

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-011927

09/13/2011

JUDGE PRO TEM COLLEEN L. FRENCH

CLERK OF THE COURT
J. Polanco
Deputy

DAVID B VANYO, et al.

JEFFREY D GROSS

v.

CAREFREE FOOTHILLS HOMEOWNERS
ASSOCIATION, et al.

KURT M ZITZER

GARY L BIRNBAUM

THIS IS A TRIAL SETTING ORDER

PLEASE READ CAREFULLY FOR COMPLIANCE

Courtroom 514- East Court Building

10:01 a.m. This is the time set for Telephonic Status Conference regarding the remand of the case from the Court of Appeals. Plaintiff is represented by counsel, Jeffrey D. Gross. Class Representative Carefree Foothills Homeowners' Association and class members John P. Dwyer, Jr. and Janet G. Dwyer are represented by counsel, Kurt M. Zitzer.

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

Case status and trial scheduling are discussed.

IT IS ORDERED setting this matter for a Four (4) day jury trial for **January 30, 2012-February 2, 2012 at 9:30 a.m.** in this Division before:

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**The Honorable Colleen French
Maricopa County Superior Court
East Court Building, Fifth Floor
101 West Jefferson, Courtroom 514
Phoenix, AZ 85003
Phone: 602-506-4567**

Trial days are normally 9:30 a.m. to 4:30 p.m., Monday through Thursday

This is a firm trial setting. A motion to continue based on lack of preparation will ordinarily not be granted.

IT IS ORDERED setting a Final Trial Management Conference for **January 6, 2012 at 10:00 a.m. (time allotted: 30 minutes)**. Counsel shall appear *in person* for the conference.

NOTE: All court proceedings are recorded by audio method and not by a court reporter. Any party may request the presence of a court reporter by calling the Division five (5) judicial days before the scheduled hearing.

10:06 a.m. Conference concludes.

Based upon the foregoing trial setting,

IT IS ORDERED as follows:

PRETRIAL PROCEEDINGS

Motions *in limine* shall be filed no later than **December 1, 2011**. Motions *in limine* may and shall be filed only in accordance with Rule 7.2, Rules of Civil Procedure (effective December 1, 2004). **Prior to filing any motion *in limine*, the parties must meet and confer to attempt to resolve issues to be raised by such motions, and any motions *in limine* must include a certification that they have done so.** Unless prior written leave of Court is obtained for good cause shown, no party may file more than three (3) motions *in limine*, including all subparts. The parties shall not file motions denominated as "*in limine*" that are, in substance, late-filed motions for summary judgment. All motions *in limine*, whether filed before or after the date of this minute entry will be considered at the pretrial management conference unless counsel advises the Court that any such motion needs to be resolved sooner to assist resolution of the case.

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PRETRIAL STATEMENT AND MANAGEMENT CONFERENCE DUTIES

A joint pretrial statement (JPTS) is due no later than **December 30, 2011**. The following shall be filed with the JPTS:

- A. Proposed *voir dire* questions to be asked by the court, if any.
- B. A list of all witnesses who the party intends to call at trial in the order in which the party intends to call the witness, together with the estimated time needed for direct, cross, and redirect examinations.
- C. A **joint** set of agreed-upon jury instructions and verdict forms. In addition, each party shall provide separate sets of any requested instructions that have not been agreed upon. (Please review *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993) and the RAJI Civil 4th Statement of Purpose and Approach before requesting non-RAJI instructions.) Recommended Arizona Jury Instructions (RAJI (Civil) 4th) need not be retyped, but should be listed, for example, in the following manner:

RAJI Preliminary 1 - - Duty of Jurors
RAJI Standard 2 - - Burden of Proof
RAJI Negligence 1 - - Violation of Statute

NON-RAJI INSTRUCTIONS should be typed, each numbered consecutively, one per page with a heading [i.e.: Plaintiff's Instruction No. 2, etc], and with authority for the instruction. Non-RAJI instructions and verdict forms should also be submitted in Word format.

- D. RAJI Preliminary 14 – Claims Made and Issues To Be Proved, a brief statement should be jointly drafted and submitted separately in Word Format.
- E. A stipulated brief summary of the case, which the court can read at the outset of *voir dire*.
- F. A list, by page and line numbers, of all deposition or other transcribed testimony that may be offered at trial, other than for impeachment, including designations of testimony that a party believes ought in fairness to be introduced pursuant to Rule 32(a) with testimony to be offered by an

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opponent. The court shall also be provided with copies of those parts of any such testimony to which objection is made, indicating the testimony objected to and the reasons for such objection. **Any objection not so included is waived.** Since jurors generally prefer narrative summaries, with brief excerpts of questions and answers, to reading many pages of testimony, the parties should confer as to whether agreed-upon summaries can be prepared.

- G. A list of all marked exhibits containing a brief description of each exhibit, as well as the objections, if any, to such exhibits and the reasons for such objection. **Any objections not so included are waived.**

At the FTMC, counsel who will try the case shall appear and be prepared to discuss and resolve:

- A. Allocation of trial time among the parties and, if appropriate, time limits for *voir dire*, opening statements, witness examinations, and closing arguments.
- B. Stipulations and objections regarding witnesses and exhibits. If time permits, the court will rule on objections at the Pretrial Management Conference.
- C. Jury instructions, juror notebooks, and verdict forms.
- D. Deposition summaries and excerpts from depositions including objections thereto.
- E. Scheduling, equipment, or interpreter issues.
- F. Status of settlement efforts.
- G. Motions *in limine* and other pending motions.
- H. Other matters addressed in the updated joint pretrial statement.

One day's jury fees will be assessed unless the court is notified of settlement by 2:00 p.m. on the judicial day before trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.1(c)

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ATTORNEYS AND ASSISTANTS
PLEASE READ THE FOLLOWING PARAGRAPHS CAREFULLY

- Exhibits to be offered at trial shall be delivered no later than **January 6, 2012** along with a brief description of each exhibit to the Division's clerk for marking.
- Exhibits should be submitted to the clerk in a three-ring binder, each separated by a tabbed numbered divider. If exhibits are submitted without a binder, then they shall be separated by a colored sheet of paper with the exhibit number written on front. Each exhibit shall be clipped or bound if too large to be stapled.
- 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). If exhibits are split, number the split exhibits as 1.001, 1.002, 1.003, etc. Letter designations such as 5(a), 5(b), 5 (c), etc. shall not be used. *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 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.

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- If you have any questions regarding these guidelines or anything related to exhibits, contact this division's clerk at (602) 372-3189.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 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.