

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-015126

06/30/2006

HONORABLE ROBERT E. MILES

CLERK OF THE COURT
K. Ballard
Deputy

FILED: 07/06/2006

EAGLE MOUNTAIN COMMUNITY
ASSOCIATION

WILLIAM F SHORE III

v.

EAGLE MOUNTAIN INVESTORS L L C

WILLIAM A NEBEKER

PRETRIAL MANAGEMENT CONFERENCE

9:34 a.m. This is the time set for Pretrial Management Conference. Plaintiff is represented by counsel, William F. Shore, III. Defendant is represented by counsel, William A. Nebeker, Marcus Tappe, and Thomas Walcott.

A digital audio and video recording of this proceeding is being made by the "For the Record" recording system in lieu of a court reporter.

Discussion is held regarding time allocations for the ten-day jury trial set for July 11, 2006 in this division. In that regard, each side will be allotted **23 hours** of the available trial time to be allocated to opening statements, direct and cross-examinations, and closing arguments as each party sees fit.

Discussion is held regarding trial exhibits. In that regard, Plaintiff seeks to mark 125 exhibits and Defendant seeks to mark 225 exhibits. All marked trial exhibits shall be delivered to the courtroom clerk **no later than 10:00 a.m. on July 5, 2006**. Counsel stipulate to the admission of all exhibits, with the exception of the Glos reports and the Pavement Maintenance Information Source Report; although, counsel will discuss these exhibits further in an attempt to stipulate to their admission as well.

Discussion is held regarding proposed trial witnesses. With regard to Plaintiff's Motion to Strike Eight Defense Witnesses, counsel for Defendant indicates Defendant will not be calling
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Karl Thompson, Tom Thompson, Gordon Wark, Ken Walsh, Shi-en Shiau, or Paul Hoskin. Therefore, the motion with regard to those witnesses is moot. With regard to witnesses Duane Hunn and Michael Havill, Defendant is uncertain at this time whether they will be called. Accordingly, Defendants will have **until 5:00 p.m. on Wednesday, July 5, 2006** to file a response to the Motion to Strike; otherwise, the Court will assume those witnesses will not be called to testify.

With regard to Defendant's objection to Plaintiff's witnesses Mary Day and Flynn Duncan, Mary Day will not be allowed to testify as she was not previously disclosed; however, Ms. Duncan, as well as any other previously-disclosed witness, may be called to testify.

Discussion is held regarding the use of juror notebooks. If counsel decide to utilize notebooks, they shall discuss and agree on the content before presentation to the Court.

Counsel being unprepared to discuss jury instructions and verdict forms, these issues will be discussed at a later date.

Discussion is held regarding the use of deposition testimony. In that regard, counsel anticipate using deposition testimony for impeachment purposes only. Should counsel determine further use is necessary, counsel shall consider presenting deposition summaries.

Counsel are advised they will be responsible for any special equipment needed throughout the course of trial.

Oral argument is presented regarding Plaintiff's Motion in Limine Regarding Financial Discovery Concerning Punitive Damages.

IT IS ORDERED denying the motion.

Upon the Court's review of Defendant's Motion in Limine re: Plaintiff's Consumer Fraud Claim, the Court finds the motion to more appropriately be submitted as a Motion for Summary Judgment. Based thereon,

IT IS ORDERED denying the motion as untimely.

Oral argument is presented regarding Defendant's Motion in Limine re: Plaintiff's Improper Expenses Claim. Based on the representations made by counsel,

IT IS ORDERED denying the motion subject to objections during trial.

Oral argument is presented regarding Defendant's Motion in Limine re: Evidence Regarding Slope Stability.

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IT IS ORDERED precluding the expert from stating the slope will danger of injury or loss of life; however, the expert may testify that the slope is unstable.

Counsel shall submit to the Court, prior to voir dire, a joint statement of the case to be read during voir dire.

With regard to Defendant's request for a site visit,

IT IS ORDERED denying that request.

Counsel are advised trial hours are generally Tuesdays through Fridays from 9:30 a.m. to 4:30 p.m. with appropriate breaks.

Discussion is held regarding a financial statement of the Homeowners' Association that has been requested by Defendant. Counsel for Plaintiff states he is not in possession of the specific document requested by Defendant but has provided counsel with additional documents that contain the figures derived from the financial statement in question.

10:50 a.m. Matter concludes.