

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
10/04/2001

10/02/2001

CLERK OF THE COURT
FORM V000A

HONORABLE COLLEEN MCNALLY

K. Ballard
Deputy

CV 2001-002724

FILED: _____

ROBERT NELSON, et al.

ELLIOT G WOLFE

v.

GRAYHAWK PROPERTIES LLC, et al.

JOSEPH B SWAN JR

MICHAEL A LUDWIG

TRIAL SET

IN CHAMBERS. This is the time set for telephonic scheduling conference. Present by telephone on behalf of the Plaintiffs is Richard R. Traulsen for Elliot G. Wolfe; present by telephone on behalf of Defendants Grayhawk Development, Inc., Grayhawk Residential, Inc., and Grayhawk Properties, LLC is Joseph B. Swan, Jr.; and present by telephone on behalf of Defendant Grayhawk Community Association is Michael A. Ludwig.

No court reporter is present.

Based upon the Court's discussion with counsel, and given the agreement of counsel,

IT IS ORDERED setting the trial to start on **Monday, July 15, 2002 at 10:30 a.m.** in this division, Central Court Building, 201 West Jefferson, 7^h Floor, Courtroom 702, Phoenix, Arizona. It shall be a jury trial, and it is estimated it will last seven (7) days.

The proceeding will take place in the Superior Court's new

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"e-courtroom". A record of the proceedings may be made by videotape in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may give the Court a blank, previously unused videotape at least fifteen (15) minutes before the trial and a copy will be made at no cost. A specific type of videotape must be used for this system in order to ensure the most reliable record: Maxell or Fuji Super HG 120 (VHS) or equivalent. If the proceedings last for more than one day, a new tape must be provided each day. For the convenience of the parties, the store in the courthouse cafeteria sells the appropriate videotape. The Court can also provide a digital log, if the party provides an unused CD-R.

Should an official transcript be required, you may request that the Court prepare it. The party ordering the transcript must pay for it. With this new 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. If a court reporter is required, the Court must receive a written request at least 48 hours before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

IT IS FURTHER ORDERED adopting the deadlines and agreements set forth in the parties' joint comprehensive pretrial conference memorandum except as they conflict with the following deadlines. The Court's deadlines shall control.

IT IS ORDERED that simultaneous disclosure of expert witnesses and their opinions shall be made on February 28, 2002.

IT IS FURTHER ORDERED that all parties shall disclose supplemental or rebuttal experts and opinions by March 28, 2002.

IT IS ORDERED setting a **pretrial management conference on Friday, June 28, 2002 at 11:00 a.m.** in this division. The Court has allotted 30 minutes for said conference. The purpose of the

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conference is to hear oral argument on pending motions in limine and to discuss various pretrial matters, including objections to deposition testimony, exhibits and/or witnesses, review proposed voir dire and settle jury instructions, so that jury selection can commence on July 15, 2002. If all counsel feel significantly more or less time is required for the conference, the Court should be notified immediately.

IT IS FURTHER ORDERED that the joint pretrial statement in accordance with Rule 16(d), Arizona Rules of Civil Procedure, proposed voir dire and jury instruction are all due by 5:00 p.m. **two business days before the pretrial management conference.** In addition to the information required by Rule 16(d), counsel are to identify in the joint pretrial statement all deposition or other transcribed testimony that may be offered at trial, other than for impeachment. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony, and the reasons for such objections, are also to be set forth.

COUNSEL ARE HEREBY DIRECTED TO PROVIDE THE COURT WITH COPIES OF ALL CASES AND STATUTES CITED IN MEMORANDA AND PLEADINGS, WHICH THEY WANT THE JUDGE TO READ AND CONSIDER, CONCERNING THE MOTION(S) TO BE RULED ON, INCLUDING ARIZONA CASES AND STATUTES.

BASED UPON THE TRIAL SETTING, THE COURT ENTERS THE FOLLOWING ORDERS:

1. **No less than two judicial days prior to the pretrial management conference, counsel (or the parties) shall file:**

- A. Requested jury instructions, and any voir dire questions counsel wish the Court to ask.

The Judge would appreciate counsel

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providing a copy of the non-R.A.J.I. jury instruction requests on IBM-compatible double-sided, high-density 3.5 inch **diskettes**, in Microsoft Word.

- B. Any trial memoranda (optional).
- C. Agreed-upon instructions on substantive issues which may be read to the jury at the beginning of the case to assist them in understanding the law. If counsel cannot agree on the law to be read or the instructions are not provided, the Court will read only the standard and preliminary instructions set out in R.A.J.I. (which counsel need not provide to the Court.)

2. Motions in limine, which must meet the test of State v. Superior Court, 108 Ariz. 396, 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," shall be filed **20 days prior to the pretrial management conference**. Written Responses to motions in limine may be filed no later than 10 days prior to the pretrial management conference.

3. All motions (except motions in limine) shall be filed **no later than 90 days prior to trial** so they can be scheduled, briefed, argued and decided prior to trial.

4. All exhibits are to be exchanged between the parties 30 days before trial so that objections can be made at the pretrial management conference. Written stipulations to admit specific exhibits in evidence are encouraged. All objections to known exhibits and witnesses must be made before or during the pretrial management conference. **At least one week before trial, the trial lawyers shall make an appointment for themselves or their knowledgeable assistants to meet with the clerk of this**

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division to present all exhibits. The exhibits will be marked serially as they are listed in the pretrial statement (Plaintiff's first, Defendant's next). Counsel shall inform the clerk at the time for marking of the exhibits that are to be received directly into evidence pursuant to written stipulation.

5. The Court encourages the use of juror notebooks in appropriate cases. Stipulating the contents in evidence is necessary. Key exhibits may be included, along with diagrams, photographs, timelines, non-argumentative summaries of positions on liability and damages and other information helpful to jurors.

6. Full and fair statements of all experts' opinions and their factual bases shall be filed and delivered 90 days before trial. Opinions of experts fairly sought and revealed in deposition or other discovery shall not be supplemented at trial.

7. The witness and exhibit lists in the pretrial statement shall contain no surprises; any information revealed for the first time on the witness or exhibit lists will be inadmissible at trial.

8. Narrative summaries with brief excerpts of deposition question and answer testimony are preferred at trial rather than the reading in of pages of testimony or the playing of the videotaped deposition.

9. All documents and pleadings described above shall be delivered or telefaxed to opposing counsel on the date they are delivered to the Court.

10. Any stipulation to continue trial will be treated as a joint motion. Local Rule 3.4 provides that "no trial continuance shall be granted unless there is a showing of good cause." Accordingly, a trial continuance will not be granted

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unless there is a showing of good cause, regardless of whether the parties stipulate to the continuance.

11. If this matter settles, the parties are to notify the Court immediately as required in Local Rule 2.10. If the Court is not notified of a settlement before 2:00 p.m. one judicial day prior to trial, either or both of the parties shall be responsible for the jury fees pursuant to Rule 2.6, Local Rules of Practice.