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Attorneys for Plaintiffs

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

GERALD FREEMAN and JANICE FREEMAN,
husband and wife,

Plaintiffs,

v.

TOWN OF CAVE CREEK *et. al.*,
Defendants.

Case No. CV2012-092643

**FREEMANS' MOTION FOR
SANCTIONS AGAINST
CAHAVA SPRINGS CORP,
N/K/A CS INVESTMENTS, INC,
MARK STAPP, CAHAVA'S
COUNSEL TIM MARTENS AND
GEORGE WINNEY AND
JOINDER OF INDISPENSABLE
PARTIES**

(Assigned to the Hon. David M.
Talamante)

**(EXPEDITED HEARING
REQUESTED)**

Comes now Plaintiffs Gerald and Janice Freeman ("Freemans"), by and through
their attorneys, Mahaffy Law Firm, PC, by Steven C. Mahaffy, and pursuant to the Court's
inherent power to sanction bad faith conduct during litigation file their motion to hold
Defendant Cahava Springs Corp. n/k/a CS Investments, Inc, Mark Stapp, and Cahava's

1 counsel Tim Martens and George Winney in contempt, impose sanctions, and for Joinder
2 of Indispensable Parties, as follows:

3 **Background:**

4 The trial in this matter was held on December 17 through 19, 2014. During cross-
5 examination of Mr. Stapp, undersigned counsel elicited the following testimony:
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7 A. Mark Stapp, managing member of Defendant Cahava Springs Corp., testified that
8 Cahava Springs deeded lots 5(b) and 5(p), the subject of this lawsuit, to Morning
9 Star Properties, a Nevada corporation, approximately one and one half to two
10 weeks before trial. TR2, p.7, ll. 6 – 25 – p. 8, ll. 1 - 12.
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12 B. Mr. Stapp testified that the he did not notify anyone in the litigation regarding the
13 transfer of the Cahava lots. TR2, p.8, ll. 5 -7.

14 C. Mr. Stapp testified that he is the president of Morningstar Properties. TR2, p. 8, ll. 8
15 - 12.
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17 Freemans and undersigned counsel are now shocked to discover that prior to and
18 during the trial, significant fraud was and has been perpetrated on the Court; accordingly,
19 this Court should hold Cahava Springs Corp., n/k/a CS Investments, Inc., Mark Stapp, and
20 their attorneys, Gammage & Burnham, PLC (George Winney and Timothy Martens), in
21 contempt and should impose sanctions as the property was transferred without notifying
22 the parties or the Court. Further, Freemans, at the very least, should be awarded attorneys'
23 fees as a sanction.
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1 Defendants' and their counsels' obligation to disclose is found in Ariz.R.Civ.P.
2 11(a) and 26.1(b). Defendants' counsel has the additional obligation to disclose under ER
3 3.3(a)(1)&(3), (b), (c), and ER 3.4 (a).

4 **Sanctions are Appropriate:**

5 In awarding attorney's fees as a sanction in favor of Freemans and against Cahava
6 and their counsel, the Court should rely in part, upon its inherent power to sanction bad
7 faith conduct during litigation. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 49 (1991);
8 *Precision Components v. Harrison, Harper*, 179 Ariz. 552, 555, 880 P. 2d 1098(App.
9 1994).
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12 The Freemans specifically seek attorney's fees as sanctions in this motion. The
13 basis of this request was the deceitful conduct of Defendant Cahava Springs and their
14 attorneys' firm, Gammage & Burnham PLC. The deceitful conduct is that neither
15 Defendant Cahava nor their counsel disclosed to Freemans, or to the Court that Cahava had
16 changed its name and had deeded lots 5(b) and 5(p), the subject of this lawsuit, to Morning
17 Star Road Properties, Inc., a Nevada corporation, approximately one and one half to two
18 weeks before trial. The execution of the transfer documents is a material fact for multiple
19 reasons. First, in their Answer to Freemans' Complaint, Cahava did not deny ownership of
20 the real property subject to the easement. Second, this same representation of ownership
21 was reflected in Cahava's Initial Disclosure Statement (which was verified by Mark Stapp),
22 dated January 6, 2014, on page 2, paragraph one when it states: "Cahava is the owner of
23 two parcels of property located in Cave Creek, Arizona that have been assigned Assessor
24 Parcel Nos. 211-01-005B and 211-01-005P." Third, paragraph 5 on page 2 of the parties'
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1 Joint Pretrial Statement – which was signed by counsel for Cahava, the Town and the
2 Freemans on December 10, 2014, states:

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4 Cahava Springs Corp. owns 2 parcels (relevant to this litigation) namely: 211-01-
5 005B consisting of approximately 20 acres and 211-01-005P, consisting of
approximately 15 acres. Both parcels are vacant land.

6
7 We now know that contrary to Cahava’s representation, it had transferred the
8 property approximately five months prior to Morning Star Road Properties, Inc.

9 **Morning Star Road Properties, Inc. and CS Investments Inc. Are Not Parties:**

10 Fourth, but in many ways most importantly, the issue before this Court could not
11 and cannot be resolved if the person/entity that owns the real property subject to the
12 easement is not a party to this case. *See A.R.S. §12-1832; Ariz.R.Civ.P. 19(a)*. At trial, the
13 Court, upon the request of undersigned counsel, and after some discussion about whether
14 Morning Star Properties was a *bone fide* third party purchaser, joined Morningstar
15 Properties as a Defendant to this case (TR2, p. 13, ll. 5 – 9). However, upon examination
16 of the transfer document, the Special Warranty Deed, a copy of which is attached as
17 Exhibit “A,” reveals that Cahava has also apparently changed its name to CS Investments,
18 Inc. and that the name of the new owner of the subject property is Morning Star Road
19 Properties, Inc. (and not Morningstar Properties as represented by Mr. Stapp at trial). The
20 Minnesota Secretary of State website reveals that C.S. Investments, Inc. was formed in
21 1981, and the only person listed on the business record details is that of Chief Executive
22 Office, Gail K. Mathisen (which is the signor on the Special Warranty Deed). The
23 Minnesota Secretary of State reveals no current information concerning Cahava Springs
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1 Corp., including whether Cahava Springs, Corp., is still a legal entity. If it is not a legal
2 entity, then any Judgment entered by the Court would have no applicability to a non-
3 existent entity. A copy of the Minnesota Business Record Detail concerning CS
4 Investments, Inc., is attached as Exhibit "B."

5
6 According to the Secretary of State of Nevada webpage, Morning Star Road
7 Properties, Inc., is a Nevada Corporation whose directors are listed as John Fisher, Dennis
8 Mathisen, and Mark Stapp. A copy of the Morning Star Road Properties, Inc., from the
9 Nevada Secretary of State is attached hereto as Exhibit "C." According to the Arizona
10 Corporation Commission website, Morning Star Road Properties, Inc., is not registered to
11 do business in Arizona; accordingly Morning Star Road Properties, Inc. may not have the
12 legal right to sue or be sued in Arizona. See A.R.S. §§ 10-1501, 10-1503, 10-11501, 10-
13 11503. Further, among other things, a foreign corporation that transacts business or
14 conducts affairs without authority is liable for fees, penalties associated with the failure to
15 pay fees, and a penalty of up to one thousand dollars.

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18 The result is that a now apparently non-existent entity (Cahava Springs Corp.) is a
19 named defendant in this litigation. C.S. Investments, Inc. is not a named party, nor was it
20 represented in this litigation. Mr. Winney, at trial, represented to this Court that he did not
21 represent Morningstar Properties; and although Gammage & Burnham, PLC at one time
22 represented Cahava, surely, it does not represent C.S. Investments, Inc. or a Notice of
23 Appearance would have been filed.

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26 The public records reveal that the ownership of the property is held by an entity that
27 was not joined by the Court at trial. Mr. Stapp represented to this Court that he was the

1 President of a company that does not exist. Mr. Stapp may or may not have the authority to
2 bind Morning Star Road Properties, Inc.; however, that entity has not been joined to this
3 litigation. Mr. Stapp further committed perjury before this Court by stating that the transfer
4 took place approximately two weeks prior to the trial. The Special Warranty Deed reveals
5 that it was signed on May 27, 2014 (more than 6 months before trial) and recorded as
6 record number 20140792811, on December 2, 2014. Further, the Special Warranty Deed
7 reveals that Timothy J. Martens, and the firm, Gammage & Burnham, PLC is listed as the
8 name and address of where the deed was to be mailed after recordation.
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10
11 Mr. Martens sent a letter dated August 22, 2014, to undersigned counsel, a copy of
12 which is attached hereto as Exhibit "D." Mr. Martens states in the first sentence of the
13 letter that "our firm represents Cahava Springs Corp." The letter reflects that a copy of the
14 letter was sent to Mr. Stapp. At that time Mr. Martens was very aware of this particular
15 litigation involving his client as subject of the letter is "Gerald Freeman Morningstar Road
16 Easement." The letter demands that any maintenance work on the easement undertaken by
17 Mr. Freeman must be in strict compliance with section 404 of the Clean Water Act. The
18 Freemans' maintenance on the easement is directly related to this litigation and the
19 property which we now know was transferred by Cahava; therefor, knowledge of this
20 litigation is imputed to Mr. Martens and knowledge of the transfer is imputed to Mr.
21 Winney.
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24 In this case, Freemans are seeking a declaratory judgment regarding the use of the
25 easement on the real property owned, at the time the Complaint was filed, by Cahava
26 Springs. If Cahava (now C.S. Investments) no longer owned that real property, any ruling
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1 by the Court as to the respective rights of the parties becomes meaningless given that the
2 true owner of the real property (now, Morning Star Road Properties, Inc.) is not a party. In
3 other words, when Cahava Springs deeded the two lots upon which the easement lies, that
4 act eliminated any justiciable controversy between the parties. *See A.R.S. §12-1832; Land*
5 *Dept. v. O'Toole, 154 Ariz. 43, 739 P.2d 1360 (App. 1987).* Cahava Springs Corp. (which
6 may no longer exist) then has no interest in this litigation under these new facts, and thus
7 all efforts taken by Freemans against Cahava would be rendered futile. Moreover any
8 ruling that would have been made by the Court would not be binding upon the new owner
9 of this real property, Morning Star Road Properties, Inc., as it would not be a party to this
10 litigation. Finally, the Court, by joining Morningstar Properties, was unable to cure the
11 defect as Morningstar Properties is not the new owner of the subject property.

12
13 Defendant Cahava Springs was obviously aware that the subject property had been
14 deeded by Special Warranty Deed to Morning Star Road Properties, Inc. Cahava's
15 counsel Gammage & Burnham, PLC was aware that the subject property had been deeded.
16 If Mr. Winney, specifically, was not aware, Mr. Martens was specifically aware, and as
17 such, the law firm that handled the legal transfer had actual knowledge and failed to inform
18 the Court or counsel. This Court cannot render a decision without first having the correct
19 parties before it.

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23 **Conclusion:**

24 Defendants' and their counsel's obligation to disclose is found in Ariz.R.Civ.P.
25 11(a) and 26.1(b). Defendants' counsel has the additional obligation to disclose under ER
26 3.3(a)(1)&(3), (b), (c), and ER 3.4 (a). Further, Cahava's attorney have duties under Rule
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1 11(a), Arizona Rules of Civil Procedure, in addition to owing duties of candor to this
2 tribunal, the responsibility to correct incorrect inaccurate trial testimony, and a host of other
3 ethical considerations.

4 Based upon the foregoing, Freemans seek the following:

- 5 a. Joinder of Morning Star Road Properties, Inc. as a defendant;
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7 b. Joinder of C.S. Investments, Inc. as a defendant;
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9 c. An under oath statement, with documentary support, regarding the legal status of
10 Defendant Cahava Springs Corp.;
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12 d. Sanctions against Cahava Springs Corp/C.S. Investments, Inc., Mark Stapp, and
13 their counsel Gammage & Burnham, PLC (George Winney and Timothy J.
14 Martens) at minimum, in the form of payment of Freemans' attorneys' fees in an
15 amount to be determined and any other equitable relief deemed appropriate by
16 the Court; and
17 e. That a culprit/contempt hearing immediately be set on these issues prior to any
18 ruling or determination of the merits of this matter.

19 A proposed Notice of Hearing is submitted herewith.

20 RESPECTFULLY submitted this 25^h day of February, 2015.
21

22 **MAHAFFY LAW FIRM, P.C.**

23 By /s/ Steven C. Mahaffy

24 Steven C. Mahaffy, ASBN 022934

25 P.O. Box 12959

26 Chandler, AZ 85248

27 *Attorneys for Plaintiffs*

1
2 **CERTIFICATE OF MAILING OR DELIVERY**

3 ORIGINAL of foregoing electronically filed
4 Via AZTurboCourt.gov

5 This 24th day of February, 2015 with:

6 The Clerk of Superior Court
7 Maricopa County, Arizona

8 Copies of the foregoing were mailed and
9 emailed this same day to:

10 Jeffrey T. Murray
11 Sims Murray Ltd.
12 2020 N Central Ave. Ste 670
13 Phoenix AZ 85004-4581
14 *Attorneys for Town of Cave Creek*

15 George U. Winney
16 Gammage & Burnham, PLC
17 Two North Central Avenue, 15th Floor
18 Phoenix, Arizona 85004
19 *Attorneys for Cahava Springs Corp.*

20 A copy of the foregoing was mailed to:

21 Donald and Shari Jo Sorchych
22 PO Box 4887
23 Cave Creek, Arizona 85327
24 *Defendants pro per*

25 By: /s/ Leah K. Mahaffy
26 Leah K. Mahaffy
27
28