

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-052655

03/08/2019

HONORABLE CYNTHIA J. BAILEY

CLERK OF THE COURT
A. Wood
Deputy

MICHAEL BERENT, et al.

KRISTIN M. ROEBUCK

v.

GRAZYNA MROCKOWSKA, et al.

DEBRA S BROCKWAY

KEVIN M ARNOLD
JUDGE BAILEY

MINUTE ENTRY

Courtroom 108-NE

9:02 a.m. This is the time set for Telephonic Status Conference re: Plaintiff's Motion to Extend Expert Disclosure filed January 23, 2019, Reset Final Trial Management Conference, and Trial Dates. Counsel Kristin Roebuck is present on behalf of Plaintiff Michael Berent. Plaintiff Nancy Berent is present on her own behalf. Counsel Debra Brockway is present on behalf of Defendants Grazyna Mrockowska, Marta Mrockowska, and Miroslaw Mrockowska. Counsel Kevin Arnold is present on behalf of Defendant Bell West Ranch Homeowners Association Inc.

A record of the proceedings is made digitally in lieu of a court reporter.

Matters discussed.

Based upon the matters presented in Court,

IT IS ORDERED granting Plaintiffs Motion to Withdraw With Consent as Attorney of Record for Nancy Berent filed March 7, 2019.

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IT IS ORDERED granting Plaintiff's Motion to Extend Expert Disclosure filed January 23, 2019 to **June 7, 2019**, for a New Appraisal only.

IT IS FURTHER ORDERED all rebuttals shall be completed by July 8, 2019.

IT IS FURTHER ORDERED affirming previous order with respect to the conduct of the plaintiffs:

- Any request for information shall be directed first to the defendants' attorneys, before the filing of a motion or request to the Court. The request shall be made in writing. If the information is not provided and the plaintiffs move to compel production, the motion shall include the letter to defendants' counsel, attached to the motion as proof that there has been a request directly to counsel. Any request to compel information that does not have attached to it the letter showing that counsel was first asked for that information will not be considered by the Court.
- All filings shall include a statement in the caption of specifically what is being requested in that filing. A general description is not sufficient. The caption shall say "motion to" or "request to" and then it shall specify what it is that the plaintiffs are asking the Court to order, and which defendant(s) specifically it is being directed to. If it is directed to both defendants it shall specifically say that. Any defendant who is not named in the caption as being the party at whom this motion or request is directed will not be required to respond and the Court will take no action.
- The Plaintiffs shall refrain from arguing their case in filings that have no purpose other than to argue the case. The content of the filings is to be directed to whatever request is being made in that filing. The Court will not consider pretrial filings that are meant as arguments of the plaintiffs' position on the merits in the case and the defendants will not be required to respond to any such filings.
- Counsel for the defendants are not required to respond to, and the Court will not consider, any accusations of wrongdoing or misconduct unless the Court orders a response.

IT IS FURTHER ORDERED that no response is required to Plaintiff Nancy Berents motions/report unless specifically ordered by the court.

Discussion further held.

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IT IS ORDERED the parties shall only contact each during business hours, 8:00 a.m. through 6:00 p.m.

IT IS FURTHER ORDERED setting a **5-Day** Jury Trial on **August 5-August 8, 2019 and August 12, 2019**. Trial hours are as follows: from 9:30 a.m. to 4:30 p.m., before:

**THE HONORABLE JUDGE CYNTHIA BAILEY
SUPERIOR COURT OF ARIZONA
NORTHEAST REGIONAL COURT CENTER
18380 NORTH 40TH STREET
COURTROOM 108
PHOENIX, ARIZONA 85032**

THIS IS A FIRM TRIAL SETTING.

Please note that normal trial days in this division are Monday through Thursday. First day shall commence at 9:30 a.m., each day after will commence at 9:00 a.m. (unless otherwise ordered). The lunch break will be taken at 12:00 p.m., with the afternoon session to begin promptly at 1:30 p.m. A fifteen (15) minute break will be taken both mid-morning and mid-afternoon, with the trial day to end at 4:30 p.m.

IT IS FURTHER ORDERED setting a Final Pretrial Management Conference on **July 16, 2019 at 10:00 a.m. (1 hour allotted)**. The Pretrial Management Conference shall be governed by the Pretrial Management Orders issued this date. **Trial counsel** and/or the parties shall attend this conference in person.

IT IS FURTHER ORDERED all trial exhibits shall be submitted for marking not later than **July 26, 2019**.

No information disclosed after the dates contained in the order may be used at the trial absent court order on motion and affidavit.

The proceedings will take place in the Superior Court's new "e-courtroom." A record of the proceedings will often, but not always, be made by FTR in lieu of a court reporter. If a court reporter is required, the Court must receive a written request prior to the Trial Management Conference set. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter. Should you want an unofficial copy of the proceedings, the parties or

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counsel may request a CD of the proceedings for a \$30.00 charge. If a CD is requested, please obtain a form from the Self Center to request a daily copy of a court hearing or trial proceeding being conducted and pay the applicable fee. Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it.

If the parties are not familiar with the courtroom's technology, they are encouraged to set up an appointment with the court's technology liaison at 602.372.7876.

9:58 a.m. Matter concludes.

NOTE: All court proceedings are recorded **digitally** 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.

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PRETRIAL STATEMENT ORDERS

1. IT IS ORDERED that the Joint Pretrial Statement (JPTS) in accordance with Rule 16(d), Arizona Rules of Civil Procedure (ARCP) is due in this division by **5:00 p.m., July 9, 2019.**

2. IT IS FURTHER ORDERED the Joint Pretrial Statement shall contain the following:

(A) Stipulations of material fact and law;

(B) Such contested issues of fact and law as counsel can agree are material or applicable;

(C) A separate statement by each party of other issues of fact and law believed by that party to be material;

(D) A list of witnesses intended to be used by each party during trial. Each party shall list any objections to a witness and the basis for that objection. No witness shall be used at the trial other than those listed, except for good cause shown. Witnesses whose testimony will be received by deposition testimony only will be so indicated;

(E) Each party's final list of exhibits to be used at trial for any purpose, including impeachment. Plaintiffs shall deliver copies of all of their exhibits to all parties twenty days before the final pretrial conference. All other parties shall deliver copies of all their exhibits to all parties fifteen days before the final pretrial conference. Any exhibit that cannot be reproduced must be made available for inspection to all parties on or before the deadlines stated above. Each party shall list any objections to an exhibit and the basis for that objection. No exhibit shall be used at the trial other than those listed, except for good cause shown. The parties shall indicate any exhibits which the parties stipulate can be admitted into evidence, such stipulations being subject to court approval;

(F) A statement by each party indicating any proposed deposition summaries or designating portions of any deposition testimony to be offered by that party at trial, other than for impeachment purposes. Deposition testimony shall be designated by transcript page and line numbers. A copy of any proposed deposition summary and written transcript of designated deposition testimony should be filed with the Joint Pretrial Statement. Each party shall list any objections to the proposed deposition summaries and designated deposition testimony shall be used at trial other than that designated or counter-designated or for impeachment purposes;

(G) A brief statement of the case to be read to the jury during voir dire. If the parties cannot agree on this statement, then each party shall submit a separate statement to the judge who will decide the contents of the statement to be read to the jury;

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(H) Technical equipment needed or interpreters requested;

(I) The number of jurors and alternates agreed upon, whether the alternates may deliberate, and the number of jurors required to reach a verdict;

(J) Whether any party will invoke *Rule 615 of the Arizona Rules of Evidence* regarding exclusion of witnesses from the courtroom; and

(K) A brief description of settlement efforts.

3. **IT IS FURTHER ORDERED** that at the time of filing the joint pretrial statement, both parties shall submit a joint draft proposed final jury instructions, in ***Word***, with all case citations and RAJI references removed from the draft. In the event that the parties disagree on a particular jury instruction, both parties' proposed jury instruction shall be included in the draft proposed jury instructions with the notation "Disputed" in the name of the instruction.

4. **IT IS FURTHER ORDERED** each party who will be submitting a trial memorandum shall file such memorandum five days before the final pretrial conference, or if no conference is scheduled, five days before the trial.

MOTIONS IN LIMINE

Pursuant to Rule 7.2(a) ARCP, counsel shall meet and confer to discuss and identify any disputed evidentiary issues that are anticipated to be the subject of motions in *limine*. The parties are directed to provide the court with a written report of agreements reached at the conference so that the court can enforce such agreements. At the time of filing any motions in *limine*, counsel shall also provide the court notice that counsel have met in person prior to the filing of said motions in *limine* or the motion(s) may be stricken.

Motions in *limine* shall be filed only in accordance with Rule 7.2, ARCP. Motions in *limine* shall be filed thirty (30) days before the PTMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972). No "prophylactic" motions in *limine* may be filed. A written response to a motion in *limine* may be filed no later than ten (10) days thereafter. The Court will rule on the motions in *limine* without oral argument. If the Court wishes to hear argument, the argument will be heard at the PTMC. No replies shall be filed.

Unless prior written leave of Court is obtained for good cause shown, no party may file more than three (3) motions in *limine*, including all subparts. The parties shall not file

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motions denominated as “*in limine*” that are, in substance, late-filed motions for summary judgment.

DISPOSITIVE MOTIONS

All motions, other than motions in *limine*, shall be filed **not later than ninety (90) days prior to the date set for trial** unless otherwise ordered by the court.

Notices of Settlement

In accordance with the provisions of ARCP 41(a), to be effective, any Notice of Settlement or Dismissal providing for resolution of one or more pending claims that is filed after service by the opposing party’s answer or dispositive motion, must be signed by each affected party (or appropriate counsel) prosecuting or defending against the claim(s) covered by the Notice. Each filed Notice shall state whether it resolves all pending issues in the case and constitutes a representation to the Court that the claims subject to the Notice have been fully resolved with respect to Notice signatories, and that the only further relief to be sought with respect to such claims is entry of an order that each signatory confirms is consistent with the agreement that gave rise to filing of the Notice.

IT IS FURTHER ORDERED that the Time Estimates for Trial attached hereto shall be submitted on the same date as the parties’ Joint Pretrial Statement as ordered herein.

ATTACHED: SAMPLE FORMAT FOR TIME ESTIMATE FORM AND EXHIBIT PROCEDURES

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CAUSE NUMBER

CASE CAPTION

PLAINTIFF'S COUNSEL

DEFENDANT'S COUNSEL

(NOTE: Add additional lines as needed for additional parties and or witnesses.)

TIME ESTIMATES FOR TRIAL

Opening Statement and Closing Argument

PLAINTIFF'S OPENING STATEMENT	
DEFENDANT'S OPENING	
PLAINTIFF'S CLOSING	
DEFENDANT'S CLOSING	
PLAINTIFF'S REBUTTAL	

Estimate of Time for Witness Examination

PLAINTIFF'S WITNESSES	DIRECT EXAMINATION	CROSS EXAMINATION	REDIRECT EXAMINATION

Estimate of Time for Witness Examination

DEFENDANT'S WITNESSES	DIRECT EXAMINATION	CROSS EXAMINATION	REDIRECT EXAMINATION

The foregoing are based on the best estimates of counsel of the time reasonably needed to complete the necessary examination of the witnesses listed.

Counsel for Plaintiff

Counsel for Defendant

GUIDELINES FOR COUNSEL WHEN PREPARING EXHIBITS FOR USE IN COURT

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COUNSEL PLEASE READ

Exhibits are due to the Court not later than July 26, 2019.

If Defendant's exhibits are received prior to Plaintiff's exhibits, the Clerk may mark them first with Plaintiff's exhibits following.

Exhibits will be marked consecutively, Plaintiff's exhibits are marked first and then Defendant's exhibits. **The clerk cannot reserve numbers for exhibits that will be provided at a later date.** To avoid confusion during trial, it is essential that counsel avoid submitting duplicate exhibits. *The clerk cannot reserve numbers for exhibits that will be provided at a later date.* Do not list "Any and all exhibits listed by" Depositions will not be marked as an exhibit. Original depositions to be used for impeachment purposes shall be provided to the clerk on the first day of trial/hearing to be hand-filed by the clerk.

*******If a party is submitting more than 100 exhibits, that party shall submit those exhibits in three-ring, tabbed binders.*******

*****Each multiple page exhibit must be securely fastened together by staple or other means. NO PAPER CLIPS, BINDER CLIPS, OR RUBBER BANDS may be used. If Acco fasteners are used they must be long enough to fasten securely.*****

Counsel are to provide a workable list of exhibits. The list should include a description of each exhibit. (See blank sample of an exhibit table below as a reference.) Do not put numbers on the exhibits; **however a colored sheet of paper with the exhibit number on it should be placed in front of each exhibit.**

Exhibit Description Information:

The descriptions should be verifiable when viewing the first page of the exhibit.

Letter designations such as 5A, 5B, etc. shall not be used.

No bates stamp references or number of pages in documents should be used.

If counsel are submitting large charts, blow-ups or maps, please include a small version which can be marked as the exhibit and can go into the jury if in evidence. The blow-ups, charts and/or maps can be used as demonstrative but will not be marked as exhibits and will be returned to counsel.

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For additional assistance in preparation of exhibits contact the courtroom clerk at 602-372-7732.

Sample of List of Exhibits to be provided to the courtroom clerk:

EXHIBIT LIST			
Exhibit No.	Identified By	Description	Stipulated in Evidence/ Objection