

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011845

03/08/2016

HONORABLE KERSTIN LEMAIRE

CLERK OF THE COURT
A. Arnold
Deputy

DONA LISA JOHNSON

JAMES ROBERT ECKLEY

v.

BERNARD POTOFF, et al.

LYN ANNE BAILEY

PETER AKMAJIAN
CYNTHIA BRUCE
651 AVENIDA DEL NORTE
SARASOTA FL 34242
MARIA R KUPILLAS
RICHARD V MACK
ROBERT J SPURLOCK
JEANNA M W NASH
EVAN P SCHUBE
JOHN DUKE HARRIS

JURY TRIAL SET

East Court Building – Courtroom 711

9:33 a.m. This is the time set for a Trial Setting Conference. All parties appear telephonically. Counsel, John Harris is present on behalf of the Plaintiff, Dona Lisa Johnson. Counsel, Lyn Anne Bailey is present on behalf of the Defendants, Bernard Potof and Elizabeth Potof. Counsel, Maria Kupillas is present on behalf of Defendant, Sunrise Desert Vistas Property Owners Association. Counsel, Robert Spurlock is present on behalf of the Defendants, Echo Farrell, Karen Warren, Farell Fine Homes LLC, and Robert Farell. Counsel, Evan Schube is present on behalf of Go Big LLC, Ashlie Van Winkle and James Dunning. Counsel, Jeanna Nash

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is present on behalf of Scottsdale Desert Inspections LLC, Belinda Lee Raymond and Tray Raymond. Peak One Builders and Restoration LLC, is neither present nor represented by counsel. Defendant, Cynthia Bruce is present on her own behalf. Grand Mesa Remodling Inc., is neither present nor represented by counsel.

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

Discussion is held regarding the scheduling order in this case.

IT IS ORDERED that counsel for Plaintiff shall submit to this division a proposed 4th amended scheduling order.

Discussion is held regarding the status of the case and the parties advise the Court they are prepared to set a trial date. Accordingly,

IT IS FURTHER ORDERED as follows:

1. Setting a Trial Management Conference on **January 6, 2017 at 10:00 a.m. 1 (hour) (time allotted: 30 minutes)**. Lead counsel for all parties must appear in person and cannot appear telephonically.
2. Setting Trial to a Jury on **January 23, 2017, at 9:00 a.m. for jury selection. The remaining days of trial, January 24-26th, 2017, and January 30, 2017 - February 2, 2017 will begin at 9:30 a.m. (time allotted: 8 days)**. PLEASE NOTE: Trial will not proceed on Fridays as Friday is Law and Motion day for this division.

Duties Prior to Trial

3. Motions in Limine: All Motions in Limine shall be filed no later than **December 16, 2016**, and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 153 (1972): The primary purpose of a Motion in Limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(d). A written response to a Motion in Limine may be filed no later than **January 2, 2017**. The Court may rule on Motions in Limine without oral argument. No replies shall be filed. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any Motion in Limine.

PLEASE NOTE: This division requires that all motions, responses, replies and other Court requested filings in this case must be submitted individually. Counsel

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shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. No pleadings will be accepted if filed in combination with another.

4. Joint Pretrial Statement: Counsel shall file, no later than **December 27, 2016**, a Joint Pretrial Statement signed by all counsel. In addition to the information required by Rule 16, the Joint Pretrial Statement shall include a Final Trial Witness List. This list shall contain the name of each witness a party actually intends to call at Trial, the day on which they intend to call each witness and the **estimated time needed for direct, cross and re-direct examination**.
5. Jury Instructions and Voir Dire Questions: Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall file with their Joint Pretrial Statement **(the Judge would appreciate counsel providing a copy of the jury instruction requests on a USB drive, in Microsoft Word)**:
 - a) Proposed voir dire questions.
 - b) A joint set of agreed-upon preliminary and final jury instructions and proposed forms of verdicts.
 - c) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 3d Standard 1 - Duty of Jurors. Non-RAJI instructions should be typed in Microsoft Word format. Each instruction should cover only one subject.

Duties at Trial Management Conference

6. Counsel shall be prepared to argue Motions in Limine if the Court deems necessary.
7. Counsel shall be prepared to discuss:
 - a) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
 - b) Preliminary jury instructions, mini opening statements and voir dire.

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- c) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
- d) Any special scheduling or equipment issues.

EXHIBITS

8. At least two weeks prior to trial, counsel or their assistants shall contact the Clerk of this division at **602-506-1470 or arnolda@cosc.maricopa.gov**, regarding the proper procedures for submitting exhibits to be marked for trial in this division.

No later than **January 9, 2017**, all parties shall deliver their exhibits to the clerk (**any deviation from this date must be approved by the clerk**). *The parties are directed to meet in person to exchange the exhibits before coming to court and, to the extent possible, remove any duplicate exhibits.* The clerk will not hold or reserve exhibit numbers for any party. If an exhibit has not been submitted by the time of marking, the clerk will assign the next exhibit with that number.

Exhibits are marked in numerical order per party, making it necessary to mark all of one party's exhibits before marking the other party's. Accordingly, the Defendant's exhibits numbering shall start at the next number following the last of Plaintiff's exhibits. (For example, Plaintiff submits 82 exhibits, which are marked Exhibit 1 through 82. Defendant submits 63 exhibits, which are marked 83 through 145). Please do not combine the parties' exhibits. Each side's exhibits must be submitted separately and in numerical order.

If counsel stipulate to any exhibits being received in evidence, counsel shall provide a signed stipulation as to said exhibits (**lack of objection to an exhibit in the Joint Pretrial Statement is not taken to signify that the exhibit is automatically received in evidence**). If large demonstrative exhibits are submitted for marking, a smaller version, such as a photograph, must also be provided in case the exhibit is received in evidence. If photographs are submitted for marking, each photograph must be marked as an individual exhibit unless counsel have stipulated to a set of photographs being admitted into evidence.

With regard to trial exhibits, the parties are strongly discouraged from marking exhibits they do not anticipate offering during trial. Each exhibit must be

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separately and securely bound by a staple, prong, or in a binder of some sort. Exhibits not securely bound or are bound with only a binder clip or rubber bands will not be accepted and will be returned. Exhibits must be separated using numbered tabs or a single sheet of colored paper.

9. The court would appreciate a bench copy of any exhibits or depositions in a binder.
10. One day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before the Trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.
11. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

The trial will take place in the Superior Court's "e-courtroom." A record of the proceedings will be made by audio and CD in lieu of 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 \$30.00 charge. If a CD is requested, please obtain a form from the courtroom clerk or from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center**. Attach the receipt showing payment of the fee and present both the receipt and the form to the bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.** Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. To request a transcript, call 602-506-7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address, and telephone number.

NOTE: All court proceedings are recorded by audio and video method and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

9:14 a.m. Matter concludes.