

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-019190

08/27/2013

HONORABLE MARK H. BRAIN

CLERK OF THE COURT
A. Melchert
Deputy

STEPHEN F SURFACE

HENRY ALZATE

v.

MANDALAY AT SOUTH MOUNTAIN H O A, RYAN J MCCARTHY
et al.

TRIAL SET

East Court Building- Courtroom 413

9:01 a.m. This is the time set for telephonic Status Conference. Plaintiff is represented by counsel, Henry Alzate. Defendant Mandalay at South Mountain HOA is represented by counsel, Ryan McCarthy.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding the status of the case. In addition to the standard topics noted below, the joint pretrial statement shall contain a section devoted to the procedure for resolving the equitable and legal claims (i.e., what role will the jury play, order of trial, etc.).

IT IS ORDERED as follows:

1. Setting a **3-day Jury Trial** for **January 13-15, 2014 at 9:30 a.m.** in this division. PLEASE NOTE: Trials do not proceed on Fridays as Fridays are Law and Motion day for this division.

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2. Setting a **Final Pretrial Management Conference** on **December 19, 2013 at 8:30 a.m. (60 minutes)** in this division. The Court will address whether to proceed as a trial to the Court or as a trial to a Jury.

All parties must appear in person and may not appear telephonically.

Counsel are admonished that the Court will not likely grant continuances or enlarge the number of days once a Trial date has been scheduled, in view of the Court's calendar.

DUTIES PRIOR TO THE FINAL PRETRIAL CONFERENCE

MOTIONS IN LIMINE. All Motions in Limine shall be filed no later than **5:00 p.m. on November 13, 2013** and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a Motion in Limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(c). A written response to a Motion in Limine may be filed no later than ten (10) calendar days thereafter. The Court may rule on Motions in Limine without oral argument. No replies shall be filed. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any Motion in Limine.

JOINT PRETRIAL STATEMENT. Counsel shall deliver to the Trial Judge no later than **5:00 p.m. on December 12, 2013** a copy of the **Joint Pretrial Statement** signed by all counsel.

a) **Deposition Summary:** In addition to the information required by Rule 16(d), counsel shall at the Final Pretrial Conference provide to the Court copies of any deposition transcripts to be read to the jury. The offering party will highlight the portions to be read, the other side will highlight Rule 106 additions, and any objections for the Court to rule on will be clearly marked in the margin. The parties are encouraged to agree on narrative summaries of deposition testimony, using brief question and answer excerpts only to emphasize very important testimony or to cover areas of testimony that cannot be summarized to the satisfaction of all counsel. No stipulation should be unreasonably refused.

b) **Final Trial Witnesses:** In addition to the information required by Rule 16(d), the Joint Pretrial Statement shall include an exhibit titled: **Final Trial Witness List**. This list shall contain the name of each witness a party actually intends to call at Trial, the day on which they intend to call each witness and the **estimated time needed for direct, cross and re-direct examination**.

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JURY INSTRUCTIONS; VOIR DIRE QUESTIONS. Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall deliver to the Trial Judge, with their Joint Pretrial Statement, copies of:

- c) Proposed voir dire questions.
- d) A joint set of agreed-upon preliminary and final jury instructions and proposed forms of verdicts.
- e) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) and non-RAJI instructions should be typed and submitted in WORD format. Each instruction should cover only one subject.

DUTIES AT FINAL PRETRIAL CONFERENCE

Counsel shall be prepared to discuss:

- f) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
- g) Stipulations for the foundation and authenticity of exhibits.
- h) Preliminary jury instructions, juror notebooks (counsel shall bring any proposed juror notebooks to the conference), mini opening statements and voir dire.
- i) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
- j) Use of Short-Trial or Summary Jury Trial.
- k) Any special scheduling or equipment issues.

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. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.

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.

**JUDGE MARK H. BRAIN
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING**

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**101 WEST JEFFERSON
4th FLOOR, COURTROOM 413
PHOENIX, AZ 85003
602-372-1141 TEL**

Please Note: Judge Brain's division is now an FTR division. Any requests for a court reporter will need to be made three (3) days prior to a hearing.

9:10 a.m. Matter concludes.

**ATTORNEYS AND ASSISTANTS
PLEASE READ THE FOLLOWING PARAGRAPHS CAREFULLY**

- Exhibits to be offered at trial shall be delivered no later than **December 23, 2013** along with a brief description of each exhibit to the Division's clerk for marking. If you have any questions regarding the guidelines set forth below or anything related to exhibits, contact this division's clerk at (602) 506-6928.
- Exhibits should be submitted to the clerk in a three-ring binder, each separated by a tabbed numbered divider. Alternatively, the parties may submit the exhibits stapled and separated by a numbered sheet of colored paper. ***Either Plaintiff's and Defendant's exhibits shall be submitted in the same form, either both sets in binders or both sets separated by colored paper.***
- The list of exhibits should contain the case number and caption, the scheduled trial date, the party submitting the exhibits, the exhibit number, and a simple description of the exhibit. Keep the descriptions of the exhibits *simple*. Do not use a description that cannot be verified by looking at the document or item. ***Do not include Bates numbers*** in your description of the exhibits.
- Exhibits shall be marked numerically and consecutively beginning with Plaintiff's exhibits and continued sequentially with Defendant's exhibits (i.e. Plaintiff's exhibits 1, 2, 3, Defendant's exhibits 4, 5, 6. ***Do not skip numbers.*** Numbers will not be skipped or saved in anticipation of additional exhibits to be submitted. Any missing or skipped exhibits shall be designated as "*Unused.*" Additional exhibits, if necessary, may be marked during the course of trial.
- Counsel shall eliminate duplication of exhibits as duplicate exhibits *will not* be marked. If duplicate exhibits exist and they are removed by the clerk and not marked, the court's

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numbering will not be consistent with the list counsel provide. Counsel shall, therefore, confer regarding exhibits to insure that there are no duplicates.

- *Do not list depositions* on the exhibit description list as depositions will not be marked as exhibits. Original depositions shall be provided to the clerk at the time of trial for filing into the court record. Counsel shall retain a copy of the depositions for their use during the trial as the original depositions remain with the clerk to be used as reference by the trial judge during testimony.
- Blow-up charts and large items may only be used for demonstrative purposes. Counsel may bring blow-up charts and large items to court to use during trial; however, if counsel would like any blow-up charts or large items marked as an exhibit, they must provide the clerk with an 8-1/2 x 11 photograph of the item.

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.