

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-095462

09/12/2017

HONORABLE JOSHUA D. ROGERS

CLERK OF THE COURT
I. Ostrander
Deputy

SUMMER PLACE TERRACE HOMEOWNERS ASSOCIATION INC BRIAN W MORGAN

v.

T C B FLASH PROPERTIES L L C MATTHEW F LEATHERS

**STATUS/SCHEDULING CONFERENCE
TRIAL TO JURY SET**

Courtroom 206 SEF

8:46 a.m. This is the time set for telephonic Status/Scheduling Conference to set trial. Plaintiff Summer Place Terrace Homeowners Association, Inc., is represented telephonically by counsel Brian W. Morgan. Defendant TCB Flash Properties, LLC, is represented telephonically by counsel Matthew F. Leathers.

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

Discussion is held regarding the status of the case. The parties advise the Court they are prepared to set a trial date. Accordingly,

IT IS ORDERED as follows:

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1. Setting a **Trial Management Conference** on **January 8, 2018, at 11:00 a.m. (30 minutes allotted)**. All parties must appear in person and cannot appear telephonically.
2. Setting **Trial to a Jury** on **January 16, 2018, at 9:30 a.m. (3 days allotted)** before:

THE HONORABLE JOSHUA D. ROGERS
Maricopa County Superior Court
Southeast Judicial District
222 E. Javelina Avenue
Courtroom 206
Mesa, Arizona 85210
(602) 506.1603

Scheduled Trial days are January 16 – 18, 2018.

Trial hours are 9:30 a.m. to 4:30 p.m. daily. The Court will take two 15-minute recesses, one in the morning and one in the afternoon. The lunch recess will be from 12:00 p.m. to 1:30 p.m.

Duties Prior to Trial

1. **Dispositive Motions:** All dispositive motions, including Rule 56 motions, shall be filed no later than **October 18, 2017**.
2. **Motions in Limine:** All Motions *in Limine* shall be filed no later than **December 18, 2017**, 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 that 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*.

PLEASE NOTE: This division requires that all motions, responses, replies, and other Court-requested filings in this case be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. No pleadings will be accepted if filed in combination with another.

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3. **Joint Pretrial Statement:** Counsel shall file no later than **January 2, 2018**, a Joint Pretrial Statement signed by all counsel. In addition to the information required by Rule 16, the Joint Pretrial Statement shall include:
 - a. **A 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** (see Witness Information Form attached).
 - b. An agreed-upon number of jurors to be seated as the final panel, including any alternates, whether or not the alternates will deliberate, and an agreed-upon verdict ratio in accordance with the number of jurors deliberating.
 - c. Whether or not the Rule of Exclusion of Witnesses is invoked.
4. **Jury Instructions and *Voir Dire* Questions.** Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall file with their Joint Pretrial Statement **(the Judge would appreciate counsel providing a copy of the jury instructions request in Microsoft Word on CD):**
 - a. Proposed *voir dire* questions.
 - b. A joint set of agreed-upon preliminary and final jury instructions and proposed forms of verdicts.
 - c. 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) need not be typed and may be requested in the following manner: RAJI 3d Standard 1 - Duty of Jurors. Non-RAJI instructions should be typed. Each instruction should cover only one subject.

Duties at the Trial Management Conference

1. Counsel shall be prepared to argue Motions *in Limine* if the Court deems necessary.
2. Counsel shall be prepared to discuss:

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- a. Time limits in *voir dire*, opening statements, examination of witnesses, and closing arguments.
- b. Preliminary jury instructions, mini opening statements and *voir dire*.
- c. Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
- d. Any special scheduling or equipment issues.

Procedures for Submitting Exhibits to be Marked for Trial

1. Provide **an exhibit list with a brief description of each exhibit**. The list should contain the case number, the caption, the scheduled trial date, and **the party (Plaintiff/Defendant) submitting the exhibits**. Counsel should confer and insure there are **NO duplicate exhibits submitted**.
2. Exhibits will be marked numerically and consecutively.
 - a. Plaintiff's exhibits are marked first, followed by Defendant's. Accordingly, the Defendant's exhibits' numbering shall start at the next number following the last of Plaintiff's exhibits. (For example, Plaintiff submits 82 exhibits, which are marked as exhibits 1 through 82. Defendant submits 63 exhibits, which are marked as exhibits 83 through 145.) Please do not combine the parties' exhibits. Each side's exhibits must be submitted separately and in numerical order, with a colored sheet of paper between each exhibit and with the corresponding exhibit number thereon.
 - b. **Do NOT use subsections of exhibits**, e.g., 4a or 4.001. If subsections are used, each subsection will be marked as the next consecutive number and your exhibit list numbers will not match the Court's exhibit list numbers. Please use **only** the next consecutive number for each exhibit.
 - c. Do not leave blank spaces as numbers will not be held. If there is a blank, the next exhibit shall be marked consecutively to the previously numbered exhibit.
3. Blow-ups and large items may only be used for demonstrative purposes during trial. If you would like them to be marked as an exhibit, you must provide/submit an 8 ½ x 11" photo of the item for marking as an exhibit.

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4. **Depositions are NOT marked as exhibits.** Counsel shall present **ORIGINAL** depositions for filing at the same time that exhibits are provided. **ORIGINAL** depositions are filed in by the division clerk.
5. **EXHIBITS MUST BE DELIVERED to Judge Rogers' division clerk by 12:00 p.m. on January 2, 2018.** If the clerk is unavailable, the exhibits may be given to the bailiff or to the judicial assistant. *The parties are directed to meet in person to exchange exhibits before coming to court. The parties shall make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits.*
6. The parties are **strongly discouraged** from marking exhibits they do not anticipate offering during trial. The parties shall include a section in the Joint Pretrial Statement regarding exhibits that *may* be used during trial (and need not be initially marked), separate and apart from those exhibits the parties know will be offered and should be initially marked as trial exhibits in this case.

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 trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Ariz. R. Civ. P. Rule 5.3(d).

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.

A trial date now having been set, the parties may, without leave of the Court, modify the deadlines previously set in the previously filed Scheduling Order, using the trial date as a guideline for the new dates. Should the parties reach an impasse in their discussions to modify the deadlines, they may contact the Court for the setting of a telephonic status conference.

The trial will take place in the Superior Court's e-courtroom. A record of the proceedings will be made digitally in lieu of a court reporter. 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 courtroom clerk or 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.** Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. To request a transcript, call (602) 506.7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address, and telephone number.

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With this technology, a court reporter is likely not required and the parties are encouraged to experience the court's video recording system before requesting 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.

8:49 a.m. Hearing concludes.

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WITNESS INFORMATION FORM

WITNESSES FOR PLAINTIFF(S)

	WITNESS NAME	DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT & CROSS EXAMINATION TOTAL: _____

WITNESSES FOR DEFENDANT(S)

	WITNESS NAME	DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT & CROSS EXAMINATION TOTAL: _____

TOTAL WITNESS TIME ESTIMATE: _____

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TIME ESTIMATE FOR:	PLAINTIFF		DEFENDANT
OPENING STATEMENT			
CLOSING ARGUMENT	1st:	2nd:	