

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2023-010115

03/12/2024

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT  
P. McKinley  
Deputy

MICHAL REILLY, et al.

JASON A CLARK

v.

JACKSON BUILDERS OF ARIZONA L L C, et  
al.

JACKSON BUILDERS OF ARIZONA L  
L C  
37852 N SANDY DR  
SAN TAN VALLEY AZ 85140

MONA BASKIN  
JAMES J OSBORNE  
EDITH I RUDDER  
MARCUS D TAPPE  
KYLE A VON JOHNSON  
BRIAN J POUDEROYEN  
RICHARD L RIGHI  
JUDGE BLANEY

**UNDER ADVISEMENT RULING**

The Court has reviewed and considered the parties' *Joint Statement of Discovery Dispute*, as well as the arguments received at the March 12, 2024 oral argument.

**THE COURT FINDS** as follows:

1. Both parties to this discovery dispute are defendants in this case.

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2. This discovery dispute arises out of a larger construction defect case in which Defendants Ryan Sieker and Katie Rogers (“Sieker and Rogers”) contracted with another Defendant/contractor to perform work on their condominium unit. The work performed on Defendants Sieker and Rogers’ unit was allegedly faulty and led to damage to Plaintiffs’ unit.
3. During the course of discovery, Defendant Orchard House Condominium Homeowners’ Association (“Orchard House”) and Defendants Sieker and Rogers, after agreeing and rescheduling multiple times, agreed that Orchard House could inspect the repair work being performed by Defendants Sieker and Rogers’ replacement contractor.
4. On December 11, 2023, the two parties agreed that Orchard House and its expert witness could conduct the inspection on January 25, 2024. Orchard House served a Rule 34 Request for Inspection that memorialized the stipulated date, and listed the scope of the inspection: “[The] inspection is to observe and photograph the visible conditions within the unit including new structural connectors, field measure the location and size of the new microlam beams and wood posts, and where accessible, field measure the size, length and spacing of the existing floor joists, wood posts, wood floor beams, and wood headers.” *Joint Statement* at pg. 2.
5. On January 22, 2024, the City of Phoenix conducted an inspection of the newly repaired structural framing in Defendants Sieker and Rogers’ unit.
6. On January 25, 2024, when Orchard House and its expert arrived to conduct the agreed-upon Rule 34 inspection, they found that Defendants Sieker and Rogers had already put drywall up over the area that was to be inspected. Thus, Orchard House’s expert was unable to conduct the inspection.

The standard for discovery is broad under the Arizona Rules of Civil Procedure. In Arizona, “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case....” Rule 26(b)(1). Information need not be admissible in evidence to be discoverable. Further, “the rules of discovery are to be broadly and liberally construed to facilitate identifying the issues, promote justice, provide a more efficient and speedy disposition of cases, avoid surprise, and prevent the trial of a lawsuit from becoming a guessing game.” *Cornet Stores v. Superior Court In and For the County of Yavapai*, 108 Ariz. 84, 86 (1972). The party objecting to a discovery request bears the burden of proving the validity of its objection. *Id.*

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**THE COURT FINDS** that the areas Orchard House seeks to inspect are relevant to the claims and/or defenses of the parties. The scope of the inspection – the area in which the prior, shoddy construction work is being remediated – is proportional to the needs of this case. Defendants Sieker and Rogers waived any objections to the inspection (if any valid objections existed) by agreeing to allow the inspection on January 25, 2024.

**THE COURT FURTHER FINDS** that Defendants Sieker and Rogers violated the parties' stipulation and Rule 34, Ariz.R.Civ.P. Defendants Sieker and Rogers have offered no valid justification for why they violated the parties' stipulation and their duty to allow inspection pursuant to Rule 34.

Good cause appearing, and in the Court's discretion,

**IT IS THEREFORE ORDERED** Defendants Sieker and Rogers shall, by **March 22, 2024**, provide three possible dates for an inspection, to occur between the dates of **April 5 and May 3, 2024**. Defendants Sieker and Rogers shall ensure that the areas that need to be inspected are accessible by removing drywall from those areas, at their expense. The Court notes that, during the March 12 oral argument, Counsel for Orchard House listed five locations in the unit where the drywall would need to be removed. The parties shall work together to identify those areas in advance of the date of inspection.

**IT IS FURTHER ORDERED** Defendants Sieker and Rogers shall reimburse Orchard House for the cost incurred in having their expert attend the January 25, 2024 inspection.