

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-091936

01/29/2016

HON. DAVID K. UDALL

CLERK OF THE COURT  
K. Tiero  
Deputy

SUNSET VISTA HOMEOWNERS  
ASSOCIATION INC

BEN J HIMMELSTEIN

v.

SANTARRA COMMUNITY ASSOCIATION

HOYT SHAY NEAL

STEVEN J HULSMAN  
MARIA R KUPILLAS  
COURT ADMIN-CIVIL-ARB DESK

MINUTE ENTRY

The Court has received Defendant Sunset Vista Homeowners' Association's Controverting Certificate of Arbitration in this case, filed November 30, 2015. No objection has been filed.

The Court has reviewed the Complaint, Defendant Sunset Vista Homeowners' Association's Answer and Controverting Certificate, Defendant Santarra Community Association's Answer and Counterclaim and Controverting Certificate, and the Court's minute entry ruling of September 4, 2015, which found that this case is subject to compulsory arbitration.

After review,

THE COURT FINDS this case is no longer subject to compulsory arbitration.

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IT IS ORDERED vacating the Court's minute entry order of September 4, 2015, and overruling Defendant Sunset Vista Homeowners' Association's Controverting Certificate and removing this case from Arbitration.

The Court notes that more than 180 days have elapsed since the commencement of this action. The parties are directed to Rules 16 and 38.1, Ariz. R. Civ. P., which were amended effective April 15, 2014.

IT IS ORDERED as follows:

The parties shall meet personally to discuss all of the matters set forth in Rule 16(b) Arizona Rules of Civil Procedure, and the parties shall file with the Court by **5:00 p.m. on February 29, 2016** a Joint Report and Proposed Scheduling Order for discovery, motion and disclosure deadlines **in the form attached hereto**, which are substantially in the form set forth in Forms 11-13, Ariz. R. Civ. P. 84, Appendix of Forms. **Counsel shall upload and e-file all proposed orders in WORD format to allow for possible modification by the Court if needed.**

The Court will review the Joint Report and Proposed Scheduling Order and may adopt or modify the Proposed Scheduling Order, set a scheduling conference to resolve disputed items, or resolve the disagreements without argument.

If counsel are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in their Proposed Order.

Upon entry of the Scheduling Order, the Court will schedule a status conference as soon as possible following the deadline for the completion of discovery for the purpose of assigning a trial date. At the status conference, if the parties have completed discovery and are ready for trial, the Court will set firm dates for the final pretrial management conference and for trial. If the parties are not ready for trial, the matter may be placed on the Dismissal Calendar for dismissal within sixty (60) days.

If the parties feel a status conference is necessary at this stage of the litigation, they should address the reasons why in the first paragraph of the Proposed Scheduling Order.

**If a Joint Report and Joint Proposed Scheduling Order are not timely submitted, the Court will place or extend the matter on the Dismissal Calendar for dismissal in sixty (60) days.**

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**JOINT REPORT**

The parties signing below certify that they have conferred about the matters set forth in Rule 16(d), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 14 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

***1. Brief description of the case:***

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- If a claimant is seeking other than monetary damages, specify the relief sought

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***2. Current case status:*** Every defendant has been served or dismissed.  yes  no

- Every party who has not been defaulted has filed a responsive pleading.  yes  no
- Explanation of a “no” response to either of the above statements:

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***3. Amendments:*** A party anticipates filing an amendment to a pleading that will add a new party to the case:  yes  no

***4. Special case management:*** Special case management procedures are appropriate:  
 yes  no

If “yes,” the following case management procedures are appropriate because:

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***5. Settlement:*** The parties agree to engage in settlement discussions with  a settlement judge assigned by the court, or  a private mediator. The parties will be ready for a settlement conference or a private mediation by \_\_\_\_\_.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s) why:

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**6. Readiness:** This case will be ready for trial by \_\_\_\_\_ -  
\_\_\_\_\_.

**7. Jury:** A trial by jury is demanded.  yes  no

**8. Length of trial:** The estimated length of trial is \_\_\_\_\_ days.

**9. Summary jury:** The parties agree to a summary jury trial.  yes  no

**10. Preference:** This case is entitled to a preference for trial pursuant to the following statute or rule:  
\_\_\_\_\_.

**11. Special requirements:**  At a pretrial conference and/or  at trial, a party will require  
 disability accommodations (specify) \_\_\_\_\_  
 an interpreter (specify language) \_\_\_\_\_

**12. Scheduling conference:** The parties request a Rule 16(d) scheduling conference.  
 yes  no

If requested, the reasons for having a conference are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**13. Other matters:** Other matters that the parties wish to bring to the court's attention that may affect management of this case: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**14. Items upon which the parties do not agree:** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:  
\_\_\_\_\_  
\_\_\_\_\_.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
For Plaintiff

\_\_\_\_\_  
For Defendant

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**PROPOSED SCHEDULING ORDER**  
**STANDARD CASE**

Upon consideration of the parties' Joint Report, the court orders as follows:

**1. Initial disclosure:** The parties have exchanged their initial disclosure statements, or will exchange them no later than \_\_\_\_\_.

**2..Expert witness disclosure:** The parties shall simultaneously disclose areas of expert testimony by \_\_\_\_\_. (Alternative: Plaintiff shall disclose areas of expert testimony by \_\_\_\_\_, and Defendant shall disclose areas of expert testimony by \_\_\_\_\_.)

The parties shall simultaneously disclose the identity and opinions of experts by \_\_\_\_\_. (Alternative: Plaintiff shall disclose the identity and opinions of experts by \_\_\_\_\_, and Defendant shall disclose the identity and opinions of experts by \_\_\_\_\_.)  
The parties shall simultaneously disclose their rebuttal expert opinions by \_\_\_\_\_.

**3..Lay (non-expert) witness disclosure:** The parties shall disclose all lay witnesses by \_\_\_\_\_. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates \_\_\_\_\_.)

**4. Final supplemental disclosure:** Each party shall provide final supplemental disclosure by \_\_\_\_\_. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

**No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.**

**5. Discovery deadlines:** The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by \_\_\_\_\_. The parties will complete the depositions of parties and lay witnesses by \_\_\_\_\_, and will complete the depositions of expert witnesses by \_\_\_\_\_. The parties will complete all other discovery by \_\_\_\_\_. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

**6. Settlement conference or private mediation: [choose one]:**

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**Referral to ADR for a settlement conference:** The clerk of the court will issue a referral to ADR by a separate minute entry.

**OR**

**Private mediation:** The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by \_\_\_\_\_.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

**No settlement conference or mediation:** A settlement conference or private mediation is not ordered.

**7. Dispositive motions:** The parties shall file all dispositive motions by \_\_\_\_\_.

**8. Trial setting conference:** On \_\_\_\_\_ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their trial calendars available for the conference. Counsel for Plaintiff shall be responsible for initiating the conference call by calling this Division at **602-506-5514**, with all participating counsel and self-represented parties on the line, at the scheduled time.

**NOTE: This Court utilizes FTR for an electronic record of the proceedings. However, any party may request the presence of a court reporter by contacting the Division three (3) court business days before the scheduled hearing.**

**9. Firm dates:** No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are FIRM dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

**10. Further orders:** The court further orders as follows:

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This case is removed from the Dismissal Calendar and all requirements of Rule 38.1 of Ariz. R. Civ. P. are waived unless and until otherwise ordered by the Court.

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DATE

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JUDGE OF THE SUPERIOR COURT