

GEORGE W. HANCE, et al.

L. Richard Mabery

(Plaintiff)

(For Plaintiff)

vs.

and

WALES ARNOLD, et ux., et al.

Douglas G. Wymore  
1136 E. Campbell  
Phoenix, AZ 85014

(Defendant)

(For Defendant)

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HEARING ON:

COURT REPORTER:

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**CLOSING ARGUMENTS ON OSC**

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This being the time set for telephonic closing arguments on Plaintiff's Order to Show Cause, Plaintiffs appearing through their counsel, L. Richard Mabery; Defendants, Davis, appearing through their counsel, Douglas Wymore.

Come now counsel and make their closing arguments to the Court.

The matter is submitted, and IT IS ORDERED taking the matter under advisement.

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This matter having been taken under advisement, the Court finds as follows:

The Court is considering only the pleadings relating to this Motion since the Court has not been asked to judicially notice any other portion of the file. Based on the pleadings, testimony of witnesses and exhibits, the Court does not find that Plaintiff presented any evidence that Defendants Davis' land is legally burdened with any sort of

easement right, either primary or secondary, in favor of Plaintiff. The 1963 Rules and Regulations, Exhibit No. 1 in evidence, may possibly be interpreted to burden the lands of shareholders in the Ditch Company, but there is no sufficient evidence to conclude that the Davises are shareholders.

Given that Plaintiff has not proven the predicate element of the ownership of any right of Davis' land, the Court does not address the question of whether the right sought by Plaintiff over Defendants' land is reasonable. Papa v. Flake, 18 Ariz. App. 496 (1972).

Based on the foregoing, IT IS ORDERED Plaintiff's Motion is denied.