

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

02/10/2009

HONORABLE EDDWARD BALLINGER, JR.

CLERK OF THE COURT
R. Tomlinson
Deputy

402 NOW L L C, et al.

LAWRENCE K LYNDE

v.

REGENCY HOUSE ASSOCIATION

BRIAN W MORGAN

MARK D ZUKOWSKI

**TRIAL SETTING MINUTE ENTRY
ORAL ARGUMENT SET**

NORTHEAST COURTROOM 112

9:01 a.m. This is the time set for a Comprehensive Pretrial Conference. All parties appear telephonically. Appearing on behalf of the Plaintiffs and Third-Party Defendant is counsel, Lawrence Lynde. Appearing on behalf of Defendant/Counterclaimant Regency House Assoc. are co-counsel, Brian Morgan and Mark Zukowski.

A record of the proceedings is made by CD/videotape in lieu of a court reporter.

Court and counsel discuss the status of the case and scheduling matters.

With respect to the parties' pending cross-motions for summary judgment,

IT IS ORDERED setting Oral Argument on the motions for summary disposition on **March 26, 2009 at 8:30 a.m. (30 minutes allotted)** in this division. Counsel are directed to hand deliver any/all responses and replies to the cross-motions.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

02/10/2009

Discussion is held with respect to Defendant/Counterclaimant Regency House Assoc.'s Motion to Dismiss Counterclaim and request for oral argument.

IT IS ORDERED denying the request for oral argument.

IT IS FURTHER ORDERED denying the motion to dismiss.

IT IS FURTHER ORDERED setting a **Three-Day** Jury Trial on **August 10, 11, and 12, 2009 at 9:30 a.m.** before:

**HONORABLE EDDWARD P. BALLINGER JR.
SUPERIOR COURT OF ARIZONA
NORTHEAST REGIONAL COURT CENTER
18380 NORTH 40TH STREET
COURTROOM 112
PHOENIX, ARIZONA 85032
602.506.8551**

THIS IS A FIRM TRIAL SETTING.

IT IS FURTHER ORDERED setting a telephonic Pretrial Management Conference on **August 3, 2009 at 9:15 a.m.** The Pretrial Management Conference shall be governed by the Pretrial Management Orders issued this date. Counsel for Plaintiff is to initiate the conference call to this division. **The parties and counsel shall not be permitted to participate in conferences via cell phones.**

No information disclosed after the dates contained in the order may be used at the trial absent court order on motion and affidavit.

IT IS FURTHER ORDERED continuing the matter on the Inactive Calendar through and including **August 31, 2009.**

The proceedings will take place in the Superior Court's new "e-courtroom." A record of the proceedings will often, but not always, be made by FTR in lieu of a court reporter. If a court reporter is required, the Court must receive a written request prior to the Trial Management Conference set. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may request a CD of the proceedings for a \$20.00 charge. If a CD is requested, please obtain a form from the Self Center to request a daily copy of a court hearing or trial proceeding

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

02/10/2009

being conducted and pay the applicable fee. Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it.

If the parties are not familiar with the courtroom's technology, they are encouraged to set up an appointment with the court's technology liaison at 602.372.7877.

9:22 a.m. Hearing concludes.

PRETRIAL STATEMENT ORDERS

1. IT IS ORDERED that the Joint Pretrial Statement (JPTS) in accordance with Rule 16(d), A.R.Civ.P., is due in this division by **5:00 p.m., July 27, 2009.**

2. IT IS FURTHER ORDERED the Joint Pretrial Statement shall contain the following:

(A) Stipulations of material fact and law;

(B) Such contested issues of fact and law as counsel can agree are material or applicable;

(C) A separate statement by each party of other issues of fact and law believed by that party to be material;

(D) A list of witnesses intended to be used by each party during trial. Each party shall list any objections to a witness and the basis for that objection. No witness shall be used at the trial other than those listed, except for good cause shown. Witnesses whose testimony will be received by deposition testimony only will be so indicated;

(E) Each party's final list of exhibits to be used at trial for any purpose, including impeachment. Plaintiffs shall deliver copies of all of their exhibits to all parties twenty days before the final pretrial conference. All other parties shall deliver copies of all their exhibits to all parties fifteen days before the final pretrial conference. Any exhibit that cannot be reproduced must be made available for inspection to all parties on or before the deadlines stated above. Each party shall list any objections to an exhibit and the basis for that objection. No exhibit shall be used at the trial other than those listed, except for good cause shown. The parties shall indicate any exhibits which the parties stipulate can be admitted into evidence, such stipulations being subject to court approval;

(F) A statement by each party indicating any proposed deposition summaries or designating portions of any deposition testimony to be offered by that party at trial, other than for

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

02/10/2009

impeachment purposes. Deposition testimony shall be designated by transcript page and line numbers. A copy of any proposed deposition summary and written transcript of designated deposition testimony should be filed with the Joint Pretrial Statement. Each party shall list any objections to the proposed deposition summaries and designated deposition testimony shall be used at trial other than that designated or counter-designated or for impeachment purposes;

(G) A brief statement of the case to be read to the jury during voir dire. If the parties cannot agree on this statement, then each party shall submit a separate statement to the judge who will decide the contents of the statement to be read to the jury;

(H) Technical equipment needed or interpreters requested;

(I) The number of jurors and alternates agreed upon, whether the alternates may deliberate, and the number of jurors required to reach a verdict;

(J) Whether any party will invoke *Rule 615 of the Arizona Rules of Evidence* regarding exclusion of witnesses from the courtroom; and

(K) A brief description of settlement efforts.

3. **IT IS FURTHER ORDERED** at the time of the filing of the joint pretrial statement, the parties shall file (A) an agreed-upon set of jury instructions, proposed verdict forms, and voir dire questions and (B) any additional jury instructions, verdict forms, and voir dire questions requested, but not agreed upon, (C) a statement by each party on how a verbatim record of the trial will be made (i.e., cd/videotape or court reporter).

4. **IT IS FURTHER ORDERED** each party intending to submit a jury notebook to the jurors shall submit a copy of the notebook to opposing counsel five days before the final pretrial conference, or if no conference is scheduled, five days before the trial.

5. **IT IS FURTHER ORDERED** each party who will be submitting a trial memorandum shall file such memorandum five days before the final pretrial conference, or if no conference is scheduled, five days before the trial.

MOTIONS IN LIMINE

Pursuant to Rule 7.2(a) ARCP, counsel shall meet and confer to discuss and identify any disputed evidentiary issues that are anticipated to be the subject of motions in limine. The parties are directed to provide the court with a written report of agreements reached at the conference so that the court can enforce such agreements. At the time of filing any motions in

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

02/10/2009

limine, counsel shall also provide the court notice that counsel have met in person prior to the filing of said motions in limine or the motion(s) may be stricken.

Motions in limine shall be filed only in accordance with Rule 7.2, Ariz. R. Civ. P. Motions in limine shall be filed thirty (30) days before the PTMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972). No “prophylactic” motions in limine may be filed. A written response to a motion in limine may be filed no later than ten (10) days thereafter. The Court will rule on the motions in limine without oral argument. If the Court wishes to hear argument, the argument will be heard at the PTMC. No replies shall be filed.

DISPOSITIVE MOTIONS

All motions, other than motions in limine, shall be filed **not later than ninety (90) days prior to the date set for trial** unless otherwise ordered by the court.

Notices of Settlement

In accordance with the provisions of A.R.C.P. 41(a), to be effective, any Notice of Settlement or Dismissal providing for resolution of one or more pending claims that is filed after service by the opposing party’s answer or dispositive motion, must be signed by each affected party (or appropriate counsel) prosecuting or defending against the claim(s) covered by the Notice. Each filed Notice shall state whether it resolves all pending issues in the case and constitutes a representation to the Court that the claims subject to the Notice have been fully resolved with respect to Notice signatories, and that the only further relief to be sought with respect to such claims is entry of an order that each signatory confirms is consistent with the agreement that gave rise to filing of the Notice.

ATTACHED: SAMPLE FORMAT FOR TIME ESTIMATE FORM AND EXHIBIT PROCEDURES

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

02/10/2009

CAUSE NUMBER

CASE CAPTION

PLAINTIFF'S COUNSEL

DEFENDANT'S COUNSEL

(NOTE: Add additional lines as needed for additional parties and or witnesses.)

TIME ESTIMATES FOR TRIAL

Opening Statement and Closing Argument

PLAINTIFF'S OPENING STATEMENT	
DEFENDANT'S OPENING	
PLAINTIFF'S CLOSING	
DEFENDANT'S CLOSING	
PLAINTIFF'S REBUTTAL	

Estimate of Time for Witness Examination

PLAINTIFF'S WITNESSES	DIRECT EXAMINATION	CROSS EXAMINATION	REDIRECT EXAMINATION

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

02/10/2009

Estimate of Time for Witness Examination

DEFENDANT'S WITNESSES	DIRECT EXAMINATION	CROSS EXAMINATION	REDIRECT EXAMINATION

GUIDELINES FOR COUNSEL WHEN PREPARING EXHIBITS FOR USE IN COURT

COUNSEL PLEASE READ

Exhibits are due to the Court not later than five (5) business days prior to the trial unless there are more than 100 exhibits in which case they shall be due not later than ten (10) Judicial days prior to trial.

If Defendant's exhibits are received prior to Plaintiff's exhibits, the Clerk may mark them first with Plaintiff's exhibits following.

Exhibits will be marked consecutively. If your list refers to an exhibit and it is not provided at the time of marking, the numbers of all following exhibits will be moved up. *The clerk cannot reserve numbers for exhibits that will be provided at a later date.* Exhibits will be marked as they are received. Do not list "Any and all exhibits listed by"

Each multiple page exhibit must be securely fastened together by staple or other means. NO PAPER CLIPS OR RUBBER BANDS may be used. If Acco fasteners are used they must be long enough to fasten securely.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

02/10/2009

EXHIBIT LIST			
Exhibit No.	Identified By	Description	Stipulated in Evidence/ Objection

The foregoing are based on the best estimates of counsel of the time reasonably needed to complete the necessary examination of the witnesses listed.

Counsel for Plaintiff

Counsel for Defendant