

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-002899

07/05/2005

HONORABLE ROBERT L. GOTTSFIELD  
FOR THE HONORABLE ANNA M. BACA

CLERK OF THE COURT  
L. Slaughter  
Deputy

FILED: 07/07/2005

SHIRLEY GAINES

JOSEPH W CHARLES

v.

RECREATION CENTERS OF SUN CITY INC

BRANDON A NEWTON

ALTERNATIVE DISPUTE  
RESOLUTION - CCC

MINUTE ENTRY

8:46 a.m. This is the time set for oral argument regarding Defendant's Motion to Dismiss Plaintiff's Complaint (on the basis of discrimination, age and sex). The claim under Arizona Civil Rights Act is barred by Statue of Limitations and the Intentional Infliction of Emotional Distress claim should be dismissed because it does not rise to a sufficient level to support such a claim. Counsel for Plaintiff, Joseph W. Charles, is present in the courtroom. Counsel for Defendant, Brandon A. Newton, appears telephonically.

Tara Kramer, court reporter, is present.

After argument,

IT IS ORDERED as follows:

1. The parties have stipulated to the dismissal of Plaintiff's Count Two, Intentional Infliction of Emotional Distress.
2. The court denies the Defendant's Motion to Dismiss Count One (discrimination under Arizona Civil Rights Act-Sex and Age). By way of explanation the court permits Plaintiff to refile her action in this court, which was filed in State Court within eight days of her voluntary dismissal of her federal action, under A.R.S. § 12-504(A).

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Moreover, the court permits such refileing under 28 U.S.C. § 1367(d) finding the thirty day tolling provision applicable to this case. While Defendant argues that the tolling provision of 28 U.S.C. § 1367(d) only applies after a federal court declines to maintain supplemental jurisdiction over the state law claim, no case authority is submitted to the court saying this and a plain reading of § 1367(d) does not lead to that conclusion.

IT IS ORDERED setting a Jury Trial on **December 19, 2005, at 9:30 a.m. (3-days)** before:

HONORABLE ANNA M. BACA  
SUPERIOR COURT OF ARIZONA  
EAST COURT BUILDING  
101 WEST JEFFERSON  
COURTROOM 811 - 8<sup>TH</sup> FLOOR  
PHOENIX, ARIZONA 85003  
602-506-1810

THIS IS A FIRM TRIAL SETTING.

IT IS FURTHER ORDERED setting a Pretrial Management Conference on **November 4, 2005 at 9:00 a.m.** (45 minutes). The Pretrial Management Conference shall be governed by the Pretrial Management Orders issued this date.

IT IS FURTHER ORDERED setting the following deadlines:

1. Plaintiff shall disclose experts and opinions not later than **September 1, 2005.**
2. Defendants shall disclose experts and opinions not later than **September 15, 2005.**
3. Rebuttal experts and non-expert witnesses shall be disclosed not later than **October 1, 2005.**
4. This matter is referred to the court's Alternative Dispute Resolution Office for the appointment of a Judge *Pro Tempore* to conduct a Settlement Conference. Counsel and/or the parties are instructed that ADR will not set the Settlement Conference and therefore they should not contact the office of ADR. Counsel and/or the parties will be notified by ADR by minute entry upon the appointment of a Judge *Pro Tempore* and at that time should contact the appointed Judge *Pro Tempore* to arrange the time and location for the Settlement Conference. The Judge *Pro Tempore* is requested to conduct a Settlement Conference no later than **November 1, 2005.**

The parties shall notify this division in writing of the results no later than five (5) days after the Settlement Conference. The failure to complete or comply may result in sanctions.

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5. Final Supplemental Disclosure Statement not later than **September 19, 2005**.
6. Discovery shall be completed not later than **October 19, 2005**.

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

IT IS ORDERED that should any discovery disputes arise, prior to filing discovery motions, counsel shall MEET AND CONFER pursuant to Rule 37, then telephonically contact the court to set up a telephonic conference before any motions are filed.

8:55 a.m. Hearing concludes.