

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-010791

08/26/2019

HON. ROSA MROZ

CLERK OF THE COURT  
D. Charbagi  
Deputy

MARDY C TOEPKE, et al.

MITCHELL W FLEISCHMANN

v.

PIONEER CONDOMINIUM ASSOCIATION OF SUN CITY WEST      DAVID G SCHMIDT

JUDGE MROZ

MINUTE ENTRY

East Court Building– Courtroom 414

9:17 a.m. This is the time set for Oral Argument on Plaintiffs Application for Preliminary Injunction, and Petition for Order to Show Cause filed on July 17, 2019, and Order to Show Cause filed on July 23, 2019. Plaintiffs, Mardy C. Toepke and Kate E. Toepke are represented by counsel, Mitchell W. Fleischmann. Defendant, Pioneer Condominium Association of Sun City Wes is represented by counsel, David G. Schmidt.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion held regarding Plaintiffs' Application for Preliminary Injunction and Petition for Order to Show Cause filed on July 17, 2019, and Defendant's Response.

The Court inquires about the need for an evidentiary hearing. Plaintiffs' position is that there are two issues, only one of which requires an evidentiary hearing. Issue one is the applicability of A.R.S. § 33-1227(D), which requires unanimous consent of the unit owners before any amendments to Declarations that restrict the use of any unit can be imposed. Plaintiffs assert

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that this is a purely legal issue. Issue two is the legitimacy of the HOA's incorporation. Plaintiffs assert that this issue will require an evidentiary hearing regarding the timing of the incorporation. Plaintiffs further assert that if the Court decides issue one in Plaintiffs' favor, issue two is moot and no evidentiary hearing will be needed. Defendants assert that an evidentiary hearing is still necessary because issue one is intertwined with issue two.

**IT IS ORDERED** that Plaintiffs shall file a Reply by no later than **September 3, 2019**.

**IT IS ORDERED** setting an Evidentiary Hearing on **September 24, 2019 at 9:00 a.m.** (time allotted: 3 hours) before:

**HONORABLE JUDGE ROSA MROZ  
MARICOPA COUNTY SUPERIOR COURT  
EAST COURT BUILDING  
101 W. JEFFERSON  
4<sup>TH</sup> FLOOR, COURTROOM 414  
PHOENIX, AZ 85003  
602-372-0384**

**NOTE:** The presumptive time limit for each side is **85 minutes** to present its case. "When you are out of time, you are out of words."

The Court will review the briefs before making a decision as to whether an evidentiary hearing is truly necessary. If the Court decides that issue one is purely legal, and decides that issue in Plaintiffs' favor, the Court will vacate the evidentiary hearing.

**IT IS FURTHER ORDERED** that all parties shall hand-deliver to the Clerk of this Division all exhibits to be used at the hearing **at least five (5) business days prior to the hearing.** All hearing exhibits shall have been exchanged prior to that time. Exhibits shall be accompanied with a numbered list of each exhibit and shall be separated with a blank sheet of colored paper. No duplicate exhibits shall be presented for marking. Exhibits are marked in numerical order per party, making it necessary to mark all of one party's exhibits before marking the other party's. Accordingly, the Defendant's exhibits numbering shall start at the next number following the last of Plaintiff's exhibits. (For example, Plaintiff submits 10 exhibits, which are marked Exhibit 1 through 10. Defendant submits 10 exhibits, which are marked 11 through 20). Exhibits must be stapled or bound together prior to delivery to the clerk. Upon submission of the exhibits to the clerk, please provide one additional set in a binder for the Judge's reference during the hearing. Please contact the Clerk at **(602) 506-8806** with any questions regarding procedures for marking and submitting exhibits.

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**NOTE: All typewritten exhibits being received in evidence should be legible and in at least an 8 point font.**

**IT IS FURTHER ORDERED** Counsel shall file, **at least three (3) business days prior to the hearing**, a Joint Hearing Statement signed by all counsel/parties.

- a) Deposition Summary: Counsel shall provide to the Court copies of any deposition transcripts to be read in place of live testimony. 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: The Joint Hearing Statement shall include an exhibit titled: Final Hearing Witness List. This list shall contain the name of each witness a party actually intends to call at the hearing, the day on which they intend to call each witness and the **estimated time needed for direct, cross and re-direct examination**.

**NOTE:** All court proceedings are recorded by audio and video method and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for up to three hours and \$280 for any hearing in excess of three hours. This fee does not include preparation of transcripts.

Requests for interpreters, court reporters or video conference must be made at least two weeks prior to your hearing date.

Should you want an unofficial copy of the proceedings, the parties or counsel may request a CD of the proceedings for a \$30.00 charge. If a CD is requested, please obtain a form from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center**. Attach the receipt showing payment of the fee and present both the receipt and the form to the bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.**

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**NOTE:** If you are not familiar with this division's electronic equipment, please make an appointment with this division's Judicial Assistant, Sandra Nageotte, via email at [nageottes@superiorcourt.maricopa.gov](mailto:nageottes@superiorcourt.maricopa.gov), to test the equipment at least one week prior to your hearing.

**NOTE:** Preferred communication with this Division is via email to my Judicial Assistant, Sandra Nageotte, at [nageottes@superiorcourt.maricopa.gov](mailto:nageottes@superiorcourt.maricopa.gov). We are able to respond much quicker to an email. Please make sure you endorse all parties involved in the case.

9:27 a.m. Matter concludes.