

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-001329

08/09/2021

HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT
G. Grantham/C. Mai
Deputy

MARYBETH ABODEELY

MARK W HORNE

v.

OASIS ASSOCIATION, THE, et al.

JEREMY C JOHNSON

JUDGE VIOLA

MINUTE ENTRY

East Court Building - Courtroom 714

9:33 a.m. This is the time set for a Trial Setting Conference. Plaintiff is represented by counsel, Justin D. Fouts, for counsel of record, Mark W. Horn. Plaintiffs are represented by counsel, Evann M. Waschuk and Jeremy C. Johnson. All parties/counsel are present virtually through Court Connect.

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

Discussion is held regarding previous attempts for a settlement.

Counsel for parties shall meet and confer in the next two (2) weeks then inform the court how they would like to proceed with settlement discussions.

Discussion is held regarding the status of the case and the setting of a trial date. Accordingly,

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IT IS ORDERED setting this matter for a **three (3)-day** jury trial on **April 18, 2022 at 9:00 a.m. for jury selection. The remaining days of trial, April 19 & 20, 2022, will begin at 9:30 a.m.**

**The Honorable Danielle J. Viola
Maricopa County Superior Court
East Court Building
101 W. Jefferson
7th Floor, Courtroom 714
Phoenix, AZ 85003
Phone: 602-506-3442**

Trial hours and days are normally 9:30 a.m. to 4:30 p.m. (with a lunch recess from noon to 1:30 p.m. and two 15-minute recesses, daily), Monday through Thursday.

IT IS FURTHER ORDERED setting a final trial management conference on **April 8, 2022 at 9:00 a.m.** (time allotted: **1 hour**) in this division. All counsel (and any self-represented party) shall **appear in person** unless otherwise ordered.

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 a half-day and \$280 for a full day.

9:53 a.m. Matter concludes.

Based on the trial setting, the court sets the following deadlines and makes the following orders. 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.

DUTIES BEFORE THE FINAL TRIAL MANAGEMENT CONFERENCE

MOTIONS IN LIMINE. All motions *in limine* shall be filed no later than **5:00 p.m. on March 9, 2022.** Written responses to motions in limine may be filed no later than 10 calendar days after service of the motion. No replies shall be filed. The court may hear argument at the final trial management conference or may rule without oral argument. The parties must comply with Ariz. R. Civ. P. Rule 7.2(a) before filing any motion in limine.

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JOINT PRETRIAL STATEMENT. The parties shall file with the court no later than **5:00 p.m. on April 1, 2022**, a **Joint Pretrial Statement**, signed by all counsel (and any self-represented party) and conforming in all respects to Ariz. R. Civ. P. 16(g), except as follows.

1. **List of Claims.** The Joint Pretrial Statement shall contain a list of all claims (i.e. claims, counterclaims, cross-claims, third-party claims, etc.) on which a verdict is sought. Such list shall specify (1) the cause of action (e.g. breach of contract, negligence, etc.), (2) the pleading and count in which such cause of action is pled, (3) each party asserting that cause of action, and (4) each party against whom relief is sought.

2. **Summary of the Case for Jury Selection.** The Joint Pretrial Statement shall include an agreed-upon brief (generally less than 200 words) summary of the case for jury selection purposes.

3. **Trial Exhibits.** As required by Rule 16(g), all trial exhibits shall be listed in the Joint Pretrial Statement along with objections. The court typically resolves objections to exhibits at trial, but objections must be listed in the Joint Pretrial Statement to be preserved.

4. **Deposition Designations.** As required by Rule 16(g), deposition designations and objections shall be included in the Joint Pretrial Statement. The court typically does not rule on objections to deposition designations at the final trial management conference. Rather, it resolves them at trial as follows. By 3:00 p.m. the day before a party plans to read deposition testimony, that party shall provide the court with a copy of the deposition transcript with the portions to be read highlighted. The court will rule on any objections by the next day.

5. **Final Trial Witnesses.** In addition, the Joint Pretrial Statement shall include an exhibit entitled Final Trial Witness List, which shall list each witness a party actually intends to call at trial, the day on which they intend to call that witness and the estimated time needed for direct, cross and re-direct examination.

JURY INSTRUCTIONS; VOIR DIRE. The parties shall meet and agree on as many proposed jury instructions as possible. The parties shall file with the court, with their Joint Pretrial Statement, copies of:

1. Proposed voir dire questions.
2. Agreed-upon preliminary and final jury instructions and proposed forms of verdicts.

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3. Separate sets of requested instructions that have not been agreed upon. Recommended Arizona Jury Instructions (“RAJI”) may be referred to name without reprinting, but if the RAJI contains options for the court the party should indicate which options it is requesting.

Jury instructions not requested by the final trial management conference will be deemed waived unless good cause exists for the untimely request.

SETTLEMENT. The parties are reminded to promptly notify the court of any settlement pursuant to Ariz. R. Civ. P. 5.1(d). 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.

TRIAL MANAGEMENT CONFERENCE

At the final trial management conference, the parties shall be prepared to discuss:

1. The claims and parties as to which a verdict is sought.
2. The time designated for trial and, if necessary, time limits.
3. Any scheduling or equipment issues.
4. Voir dire.
5. Any special issues regarding exhibits or deposition designations.
6. Preliminary jury instructions.
7. The case summary for jury selection purposes.
8. Motions in limine.
9. The potential for settlement before trial.

PROCEDURES FOR SUBMITTING EXHIBITS TO BE MARKED

Exhibits are due to the clerk no later than 3:00 p.m. on March 25, 2022. If you have any questions, please contact the clerk at Keleigh.Cabral@Maricopa.gov or by telephone at 602.506.1474.

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Bench Copies: Deliver hard copies of the exhibits (same due date as above) in a notebook/binder and an exhibit list for the Judge into this division's inbox at the entry to the division's courtroom. The exhibits need to be numbered with tabs.

Depositions will NOT be marked as exhibits. If you plan to read from a deposition or use the deposition for impeachment purposes, you will need to supply an ORIGINAL to the courtroom clerk for filing. Copies will not be filed with the clerk.

- A list with a generic description of each exhibit should be provided. The list should contain the case number, the caption, scheduled trial date and the party submitting the exhibits.
- Exhibits will be marked numerically and consecutively, plaintiff's first and defendant's second. If your list refers to an exhibit and it is not provided at the time of marking, the numbers of all following exhibits will be moved up. In addition, if duplicate exhibits are submitted, the clerk will remove the duplicate and the numbering will be adjusted accordingly. To avoid confusion during trial, it is essential that counsel avoid submitting duplicate exhibits. *The clerk cannot reserve numbers for exhibits that will be provided at a later date.* Exhibits will be marked as they are received.
- Each exhibit shall be stapled. If an exhibit is too large to be stapled, that exhibit shall be **securely fastened in order to prevent page separation during witness/jury review.** (Note: Black binder clips are NOT considered securely fastened. I suggest you use the silver two-prong fasteners).
- Exhibits should be separated by a colored sheet of paper or a tabbed divider sheet. The colored sheet or tabbed divider shall reflect the number of the exhibit and should be placed on top of the exhibit.
- Counsel shall submit for marking only those exhibits that they actually intend to use at trial. If they determine during trial that they wish to use a document not previously marked as an exhibit, the clerk can mark it at that time.
- Blow-ups and large items may only be used for demonstrative purposes. You may bring them to court to use during trial; however, if you would like them to be marked as an exhibit, please submit an 8 ½ x 11 photo of the item.

NOTICE: Exhibits Marked But Not Offered

Exhibits submitted to the court for an evidentiary hearing/trial, whether through hard copy or submitted electronically, that are marked as exhibits but are not offered into evidence at the

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evidentiary hearing/trial will be destroyed following the hearing, unless a party requests that the evidence be returned at the conclusion of the hearing. Such requests must be filed with the Court and served on all parties in advance of the hearing or by no later than the conclusion of the hearing.

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FOR ALL IN-PERSON APPEARANCES: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2021-109 and the Maricopa County Superior Court Administrative Order 2021-119 require all individuals entering a court facility in Maricopa County to wear a mask or face covering at all times that they are inside the facility. Any person who refuses to wear a mask or face covering as directed by court personnel will be denied access to the facility. If a participant is denied physical access to a courthouse for refusing to wear a face covering, the participant must contact the assigned judicial division to determine whether the person can participate in the proceeding using an audio or video connection.