

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-008702

01/13/2004

HONORABLE KENNETH L. FIELDS

CLERK OF THE COURT
D. Whitford
Deputy

FILED: 01/15/2004

MONTANA DEL SOL CONDOMINIUM
ASSOCIATION

JOYCE J KAPSAL

v.

JWE SPRING OAKS LLC, et al.

JONATHAN C BURWOOD

JACK G BARONE
STEVEN R BARTELL
WILLIAM H DOUGLAS
ANDREW M FEDERHAR
DOUGLAS H FITCH
FREDERICK G GAMBLE
JOHN T GILBERT
BRIAN L HENRY
MICHAEL W HERZOG
JOSEPH A KULA
DAVID E MCDOWELL
ANDREW PESHEK
GREGORY A ROSENTHAL
JONATHAN D SCHNEIDER
GARY M SUNDBERG
MICHAEL WARZYNSKI
DAVID R GREEN
KATHERINE CORCORAN
JASON M KELLY
DREW M GULLY
ADAM B CAMPBELL
JOHN H CLINE
JULIE G OGAWA
M DUNCAN SCOTT
RINA K RAI
DOUGLAS A LUSSON

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CASE MANAGEMENT ORDER #1

The Court, previously having designated this action a complex civil case and thereby finding that it requires specialized management to avoid placing unnecessary burdens on the Court and the litigants, issues this Case Management Order #1 to govern the action as to the procedures and issues set forth herein until and unless further modified by the Court. **THIS CASE BY ITS DESIGNATION AS A COMPLEX CASE REQUIRES ELECTRONIC FILING UNDER LOCAL RULE/ADMINISTRATIVE ORDER. NO PAPER FILING WILL BE ACCEPTED ABSENT PRIOR APPROVAL OF THE COURT.**

1. SERVICE OF THIS ORDER.

A copy of this Order, and any subsequent Case Management Order issued, shall be served with the operative Complaint and any operative Cross-Complaint or Third-Party Complaint bringing in a new party, whereupon each Order shall bind such newly appearing party unless the Court grants the party relief therefrom upon motion for good cause shown. Failure to comply with this paragraph by the serving party will not bind the party served to this or to additional orders until such party is served by any party to the action with such orders.

2. ADDITIONAL DEFENDANTS AND CROSS-DEFENDANTS.

Given the age of this case and advanced preparation by all parties no new defendants and/or cross-defendants will allowed in the case absent prior order of the Court.

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3. MEDIATOR

The parties hereby agree to use Alternative Dispute Resolution processes and agree to utilize the services of the Honorable Lawrence H. Fleishman, Superior Court Judge Ret., as a mediator in this matter. All parties are to have a person with settlement authority present at all mediation sessions unless the Mediator gives prior approval to the absence or telephonic appearance of such person.

4. DISCOVERY/DISCLOSURE.

4.1 Document Depository. A Document Depository shall be established at Paulson Reporting Service Inc, 3350 N. Central Ave, Phoenix, AZ 85012.

4.2 Deposit of Pleadings and Documents. A copy of all pleadings served by a party after Dec 15, 2003 shall be filed electronically and all documents for disclosure and discovery shall be deposited in the Document Depository so all parties may obtain them from the Depository rather than the other parties.

A. For purposes of this section, the term "document" shall mean any written, printed, typed, photocopied, photographic, recorded or encoded matter or communication of any kind; however, produced, stored or reproduced, including, but not limited to, data processing cards and tapes, audio tapes, videotapes, computer printouts, computer disks, correspondence, letters, analyses, reports, notes, diaries, calendars, account statements, confirmations, bank advice, telegrams, cables, telexes, notes, memoranda, reports, diaries, calendars, photographs, charts, minutes of meetings, contracts, agreements and amendments and addenda thereto, financial journals and ledgers, bookkeeping records, promotional literature, sales literature, prospectuses, offering circulars, interoffice communications, accountings, projections, statistical records, appointment books, time sheets and logs, chronological files,

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reading files, and all other materials, including drafts and other copies of any of the foregoing which are or have been in your possession, custody or control, or of which you have knowledge or to which you may gain access or possession. The term “document” also means a copy where the original is not in a party’s possession, custody or control or reasonably accessible. This definition includes each copy of each document that is not an exact duplicate of the original and includes every duplicate having any writing, figure, notation or the like on it, drafts of each document, and any attachment to or enclosure accompanying or referred to in such document.

B. Any problems or questions which arise concerning these procedures shall be addressed to the Court.

4.3 Copying and Indexing. Documents are to be deposited with a consecutive bate number and a unique prefix to designate the depositing party. The depositing party shall serve a Notice of Compliance electronically with an index of descriptions and bate numbers for each deposit on all parties and the depository.

4.4 Costs of Compliance. The depositing party shall bear its own costs for utilizing the depository. The fees for utilizing the Depository shall be set by the custodian of same.

4.5 Statement of Work/Insurance. Attached as Exhibit “2” and Exhibit “3” are, respectively, Verified Statement of Work and an Insurance Questionnaire, both of which shall be answered under oath by all defendants and/or cross-defendants. Responses, verified under oath, shall be served on all parties and placed in the Document Depository not later than sixty (60) days of the date of this Order or within sixty (60) days of first appearance, whichever is later.

4.6 Within sixty (60) days of the party’s first appearance or sixty (60) days of the date of this Order, each defendant and/or cross-defendant shall complete, and serve on all parties, a written statement identifying each primary and first layer excess or umbrella insurance carrier and each policy from each carrier which, from the date construction first began at the project

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through the present, are providing or may provide coverage to them for the claims asserted by Plaintiff and/or any other party to this action, including any policies that party is named as an additional insured. The parties shall deposit said policies that are in the custody or control of that party.

4.7 No Admission of Admissibility. Submission of this insurance information shall not be deemed an admission by any party that such information can be introduced into evidence at trial.

4.8 Preservation of Records. Each party shall preserve all documents and other records containing information potentially relevant to the subject matter of this litigation. Each party shall also preserve any physical evidence or potential evidence and shall not conduct any testing that alters the physical evidence without notifying opposing counsel and, unless counsel stipulate to the test, without obtaining the court's permission to conduct the test. Subject to further order of the court, parties may continue routine erasures of computerized data pursuant to existing programs, but they shall immediately notify opposing counsel about such programs and preserve any printouts of such data. Requests for relief from this directive will receive prompt attention from the court.

4.9 The deadline for all site inspections is April 16, 2004.

4.10 All non-expert witnesses for all parties shall be disclosed no later than Nov 19, 2004.

4.11 All discovery will be complete by Dec 17, 2004.

4.12 Rule 43, Az Rules of Civil Procedure, shall apply to oral depositions.

4.13 All initial Rule 26.1 disclosure shall be complete by Jan 30, 2004.

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5. DEFECT LISTS, EXPERT REPORTS & COST OF REPAIR.

5.1 Preliminary Defect List. Plaintiff has already served a defect list.

5.2 Amendments to Defect List. Plaintiff may amend, supplement or change the Defect List in good faith subject to Court order.

5.3 Cost of Repair and Expert reports. Plaintiff deposited as of Nov 14, 2003 in the depository a Cost of Repair and Expert Reports. **Defendants** shall deposit Cost of Repair and Expert Reports by **April 30, 2004.** **Third Party Defendants** shall deposit Cost of Repair and Expert reports by **June 14, 2004.**

5.4 All expert fees are to paid by the party responsible within 30 days of the date of receipt of the billing.

6. INTRUSIVE TESTING.

Plaintiff, in conjunction with the other parties, shall notice the dates of the destructive testing in a reasonable time, and shall provide at least two weeks prior notice.

7. PLAINTIFF'S REPAIRS.

Except for repairs to a plumbing leak, roof leak or a life/safety issue, as to which Plaintiff shall give as much advance notice as possible under the circumstances, if possible, Plaintiff shall give at least forty-eight (48) hours advance notice of emergency repair work performed by it which relates to an alleged defect put at issue in this lawsuit in order to allow Defendant/Cross-Defendants and their experts to observe and photograph the condition and the repair. At least seven (7) days written notice is to be given to all parties prior to any non-emergency repairs. Any Defendant/Cross-Defendant who intends to observe, photograph or otherwise record any repairs must give the Plaintiff at least twenty-four (24) hours notice if the Plaintiff has provided at least seven (7) days notice of such repairs. If Plaintiff has given less than seven (7) days notice of repairs, then any Defendant/Cross-Defendant who intends to observe, photograph or

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otherwise record any repairs must give the Plaintiff as much notice as possible under the circumstances. If no notice is possible, Plaintiff shall photograph or videotape the repairs.

8. MEET AND CONFER SESSIONS.

The Court deems it necessary and appropriate to encourage all counsel to meet and confer to discuss, inter alia, the issues, damages, liability and claims to determine what discovery is necessary, what discovery may be mutually agreed upon, and to help evaluate the case. In addition, the Court may order the parties to attend a Meet and Confer session, as deemed necessary and appropriate by the Court.

9. Management Conferences.

The Court will conduct management conferences approximately every ninety (90) days in order to ensure the orderly processing of this case. The next management conference will be at 9:00 am on Mar 26, 2004 at 1:30 P.M. in this courtroom. Counsel may submit agenda items ten (10) days in advance of the conference. A final management conference will occur 60 days before the trial.

10. Liaison Counsel.

Because of the large number of third party defendants, the third party defendants shall designate liaison counsel to work with defendants and plaintiffs. At this time the Court understands liaison counsel to be Rena Rai and Duncan Scott.

11. Motions.

- 11.1 No additional motions for summary judgment shall be filed until prior order of the Court. Para Drywall's Motion for Summary Judgment is set for oral argument on Mar 26, 2004 at 1:30 P.M.

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11.2 All Motions to Dismiss have been filed and are set for Oral argument on **Mar 26, 2004 at 1:30 P.M.**

12. Trial.

The trial of this matter will begin on **February 23, 2005 at 9:00 A.M.** and is scheduled for **20 trial days** before a jury.

EXHIBIT "1" - CASE MANAGEMENT TIME LINE

Plaintiff's Defect List	Completed
Filing of Third-party Complaint	N/A
Site Inspection Deadline	April 16, 2004
Defect Report / Cost of Repair	Defendants' due 4-30-04 3 rd Party Defendants' due 6-14-04
Notice of Invasive Testing by Defendants and Third-Party Defendants	N/A
Invasive Testing by Defendants	N/A
Expert Reports Deadline	Defendants' due 4-30-04 3 rd Party Defendants' due 6-14-04
Deadline for Completion of Discovery	Dec 17, 2004
Mediation	Feb 19 & 20, 2004
Initial 26.1 Disclosure Complete	Jan 30, 2004
20 day Jury Trial	Feb 23, 2005

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EXHIBIT "2" - VERIFIED STATEMENT OF WORK

1. Name of Party:

2. Name of Trial Attorney

3. Detailed description of work and/or service performed:
4. Location of work and/or services performed (by phase number, unit number or building number):
5. Inclusive dates between which work was performed
6. Identity of person or entity with whom you contracted to perform the above-described work:
7. Did you supply materials? _____. if you supplied materials, describe all materials you provided:
8. If you supplied materials, identify the person or entity, including the names, address and telephone number, from whom you purchased the materials:
9. Did you subcontract any of the work that was to be performed by you to another person or entity?
10. If you did subcontract any of the work to another person or entity, identify the subcontracted work and the person or entity, including the name, address and telephone number to whom you subcontracted the work.

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11. If you did subcontract any of the work to another, was that subcontract in writing?
12. Detailed description of all locations within the project (by tract number, lot letter, phase number and lot number) upon which you performed work.
13. Detailed description of all locations within the project (by tract number, lot letter, phase number and unit number) for which you acted as the builder.
14. Detailed description of all locations within the project (by tract number, lot letter, phase number and unit number) for which you acted as the developer or co-developer.
15. Detailed description of all repairs made by you or on your behalf at the project, including location thereof by tract number, lot letter, lot number and phase number.

EXHIBIT "3" - INSURANCE QUESTIONNAIRE

1. Name of Party: _____

2. Name of insurance carriers who may have coverage obligations, including, but not limited to, all carriers to whom the claim has been tendered:
Name: _____
Address: _____
Telephone no.: _____
Supervising claims adjuster: _____
3. Type of policy: _____
4. Effective dates of policy: _____
5. Identity of all named insureds: _____
6. Identity of all additional insureds who are parties to the action: _____

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7. Is the carrier: _____excess _____ primary
8. Policy no.: _____
9. Policy limits: _____
10. Name, address and phone number of coverage counsel (if any): _____

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11. Has coverage been denied? _____yes _____no.
12. Has coverage been revoked? _____yes _____no.

The foregoing is all in accordance with the formal written Case Management Order #1 signed by the Court on January 13, 2004 and filed (entered) by the clerk on January 13, 2004.