

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-000397

05/22/2024

HONORABLE BRADLEY ASTROWSKY

CLERK OF THE COURT
C. Lockhart
Deputy

POWER RANCH COMMUNITY
ASSOCIATION

CHAD PHILIP MIESEN

v.

WOODCREST EAST L L C, et al.

F ROBERT CONNELLY II

ERICA L MORTENSON
KYLE A VON JOHNSON
JONATHAN A DESSAULES
JUDGE ASTROWSKY

MINUTE ENTRY

East Court Building – Courtroom 413

9:15 a.m. This is the time set for a Status Conference regarding the parties' Stipulation to Continue Evidentiary Hearing Regarding Plaintiff's Request for Preliminary and Permanent Injunctions and Request to Set a Status Conference, filed May 3, 2024. Plaintiff, Power Ranch Community Association, is represented by counsel, Chad Philip Miesen and Kyle A. Von Johnson. Defendant, Woodcrest East, LLC, is represented by counsel, F. Robert Connelly II, and Jonathan A. Dessauls. Defendant, Woodcrest Village East Condominium Association, is represented by counsel, Erica L. Mortenson. All appearances are virtual.

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

Discussion is held regarding the status of the case, newly discovered information, and the pending motions.

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Plaintiff withdraws his request for a Preliminary Injunction with no objections from Defendants.

For the reasons set forth on the record,

IT IS ORDERED the parties shall disclose any and all additional recently discovered evidence no later than close of business on **June 12, 2024**.

IT IS FURTHER ORDERED granting Plaintiff's Motion for Leave to File Motion for Summary Judgment, filed May 7, 2024.

IT IS FURTHER ORDERED parties are granted leave to supplement their already filed briefs, but such supplements are to be limited to the newly discovered evidence.

IT IS FURTHER ORDERED setting a remote** Oral Argument on all pending Motions for Summary Judgment on **August 30, 2024 at 9:00 a.m. (time allotted: 1 hour)** with the time divided equally between the parties, before this division. Counsel are requested to appear five minutes prior to the scheduled hearing.

IT IS FURTHER ORDERED vacating the remote** Trial Setting Conference set on June 28, 2024 at 11:00 a.m. and resetting same to **May 22, 2023 at 9:15 a.m** before this division.

IT IS FURTHER ORDERED setting this matter for a **5-day** Jury Trial beginning on **February 24, 2025 at 9:00 a.m.** (concluding by 4:30 p.m. on **March 3, 2025**) in this division.

The Honorable Christopher Whitten
Maricopa County Superior Court
East Court Building
101 West Jefferson
4th Floor, Courtroom 413
Phoenix, AZ 85003
Phone: 602-372-1164

Trial days in this matter will be as follows: February 24, 25, 26, 27 and March 3, 2025 with the time divided equally between the parties.

Trial hours are normally 9:30 a.m. to 4:30 p.m. (with a lunch recess from noon to 1:30 p.m. and two 15-minute recesses), daily. However, jury selection begins at **9:00 a.m. on March 3, 2025**.

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The trial will concern both the request for a permanent injunction and a trial on the merits of the other claims. The Court shall determine the request for injunctive relief and the jury shall address all other claims. Whether the parties desire the jury to serve as an advisory jury on the request for injunctive relief is something the parties should meet and confer to discuss and address in their Joint Pretrial Statement.

IT IS FURTHER ORDERED setting a remote** Final Trial Management conference for **February 7, 2025 at 9:00 a.m.** (time allotted: **one hour**) in this division. All counsel (and any self-represented party) shall **appear remotely** unless otherwise ordered.

Please note that the Court is utilizing a virtual platform called Court Connect. An auto-generated e-mail has been sent to local counsel of record. If for some reason you did not receive the e-mail, please advise the Court. You may join the hearing using the following link: **tinyurl.com/jbazmc-cvj04, or you may appear via telephone by calling **1-917-781-4590**, conference ID# **828 262 029#**. If the parties need assistance or have any questions, they may contact the Court's Judicial Assistant after June 21, 2024, Jackie Hernandez, at Jackie.Hernandez@jbazmc.maricopa.gov.

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.

9:34 a.m. Matter concludes.

Based on the trial setting, the court sets the following deadlines and makes the following orders. 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.

DUTIES BEFORE THE FINAL TRIAL MANAGEMENT CONFERENCE

MOTIONS *IN LIMINE*. All motions *in limine* shall be filed no later than **5:00 p.m. on January 17, 2025**. Written responses to motions *in limine* may be filed no later than 10 calendar days after service of the motion. No replies shall be filed. The court may hear argument at the final trial management conference or may rule without oral argument. The parties must comply with Ariz. R. Civ. P. Rule 7.2(a) before filing any motion *in limine*. There is no limit to the number of motions *in limine* filed. The parties are limited to one issue for each motion filed. The parties are discouraged

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from filing a Motion *In Limine* simply to request that the other party comply with the law when there is no reason to believe the other party won't comply with same.

JOINT PRETRIAL STATEMENT. The parties shall file with the court no later than **5:00 p.m. on January 31, 2025**, a **Joint Pretrial Statement**, signed by all counsel (and any self-represented party) and submit a copy in WORD format to the Court's Judicial Assistant, containing the following: **This order modifies the requirements of Ariz. R. Civ. P. 16(f).**

NOTE: The failure to timely file and submit a Joint Pre-Trial Statement may result in the Court's need to vacate and continue your trial setting. Accordingly, kindly make it a priority to timely file and submit same.

1. **List of Claims.** The Joint Pretrial Statement must contain a list of all claims or causes of action on which a verdict is sought by any party. Such list shall specify (1) the cause of action (e.g., breach of contract, negligence, etc.), (2) each party asserting that cause of action, and (3) each party against whom that cause of action is asserted.

2. **No List of Issues.** The requirements of Ariz. R. Civ. P. 16(f)(2)(A), (B) and (C) are waived. The parties need not prepare a list of stipulations, agreed contested issues or other issues considered material. Disputes over what issues are properly in the case will be decided under Rule 26.1. The parties may, if they wish, submit one or more separate stipulations regarding facts, evidence or other matters.

3. **Summary of the Case for Jury Selection.** The Joint Pretrial Statement must include an agreed-upon brief (generally less than 200 words) summary of the case for jury selection purposes. If the parties cannot agree, they must submit separate proposed summaries.

4. **Final Trial Witnesses.** The Joint Pretrial Statement must include an exhibit entitled Final Trial Witness List, which must list each witness a party expects to call at trial (in person or by deposition) and the day on which they expect to call that witness. If the court finds that a party unreasonably included witnesses not likely to be called at trial, it may consider appropriate sanctions.

5. **Trial Exhibits.** As required by Rule 16(f)(2)(E), all trial exhibits must be listed in the Joint Pretrial Statement along with objections. The court typically resolves objections to exhibits at trial, but objections must be listed in the Joint Pretrial Statement to be preserved. If the court finds that a party unreasonably included exhibits not likely to be used at trial, it may consider appropriate sanctions.

6. **Deposition Designations.** Deposition designations and objections should not be included in the Joint Pretrial Statement, but must be filed with the court three judicial days before the

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start of trial. The court will resolve deposition designations as follows. By 3:00 p.m. the day before a party plans to read deposition testimony, that party must provide the court a hard copy of the deposition transcript with (1) the portions to be read highlighted in one color, (2) any counter-designations highlighted in a different color, and (3) any objections written in the margin. The court will rule on any objections by the next day. If the party plans to play a video deposition, the transcript must be provided by 3:00 p.m. three (3) days before the deposition will be played.

7. **Other Matters.** The Joint Pretrial Statement must include the matters in Ariz. R. Civ. P. 16(f)(2)(H-M).

JURY INSTRUCTIONS; VOIR DIRE. The parties shall meet and agree on as many proposed jury instructions as possible. The parties shall file with the court, with their Joint Pretrial Statement, copies of:

1. Proposed *voir dire* questions.
2. Agreed-upon preliminary and final jury instructions and proposed forms of verdicts.
3. Separate sets of requested instructions that have not been agreed upon. Recommended Arizona Jury Instructions (“RAJI”) may be referred to name without reprinting, but if the RAJI contains options for the court the party should indicate which options it is requesting.

Jury instructions not requested by the final trial management conference will be deemed waived unless good cause exists for the untimely request.

SETTLEMENT. The parties are reminded to notify the court promptly of any settlement pursuant to Ariz. R. Civ. P. 5.3(d). 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.

TRIAL MANAGEMENT CONFERENCE

At the final trial management conference, the parties shall be prepared to discuss:

1. The claims and parties as to which a verdict is sought.
2. The time designated for trial and, if necessary, time limits.
3. Any scheduling or equipment issues.

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4. *Voir dire* and the jury questionnaire.
5. Any special issues regarding exhibits or deposition designations.
6. Preliminary jury instructions.
7. The case summary for jury selection purposes.
8. Motions *in limine*.
9. The potential for settlement before trial.

TRIAL EXHIBITS

This Division uses Case Center, a state-wide electronic exhibit portal. All exhibits shall be electronically submitted through Case Center. When the case has been initiated by the Clerk of Court, the attorney of record and any self-represented party will receive an email invitation to the case created in Case Center. The attorney of record is responsible for inviting through Case Center any co-counsel or staff who need access to the case.

Counsel and any self-represented party shall upload all trial exhibits to Case Center no later than 3:00 p.m. on February 10, 2025.

For uploading exhibits to Case Center, please adhere to the following guidelines:

1. Exhibits must be appropriately titled. Any exhibit title containing derogatory or prejudicial information will be renamed by the Clerk.
2. Do not put exhibit numbers in your exhibit titles. Case Center will assign an exhibit number to each exhibit upon upload, and will number Plaintiff's exhibits and Defendant's exhibits separately (e.g., Plaintiff's exhibit 1; Defendant's exhibit 1, etc.).
3. Do not submit duplicate exhibits. **It is essential that the parties confer to avoid submitting duplicate exhibits.**
4. Original Depositions will not be marked as an exhibit. **Original** depositions to be used for impeachment purposes shall be provided in paper form to the Clerk on the first day of the hearing/trial to be hand-filed.

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5. If large charts or blow-ups are anticipated to be used, please include a small version (or photo) which can be marked as the exhibit. The charts and blow-ups are used for demonstrative purpose only, are not marked as the exhibits, and are returned.

The Court, Clerk, and all counsel and self-represented parties will have access to the exhibits through Case Center. The Court will not have paper copies of exhibits available for witnesses. Counsel may use the Case Center presentation software or may use their own trial presentation software to present exhibits to witnesses and the jury, as long as counsel can avow that the exhibits they present are true and accurate copies of the Court's exhibits. These matters will be discussed further at the Final Trial Management Conference.

For further information about Case Center and training materials:

- <https://digitalevidence.azcourts.gov/>
- <https://www.azcourts.gov/digitalevidence/Training/Attorney-and-Self-Represented-Litigants>

For assistance in preparation of exhibits contact the Courtroom Clerk: contact Caralee H. Lockhart at Caralee.Lockhart@maricopa.gov or 602-506-6928.

PLEASE NOTE: Effective **June 21, 2024**, Judge Christopher Whitten will assume this Division's civil calendar. Telephone: 602-372-1164.