

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-006413

03/14/2012

HONORABLE HUGH HEGYI

CLERK OF THE COURT  
K. Ballard  
Deputy

JEFFREY DUNAYER, et al.

DANIEL SCOTT BRILL

v.

TOUSA HOMES INC, et al.

CYNTHIA D STARKEY  
CHRISTOPHER D STICKLAND  
COURT ADMIN-CIVIL-ARB DESK

ORDER OF THE COURT

The Court having considered the parties' February 6, 2012 Stipulated Motion for Transfer from Arbitration Calendar to Trial Calendar, Request for Scheduling Conference and Plaintiffs' February 29, 2012 Motion to Set, and good cause appearing,

**IT IS ORDERED** removing this matter from the Court's arbitration calendar and relieving the court-appointed arbitrator from further responsibility in this matter.

On the Court's motion,

**IT IS FURTHER ORDERED** that the parties shall submit a Joint Pretrial Memorandum as set forth below.

The Court will review the Joint Pretrial Memorandum and proposed Scheduling Order prescribed herein. The Court may adopt or modify the discovery and disclosure schedule order and set a scheduling conference for purposes of setting a trial date. If counsel believe that a

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pretrial conference is necessary at this stage of the litigation, they should address the reasons for the need for a pretrial conference in the first paragraph of the Joint Pretrial Memorandum.

If the parties fail to file a timely memorandum, sanctions may issue pursuant to Rule 16(f).

**IT IS FURTHER ORDERED:**

All counsel are directed to meet personally to discuss all of the matters set forth in Rule 16(b). Counsel shall prepare and file with the Court by **5 p.m. on April 20, 2012**, a Joint Pretrial Memorandum, and prepare a proposed order for Discovery and Disclosure deadlines. The proposed order shall include dates for the following items and conform substantially with the attached sample order.

1. **A date or dates for initial disclosures** and/or to supplement disclosures made to date.
2. **An initial and final date to propound written discovery requests** that shall include, as far as can reasonably be anticipated, any and all medical examinations which may be required of any of the parties; the person or persons to conduct such examinations; and all tangible evidence to be disclosed or exchanged.
3. **A date for the initial and final disclosure of all non-expert witnesses**, and/or to supplement disclosures made to date.
4. **A date for the initial and final disclosure of the identities, subject matter, and reports of expert witnesses**, and/or to supplement disclosures made to date.
5. **A date for completion of all depositions.**
6. **A date by which any motions to amend the pleadings will be filed.**
7. **A date by which all discovery motions will be filed.**
8. **A date by which all dispositive or partially-dispositive motions shall be filed.**
9. **A proposed date for a Mandatory Settlement Conference pursuant to Rule 16.1. Alternatively, the parties may propose a deadline by which they will participate in private mediation.**

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10. **The anticipated length of trial.**

If the parties agree as to the dates, they need only prepare, approve as to form, and submit the proposed order attached hereto. If counsel are unable to agree on some or all of the items set forth in the attached form of order, they shall submit their agreements in the form of the attached form of order, and, as to any disagreements, state their separate proposals and reasons for any disagreements. **All proposed deadlines shall be set forth as calendar dates, and not in the form “XX days before trial.”**

**IT IS FURTHER ORDERED** that counsel shall notify the Court of any agreed-upon extension of any time period provided by the Rules of Civil Procedure. The purpose of this order is not to discourage extensions as a matter of courtesy, but to ensure that no party suffers summary disposition on an issue by virtue of an extension as to which the Court is not aware.

**NOTE:** Effective **June 25, 2012**, this Division’s calendar will be assigned to the Honorable Randall Warner (telephone number: 602-372-2966), located in the East Court Building, 101 West Jefferson, Suite 512, Phoenix, Arizona 85003.

**ALERT:** The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk’s Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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[Proposed] Scheduling Order

The Court having received the parties' Joint Comprehensive Pretrial Conference Memorandum,

**IT IS ORDERED** entering the following schedule for disclosure as set forth unless the parties obtain written modifications by the Court:

- (1) Initial disclosures shall be exchanged by: **(MM/DD/YYYY)**
- (2) Written discovery shall be propounded by: **(MM/DD/YYYY)**
- (3) Written discovery shall be completed by: **(MM/DD/YYYY)**
- (4) Final non-expert disclosures shall be exchanged by: **(MM/DD/YYYY)**
- (5) The identities and subject areas of expert testimony shall be disclosed by: **(MM/DD/YYYY)**
- (6) Plaintiff's final expert disclosures shall be served by: **(MM/DD/YYYY)**  
Defendant's final expert disclosures shall be exchanged by: **(MM/DD/YYYY)**  
Rebuttal expert disclosures shall be exchanged by: **(MM/DD/YYYY)**
- (7) Depositions shall be completed by: **(MM/DD/YYYY)**
- (8) All discovery motions shall be filed by: **(MM/DD/YYYY)**
- (9) Any motions to amend pleadings shall be filed by: **(MM/DD/YYYY)**
- (10) Dispositive Motions shall be filed by: **(MM/DD/YYYY)**
- (11) The parties remaining in this action shall participate in private mediation by **(MM/DD/YYYY)**. **OR** The parties remaining in this action shall participate in a Mandatory Settlement Conference (ADR) by **(MM/DD/YYYY)** (**Note: only one of the preceding two options shall be included in the proposed order.**)

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- (12) The following number of days will be required to pick a jury and try this matter:  
\_\_\_\_\_
- (13) The provisions of subsections (a) through (g) of Rule 38.1, ARCP, shall not apply to this proceeding.

**IT IS FURTHER ORDERED** setting a **telephonic** Status Conference on [counsel to leave this date blank] (time allotted: **15 minutes**), in this Division. Plaintiff's counsel shall initiate the conference call to this Division at **602-506-3963**. All persons appearing shall **appear on land lines** and not on cellular phones, and shall not use the speakerphone features of their telephones, in order to maximize all participants' ability to hear and be heard. Additionally, **counsel shall have their calendars available for this proceeding.**

**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 (602-506-3963) three (3) court business days before the scheduled hearing.

**IT IS FURTHER ORDERED** that in no less than five days prior to the Status Conference set herein, the parties shall submit a joint status report to the Court regarding the history and status of the case and efforts at Alternative Dispute Resolution pursuant to ARCP Rule 16(g).

**DISCOVERY DISPUTES:** In the event of any dispute concerning discovery, counsel shall use good faith efforts to meet and confer **in person or by telephone**. If such conference is unsuccessful, counsel are strongly urged to initiate a conference call with this Division to give it an opportunity to attempt to decide the issues without the expense and delay of filing a motion to compel or motion for protective order.

**MOTIONS:** Counsel are directed to send a copy of case or other authority (except Arizona state appellate cases) referred to in a pleading to this Division at the time the pleading is filed.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Hugh E. Hegyi  
JUDGE OF THE SUPERIOR COURT