

1 TONY S. CULLUM  
2 LAW OFFICE OF TONY S. CULLUM, PLLC  
3 14 EAST DALE AVENUE  
4 FLAGSTAFF, ARIZONA 86001  
5 (928) 774-2565  
6 STATE BAR I.D. No. 4160

7 Attorney for Plaintiff

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
9 IN AND FOR THE COUNTY OF GILA

10 BEAVER VALLEY IMPROVEMENT )  
11 ASSOCIATION, a domestic nonprofit )  
12 Corporation, )

13 Plaintiff, )

14 vs. )

15 BEAVER LAND, LLC, a domestic )  
16 limited liability company; its member )  
17 MICHAEL ARMSTEAD; BEAVER )  
18 VALLEY WATER COMPANY, INC., )  
19 a domestic for-profit corporation; its )  
20 sole director and president MICHAEL )  
21 ARMSTEAD, )

22 Defendants. )  
23 \_\_\_\_\_ )

NO. \_\_\_\_\_

**COMPLAINT**

(Declaratory Judgment; Preliminary  
& Permanent Injunctive Relief;  
Quiet Title for Adverse Possession)

24 COMES NOW Plaintiff, BEAVER VALLEY IMPROVEMENT  
25 ASSOCIATION, by and through its attorney undersigned, and for its claims against the  
26 named Defendants, BEAVER LAND, LLC, its member MICHAEL ARMSTEAD and  
BEAVER VALLEY WATER COMPANY, INC., its sole director and president  
MICHAEL ARMSTEAD, alleges as follows:

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**JURISDICTION AND VENUE**

1. The Court has jurisdiction to hear and determine this Complaint and to grant relief requested by virtue of Article VI, Section 14 of the ARIZONA CONSTITUTION and ARIZONA REVISED STATUTES (“A.R.S.”) § 12-123.

2. The Gila County Superior Court is the proper venue pursuant to A.R.S. § 12-401.

3. The property and events complained of herein occurred within Gila County, Arizona.

**PARTIES**

4. Plaintiff, BEAVER VALLEY IMPROVEMENT ASSOCIATION, (hereafter “Plaintiff”) is a domestic non-profit homeowner’s association organized under the laws of the State of Arizona. Defendant, BEAVER LAND, LLC (hereafter “Beaver Land”) is an active domestic limited liability company in good standing, and its known place of business is in Yavapai County, Arizona. Defendant, BEAVER VALLEY WATER COMPANY, INC (hereafter “Water Company”) is an active domestic for-profit (business) corporation in good standing, and its known place of business is in Gila County, Arizona. Defendant, MICHAEL ARMSTEAD, (hereafter “Armstead”) in his capacity as the sole member of Beaver Land and in his capacity as the sole director and president of Water Company is a resident of Gila County.

**GENERAL ALLEGATIONS FOR ALL COUNTS**

5. Plaintiff’s formation occurred on or about May 25, 1966 as a Homeowner’s Association for the Beaver Valley Estates, in Gila County, Arizona, by the Beaver Valley Development Company. Arizona Corporation Commission Entity ID # 00690714.

6. Plaintiff has enjoyed ownership, possession and/or use of the real property (Gila County Assessor Parcel Number (“APN”) 302-17-048B) described in the Litigation Guarantee Report attached hereto as Exhibit “A” for the period in excess of fifty-one (51)

1 years.

2 7. The property which is subject of this action does not embrace more than 160  
3 acres.

4 8. During this timeframe, Plaintiff granted Beaver Valley Fire District ownership  
5 of the parcel to construct a community fire station. This grant stipulated that Plaintiff  
6 would continue to enjoy “joint-use” of the facility and if the Fire District ever ceased to  
7 exist or was dissolved that the above-described property and the improvements and fixtures  
8 would revert to the ownership of the Plaintiff. This grant and stipulation was memorialized  
9 by a “Correcting Deed” recorded upon the Official Records of Gila County at Document  
10 #2004-008311 on May 26, 2004, more specifically described in Exhibit “B”, attached  
11 hereto and incorporated herein.

12 9. The parcel identified as Gila County APN 302-17-50, is located adjacent to and  
13 share the southeast boundary line of APN 302-17-048B.

14 10. In or about November 2004, Beaver Valley Fire District and then owner of APN  
15 302-17-50, Michael T Davoren, a single man, DBA Beaver Valley Water Company<sup>1</sup>,  
16 adjusted the Lot Line between the two parcels and recorded a Record of Survey upon the  
17 Official Records of Gila County at Document # 2005-003676, more specifically described  
18 in Exhibit “C”, attached hereto and incorporated herein.

19 11. On or about July 1, 2017, Beaver Valley Fire District consolidated with  
20 Whispering Pines Fire District. On this date Beaver Valley Fire District dissolved and all  
21 assets, liabilities and records were transferred to the newly formed Water Wheel Fire &  
22 Medical District. The resolution executing the consolidation was recorded upon the  
23 Official Records of Gila County at Document # 2016-009698, more specifically described  
24 in Exhibit “D” attached hereto and incorporated herein.

25 12. Based upon information and belief, Defendant Beaver Land, LLC formation

26 <sup>1</sup> Not the same entity as Defendant Beaver Valley Water Company, Inc.

1 occurred on or about August 17, 2017 as a domestic limited liability company, with  
2 Defendant Armstead as the sole member. Arizona Corporation Commission Entity ID  
3 #L22093876.

4 13. Based upon information and belief, Defendant Beaver Valley Water Company,  
5 Inc. formation occurred on or about May 8, 2017 as a domestic for-profit Utilities  
6 Corporation, with Defendant Armstead as the sole director and president. Arizona  
7 Corporation Commission Entity ID #21849911.

8 14. Based upon information and belief, Defendant Beaver Valley Water Company,  
9 Inc. is a regulated water utility, Arizona Corporation Commission Utilities Division Docket  
10 No. W-03067A.

11 15. On or about February 16, 2018, Defendants Beaver Valley Water Company and  
12 Beaver Land LLC redeemed Gila County Certificate of Purchase No. 2018-07058 for APN  
13 302-17-050 by the payment of the amount due as provided by law. More specifically  
14 described in Exhibit "E", attached hereto and incorporated herein.

15 16. On or about March 22, 2018, Michael T Davoren, a single man, DBA Beaver  
16 Valley Water Company granted APN 302-17-50 to Defendant Beaver Land LLC, via a  
17 Warranty Deed, recorded upon the Official Records of Gila County at Document # 2018-  
18 003351 on March 26, 2018, more specifically described in Exhibit "F", attached hereto and  
19 incorporated herein.

20 17. On or about September 13, 2018, Water Wheel Fire & Medical District granted  
21 parcel APN 302-17-048B back to Plaintiff.

22 18. Defendant Water Company claims ingress / egress easement and utility  
23 easement upon Plaintiff's parcel.

24 **COUNT ONE**

25 (DECLARATORY JUDGMENT)

26 19. Plaintiff hereby realleges and incorporates the foregoing allegations.

1           20.     This claim is brought pursuant to the Uniform Declaratory Judgment Act,  
2 A.R.S. § 12-1831 and ARIZONA RULES OF CIVIL PROCEDURE (“ARIZ.R.CIV.P.”) Rule 57.

3           21.     An actual controversy has arisen and now exists between Plaintiff and  
4 Defendants as to the Defendants’ rights with respect to an alleged “easement” over and  
5 upon the Plaintiff’s property.

6           22.     Defendant Armstead has made public claims that Defendant Water Company  
7 has easements and rights-of-way over and upon the Plaintiff’s property, to include a  
8 functioning 4” water main under the county-permitted structure that currently is located  
9 upon the property.

10          23.     Defendant Water Company claims, by virtue of its status as a “utility”, that it  
11 has an easement and right-of-way and may take whatever actions are necessary, including  
12 refusal of service to Plaintiff.

13          24.     Defendant Armstead alleges that the county-permitted structure poses a hazard  
14 or is in violation of federal, state or local laws, or significantly interferes with the  
15 “utility’s” access to equipment, and therefore has demanded the removal of the structure or  
16 transfer possession and ownership of the structure to Defendant Water Company for the  
17 construction of a “new water treatment plant for the benefit of the community”.

18                 WHEREFORE, Plaintiff requests that this Court enter Judgment against  
19 Defendants as follows:

- 20           a.     An Order judicially declaring the Plaintiff’s property is not servient to  
21 any easements, and there exists no easement over Plaintiff’s property for  
22 any purpose including, without limitation, water utility, pipelines, egress,  
23 and ingress or right-of-way;
- 24           b.     An Order judicially declaring Plaintiff to be the sole owner and sole  
25 possessor of the entirety of Plaintiff’s property;
- 26           c.     An Order judicially declaring that there is no cloud to or on the

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Plaintiff's property title;

- d. For an award of Plaintiff's attorneys' fees and costs pursuant to A.R.S. §12-341, which in the event of default shall not be less than \$5,000.00, together with interest at the highest rate permitted by law; and
- e. For such other and further relief as this Court deems just and appropriate under the circumstances.

**COUNT TWO**

(PRELIMINARY & PERMANENT INJUNCTION)

25. Plaintiff hereby realleges and incorporates the foregoing allegations.

26. On or about February 1, 2019, Defendants without authorization, approval, or consent of Plaintiff, entered upon Plaintiff's property, unlawfully remained, and began to excavate with shovels the area adjacent to the south side of Plaintiff's structure and under the building. Based upon information and belief, Defendants were looking for an abandoned water main. At the conclusion of the exploration (without finding any water main), Defendants left an open trench approximately 5 feet deep and extending under the foundation of the structure approximately 6 feet.

27. Defendants' recklessly defaced, tampered with, and damaged property belonging to Plaintiff in such a matter as to substantially impair its function or value. These actions caused a life, health and safety hazard. To date Defendants have refused or ignored repeated requests to repair their damage.

28. On or about February 8, 2019, Defendants' began earth work operations of surface water located on Defendant Beaver Land property. Defendants' piled the sludge from the operation on the northern portion of Defendant Beaver Land property, immediately adjacent to Plaintiff's property. The sludge combined with the naturally occurring precipitation, which caused the sludge to landslide onto Plaintiff's property.

29. Defendants' reckless and negligent actions are the proximate cause of damage

1 to Plaintiff's property. To date Defendants have refused or ignored repeated requests to  
2 repair their damage.

3 30. Plaintiff is entitled to recover its attorney's fees and costs incurred in this matter  
4 pursuant to A.R.S. §§ 12-341 and 12-349.

5 WHEREFORE, Plaintiff requests this Court grant Plaintiff Judgment against  
6 Defendants, awarding the Plaintiff the following relief:

- 7 a. Preliminary and permanent injunction directing that Defendants be  
8 ordered to avoid, refrain, and restrict Defendants' access and/or entry  
9 onto any and all portions of the Plaintiff's property, at all times, *unless*  
10 Plaintiff specifically requests and requires service to the water  
11 connection to the utility property used in furnishing service;
- 12 b. Preliminary and permanent injunction directing that Defendants  
13 immediately fix, repair, and remediate the damage caused by the  
14 exploratory excavation and landside, with services obtained by a  
15 qualified, licensed, and bonded structural engineer and an qualified,  
16 licensed, and bonded contractor to execute the structural engineer plans;
- 17 c. Preliminary and permanent injunction directing that Defendants be  
18 ordered to avoid, refrain, and restrict Defendants' claims of easement,  
19 right-of-way, ownership, or any other interest in Plaintiff's property;
- 20 d. For reasonable attorney's fees and costs pursuant to A.R.S. §§ 12-341  
21 and 12-349;
- 22 e. For pre- and post-judgment interest at the maximum legal rate; and  
23 f. For such other and further relief this Court deems just and proper.

24 **COUNT THREE**

25 (QUIET TITLE)

26 31. Plaintiff hereby realleges and incorporates the foregoing allegations.

1           32.     On or about March 3, 2005, Beaver Valley Fire District caused the survey of the  
2 southeastern lot boundary to locate the adjusted lot line. (See Exhibit "C") The parties at  
3 the time failed to execute and record a deed for this lot line adjustment. Based upon  
4 information and belief, this adjustment was for the expansion of the Fire District Building,  
5 Gila County issued the necessary building permits and approved the Certificate of  
6 Occupancy at the conclusion of the construction.

7           33.     The Lot line adjustment caused the loss of approximately 246.96 square feet or  
8 0.01 acres +/- from the adjacent Lot.

9           34.     Plaintiff and its predecessor under the claim of ownership used this property in  
10 open, notorious, continuous, and visible adverse occupation and use of now Defendant  
11 Beaver Land's property for more than ten (10) years. Plaintiff is entitled to fee title to said  
12 property pursuant to A.R.S. § 12-526.

13           35.     Defendants' assert a claim in and to this property, possessed and used by  
14 Plaintiff for more than fifteen years, more than thirteen years before Defendants' became  
15 owner of their property.

16           36.     On April 17, 2019, Plaintiff duly attempted to resolve this matter by sending,  
17 via certified mail, return receipt requested to Defendants, a quit-claim deed pursuant to  
18 A.R.S. § 12-1103, correctly describing the property therein and tendering a check in the  
19 amount of \$5.00.

20           37.     Defendants' signed for the certified mail on April 19, 2019.

21           38.     Defendants' failed to execute and return the quit-claim deed, entitling Plaintiff  
22 to seek attorney's fees and costs in this action, pursuant to A.R.S. § 12-1103.

23           39.     Pursuant to A.R.S. § 12-1101(A), Plaintiff is entitled to judgment against  
24 Defendants' quieting title in favor of Plaintiff and barring and forever estopping  
25 Defendants from having or claiming any right, title, or interest in said real property  
26 described herein.




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WHEREFORE, Plaintiff request this Court grant Plaintiff Judgment against Defendants awarding the Plaintiff the following relief:

- a. An Order declaring Plaintiff is entitled to fee ownership of the property illustrated in Exhibit C by the virtue of adverse possession.
- b. An Order barring and forever estopping Defendants, and each of them, from having or claiming any right, title, or interest in said real property.
- c. For an award of Plaintiff's attorneys' fees and costs pursuant to A.R.S. §12-341, which in the event of default shall not be less than \$5,000.00, together with interest at the highest rate permitted by law; and
- d. For such other and further relief as this Court deems just and appropriate under the circumstances.

DATED this 27<sup>th</sup> day of August, 2019.

LAW OFFICE OF TONY S. CULLUM, PLLC.

By   
Tony S. Cullum  
14 E. Dale Ave.  
Flagstaff, Arizona 86001  
*Attorney for Plaintiff*

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LIST OF EXHIBITS ATTACHED

- Exhibit A – Litigation Guarantee Report
- Exhibit B – Correcting Deed dated May 24, 2004
- Exhibit C – Record of Survey dated March 3, 2005
- Exhibit D – Resolution dated October 19, 2016
- Exhibit E – Redemption Certificate dated June 15, 2018
- Exhibit F – Warranty Deed dated March 26, 2018

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STATE OF ARIZONA )  
 )ss.  
County of Maricopa )

GAIL BELLINGER, upon his oath, deposes and says:

That he is the Secretary of the above named Plaintiff corporation and is duly authorized to make this verification on behalf of Plaintiff; that he has read the foregoing Complaint and knows the contents thereof; that the allegations contained therein are true of his own knowledge, except those matters stated upon information and belief and, as to such matters, he believes them to be true.

Gail Bellinger  
GAIL BELLINGER

SUBSCRIBED AND SWORN to before me this 23rd day of August, 2019, by GAIL BELLINGER.

Leah Wood  
Notary Public

My Commission Expires:

2-14-23

