

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2013-007263

02/24/2015

HON. RANDALL H. WARNER

CLERK OF THE COURT  
K. Ballard  
Deputy

JEFFREY SALLUS, et al.

JAMES ROBERT ECKLEY

v.

SUNRISE DESERT VISTAS PROPERTY  
OWNERS ASSOCIATION INC, et al.

GUY W BLUFF

LARRY D LANGLEY

HEARING

**Courtroom: ECB-512**

8:33 a.m. This is the time set for oral argument regarding (1) Defendants' December 3, 2014 Motion to Strike Plaintiff's [sic] Untimely and Prejudicial Expert Disclosure; (2) Plaintiffs' December 19, 2014 Motion to Exclude Standard of Care Type Expert Testimony and (3) Defendants' December 23, 2014 Motion to Dismiss Plaintiffs' Amended Complaint. Plaintiffs are represented by Counsel John Harris (appearing in place of J. Robert Eckley). Defendants are all represented by Counsel Jill L. Ormond (appearing in place of Larry D. Langley). Plaintiff Suzanne Sallus is also present.

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

Oral argument is presented.

**IT IS ORDERED** taking these issues under advisement.

**IT IS FURTHER ORDERED** affirming the **April 21, 2015** scheduling conference set for **9:00 a.m.** in this division. Time allotted: **(30 minutes)**.

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**IT IS FURTHER ORDERED** that the conference will now be conducted **in person** and all parties will be present at the conference.

**The Honorable Randall H. Warner  
Maricopa County Superior Court  
East Court Building  
101 W. Jefferson  
5th Floor, Courtroom 512  
Phoenix, AZ 85003  
Phone: 602-372-2966  
Fax: 602-372-8746**

**NOTE:** All court proceedings are recorded by audio and video method and not by a court reporter. Any party may request the presence of a court reporter by contacting this division (602-372-2966) three (3) court business days before the scheduled hearing.

Defendants' counsel requests the court's assistance in obtaining a secure location for the remaining depositions in this matter. Counsel further indicates that the remaining depositions have all been scheduled for the same day.

Counsel is directed to submit this request in writing.

9:10 a.m. Matter concludes.

**Later**

The court rules as follows.

**1. Defendants' Motion to Dismiss Amended Complaint.**

Defendants seek dismissal of claims asserted by Mr. and Mrs. Sallus for various reasons. Because the Salluses were the original named Plaintiffs, the operative filing date for statute of limitations purposes is May 13, 2013, when the original complaint was filed. The fact that they listed themselves as trustees and not as individuals does not make a difference in light of the substantive allegations in the complaint.

Based on Plaintiffs' allegations, a jury could find that claims accrued after May 13, 2012. Dismissal is not warranted on statute of limitations grounds.

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Dismissal also is not warranted for lack of indispensable parties. When one sues an entity for breach of contract, its directors do not need to be joined as defendants.

Finally, the amended complaint adequately alleges a basis for punitive damages.

**IT IS ORDERED** denying the Motion.

**2. Defendants' Motion to Strike Expert Disclosure.**

The court construes this Motion as one to preclude testimony. The court finds that Plaintiffs' rebuttal expert opinions were not timely disclosed, that there was not good cause for late disclosure and that the untimeliness was not harmless. Plaintiffs had ample time under the amended scheduling order.

**IT IS ORDERED** granting the Motion and precluding Plaintiffs from offering Mr. Schippel or Mr. Bainbridge as witnesses.

**3. Plaintiffs' Motion to Exclude Standard of Care Type Expert Testimony.**

The court cannot find at this stage that Defendants' standard of care expert will offer no admissible testimony. The admissibility of particular opinions can be determined at trial.

**IT IS ORDERED** denying the Motion.