

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-052655

03/20/2018

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT  
W. Tenoever  
Deputy

MICHAEL BERENT, et al.

KRISTIN M. ROEBUCK

v.

GRAZYNA MROCZKOWSKA, et al.

DEBRA S BROCKWAY

MARIA R KUPILLAS

**ORDER SIGNED**

There have been a number of filings in this case since the last round of rulings. This order is intended to address all outstanding issues and to reset the scheduling order.

LET THE RECORD REFLECT that, pursuant to the order concerning the plaintiffs' litigation conduct entered November 21, 2017 as a ruling on the motion to designate the plaintiffs as vexatious litigants, the Court has not acted, and will not act, on the following filings by the plaintiffs:

- "Strike Defendants Accusations Against Litigants Unfounded / Retaliatory Abuse of Power / Fear Tactics," filed November 20, 2017;
- "Contempt of FOIA Requests by Defendants' Attorney Debra Brockway," filed March 12, 2018;
- "Contempt of Order of Protection Felony – Debra Brockway Repeated Verbal Insults in Front of Judge Hannah," filed on March 12, 2018.

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The filing entitled “Contempt of Order of Protection Felony – Debra Brockway Repeated Verbal Insults in Front of Judge Hannah” has been stricken from the docket, pursuant to Civil Rule 12(f), by a separate minute entry order.

As to the “Stipulation to Admit Medical Documentation for Casual Relationship Pain and Suffering Permanent Damage,” filed November 20, 2018,

IT IS ORDERED the request to order the admission of the records in advance of the trial is denied.

The Court previously ordered that the “Third Amended Complaint,” filed October 17, 2017 and the “Response to Defendants Response to Motion to Strike Plaintiffs Third Amended Complaint,” filed October 30, 2017, would be addressed together and treated as a motion by the plaintiffs to amend the complaint. Though the proposed pleading is not the “short, plain statement of the claim” required by Civil Rule 8(a), it will be “construed so as to do justice” as required by Rule 8(f). With that in mind, the Court has attempted to distill from the pleading the allegations that do not appear in the existing complaint and that might support a cause of action.

IT IS ORDERED that the plaintiffs may amend the existing complaint by adding, as a general allegation and as an element of the First Claim for Relief (Declaratory Judgment), Fourth Claim for Relief (Breach of Contract – the Association) and Fifth Claim for Relief (Negligence – the Association) that

The Association failed to follow its own rules by approving the Mroczkowskas’ driveway extension when (1) the Architectural Review Committee that recommended approval was not properly constituted; (2) the application was missing material information, including the square footage of the proposed driveway extension and the identity of the contractor; and (3) the “Neighbors’ Approval” was not submitted with the application.

IT IS FURTHER ORDERED that the plaintiffs may amend the existing complaint by adding, as a general allegation and as an element of each Claim for Relief, that

The Mroczkowskas’ driveway extension covers a greater percentage of the front yard of their property than is permitted by the applicable CC & Rs and City ordinances.

To be clear, the Court is not endorsing these allegations, or making any findings as to their legal or factual sufficiency. The plaintiffs are simply being allowed to add the allegations to the complaint, at which point the defendants will have a full opportunity to test them.

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IT IS FURTHER ORDERED the plaintiffs shall prepare a Third Amended Complaint that is consistent with this order, and file and serve such complaint, within ten days of the date on which the Clerk issues this order.

The plaintiffs have not alleged facts sufficient to state a claim for fraud. See Ariz. R. Civ. P. 9(b) (pleading must state the circumstances constituting fraud with particularity). The plaintiff also have not alleged facts that would give rise to claims against the HOA's lawyers, or claims against the HOA's management company and its employees. The duties of the HOA's contractors generally run to the HOA, not to individual HOA members. Therefore, as to these issues, and any others that have not been discussed herein,

IT IS FURTHER ORDERED the plaintiffs' motion to amend the complaint is denied except as specifically stated in this order.

As to the "Request for Reassignment of Mediator," the Court takes no action as this issue was addressed at the Status Conference on March 9, 2018.

In the "Advisory; and Motion to Allow Counterclaim" filed by the defendants Mroczkowska on December 22, 2017, the Mroczkowskas ask permission to file a claim for breach of the duty of good faith and fair dealing. The factual basis of the proposed claim, reduced to its essence, is that the Bell West Ranch CC & Rs amount to a mutual covenant among the homeowners for peaceful and quiet enjoyment of their respective homes, and that the Berents have breached that covenant because they have not been "good neighbors."

The Court is not persuaded that such a broad contract claim is cognizable as a matter of law. The Mroczkowskas present no authority to that effect.

IT IS ORDERED the Motion to Allow Counterclaim is denied.

As to the plaintiffs' "Motion to compel Bell West Ranch to produce public records foia request denied by counsel,"

IT IS ORDERED the motion is granted in part as to Request No. 7. Defendant Bell West Ranch shall produce the minutes of any Board meeting (including Executive Sessions) at which the Mroczkowskas' driveway or the dispute over the driveway was discussed, except that any Executive Session minutes that reflect privileged attorney-client communications may be withheld or redacted so long as the plaintiffs are provided a privilege log. Bell West Ranch is not required to produce email communications between the Board and its attorney Mr. Goodman.

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IT IS FURTHER ORDERED denying the balance of the motion. Request No. 1 (the entire property record for 17986 N. 167<sup>th</sup> Dr.) is overbroad. Requests 2, 3, 4, 5, 6, 8 and 9 seek information that is neither relevant nor likely to lead to discovery of information that is relevant.

As to the plaintiffs' "Motion to Compel Defendants to Produce Public Records Requests," which is directed to the Mroczkowskas, the Court finds that the receipt or contract for the driveway installation, and documents relating to payment for that work, are potentially relevant to this case.

IT IS ORDERED the plaintiffs' motion to compel is granted with respect to such documents. The Mroczkowskas shall produce those documents.

IT IS FURTHER ORDERED, as a protective order issued pursuant to the Court's authority under Civil Rule 26(c)(1), that the plaintiffs may not use the information contained in those documents in a lawsuit against the contractor.

The rest of the information requested by the plaintiffs is not relevant to this case.

IT IS THEREFORE ORDERED the motion to compel is denied as to all other requests for production directed to the Mroczkowskas.

Finally, as to the issue of scheduling.

LET THE RECORD REFLECT that an Amended Scheduling Order is being entered contemporaneously with this order all in accordance with the formal written Order signed by the Court on March 20, 2018 and filed (entered) by the Clerk on March 20, 2018.

Please note: The Court has signed a hard-copy version of the order provided with an electronically filed pleading. Therefore, copies of the order and self-addressed, stamped envelopes were not available for mailing to the parties. After the order has been scanned and docketed by the Clerk of Court, copies of this order may be available through ECR Online at [clerkofcourt.maricopa.gov](http://clerkofcourt.maricopa.gov) or through [AZTurboCourt.gov](http://AZTurboCourt.gov) and from the Public Access Terminals at the Clerk of Court's offices located throughout Maricopa County.

IT IS ORDERED converting the Status Conference set on **May 10, 2018 at 8:30 a.m.** to a Trial Setting Conference (30 minutes allotted) in this division. The parties and counsel are directed to appear in person.