

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-000707

05/31/2012

HONORABLE MARIA DEL MAR VERDIN

CLERK OF THE COURT
L. Firriello
Deputy

MARKHAM CONTRACTING CO INC

KAREN A PALECEK

v.

PINNACLE POINT DEVELOPERS L L C, et al.

NATHANIEL ROSE

MINUTE ENTRY

The Court is in receipt of simultaneous pleadings filed May 30, 2012: the Plaintiff's Motion to Reconsider and Motion for Expedited Ruling; and the Defendant's Memorandum Regarding Consistency of Rulings.

The Court has considered the matters presented.

The Defendants timely made the Plaintiff aware of their intention to argue a replacement theory on June 8, 2011 in their Reply in support of their Cross-Motion for Summary Judgment. This theory is not a surprise to the Plaintiffs.

The Plaintiff, however, has never pled or disclosed their intention to claim excess proceeds and unjust enrichment against the Defendant Lending Parties. This is a surprise to the Defendants.

The Court is not persuaded by the Plaintiff's argument that allowing a disclosed replacement theory to proceed and not allowing an unplead and not noticed unjust enrichment claim against the Defendant Lending Parties is inconsistent. It is not.

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The Court however is persuaded by the Plaintiff's argument that the Court's September 2011 ruling on the Motions for Summary Judgment came well after the date to amend the pleadings in March 2011. Further, the Court agrees with the Plaintiff's characterization of the Court's delay in ruling on their Motion for Reconsideration as leaving unresolved issues so close to trial. The Plaintiff, for the first time requested leave to amend the pleading on May 24, 2012. While the Court notes they certainly could have done so sooner, the Court agrees that the Plaintiff's lien priority was not fully known until a few weeks ago.

The Parties are responsible for the scheduling deadlines they crafted and that were ultimately adopted by the Court. Nevertheless, the Court should not have given the Parties a trial date without all pending issues resolved.

IT IS ORDERED vacating the Trial set June 5, 2012 and Trial Management Conference set for June 4, 2012.

IT IS FURTHER ORDERED granting leave to **both Parties** to amend their Complaints, make further disclosure and conduct discovery **on any issues, new or old**, until **July 1, 2012**. The Court deems the Defendant's Third Supplemental Disclosure Statement of March 30, 2012 as timely.

The Parties are advised the Court will not consider Motions for Summary Judgment on any issue previously considered.

IT IS FURTHER ORDERED setting the matter for an **in person** Status Conference on **July 16, 2012 at 10:00 a.m.** The Court anticipates setting a trial at that time as early as calendars will permit.

IT IS FURTHER ORDERED Counsel and the Parties will meet in person to discuss possible resolution **in good faith** prior to the time of the next Status Conference and shall jointly file a status report not later than Two (2) Days before the date of the Status Conference.

The Court takes no further action at this time.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.