

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-008669

08/15/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT  
C. Keller/S. Brown  
Deputy

CAROLINE BROWN

MARK J DEPASQUALE

v.

PINNACLE RESTORATION L L C, et al.

THOMAS P BURKE II

MINUTE ENTRY

The Court has received and considered the following:

- Plaintiff's Motion in Limine to Exclude Evidence or Argument Regarding Alleged Comparative Fault, filed June 3, 2013,
- Defendant Camelback Village Improvement Association, Inc.'s Response to Plaintiff's Motion in Limine to Exclude Evidence or Argument Regarding Alleged Comparative Fault, filed August 5, 2013,
- Defendant Camelback Village Improvement Association, Inc.'s Notice of Errata in Defendant Camelback Village's Response to Plaintiff's Motion in Limine re: Comparative Fault, filed August 8, 2013,
- Plaintiff's Amended Motion in Limine to Exclude Certain Evidence of Farmers Insurance Company Payments, filed July 12, 2013, and
- Defendant Camelback Village Improvement Association, Inc.'s Response to Plaintiff's Amended Motion in Limine re: Farmers Insurance Company Payments, filed August 5, 2013.

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IT IS ORDERED as follows:

Comparative Fault

The Court does not see how the involvement of Mutual Management or CAU is even relevant. CVIA is liable for the consequential damages from its breach; conversely, if an element of damages did not derive from the breach, CVIA is not liable for it. Thus, to the extent that alleged damages derive from Ms. Brown's decision to undertake work outside what should have been in CVIA's policy, she cannot recover, and it is immaterial whether she got the money to pay for that extra work from another insurance company or out of her own pocket. In theory, the same would apply to Pinnacle, but as a practical matter it may be impossible to separate the two kinds of work, as well as Ms. Brown's involvement if any in overseeing the work. The Court therefore grants the Motion with respect to Mutual Management and CAU, and denies it with respect to Pinnacle.

Farmers

The same considerations apply here. CVIA is liable only for the damages resulting from its breach. It is of course entitled to explore just what those damages were; if, as it suggests, Pinnacle billed to its insurance expenses from the extra work, that is fair game. But again, whether the source of Ms. Brown's contribution was an insurance policy or her own funds is immaterial.

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.