

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-008955

10/08/2020

HONORABLE CHRISTOPHER COURY

CLERK OF THE COURT  
L. Stogsdill  
Deputy

SUNRISE DESERT VISTAS PROPERTY  
OWNERS ASSOCIATION INC

GUY W BLUFF

v.

DONA LISA JOHNSON

DANIEL R SALLUS

**RULING RE: MOTION IN LIMINE #1**

The Court has reviewed and considered the following:

- A. *Defendant's Motion in Limine Number One RE: Excluding Correspondence Between Plaintiff's Counsel With Prior Attorney for Defendant In Different Case*, filed May 26, 2020; and
- B. *Plaintiff's Response to Defendant's Motion Number One*, filed June 9, 2020.

Oral argument would not be helpful.

Defendant seeks to exclude correspondence with her prior counsel pursuant to the attorney-client privilege. Defendant contends that the statements are protected pursuant to Rules 408, inadmissible hearsay pursuant to Rule 801, not relevant pursuant to Rule 402, and outweighed by the dangers set forth in Rule 403. Plaintiff disagrees.

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**THE COURT FINDS** as follows:

1. The correspondence is relevant pursuant to Rule 402, *Arizona Rules of Evidence*, insofar as it provides evidence that Defendant (a) had notice of encroachments within the easement prior to the commencement of this action, (b) received a demand from Plaintiff to remove the encroachments prior to the commencement of this action, and (c) was threatened with litigation in the event that Plaintiff had to remove the encroachments.
2. The out of court statements of prior counsel are not being offered for the truth of the matter asserted. Rather, they are merely being offered for the purpose of proving that Defendant was aware that Plaintiff had given notice of alleged encroachments, and that Plaintiff had made demands and threats of litigation. Therefore, the statements of prior counsel do not meet the definition of hearsay pursuant to Rule 801(c)(2), *Arizona Rules of Evidence*.
3. The narrow basis for the correspondence is not protected by Rule 408, *Arizona Rules of Evidence*.
4. The Court is unable to conduct a Rule 403 balancing at this time. The documents will be precluded as cumulative pursuant to Rule 403 if Defendant does not dispute that she had notice of the encroachment, that she received a demand to remove the encroachment, and that she was threatened with litigation if Plaintiff had to remove the encroachment. However, if Defendant denies any of these facts, the documents may not be precluded pursuant to Rule 403.
5. It does not violate the attorney-client privilege for counsel for Plaintiff to ask Defendant if she had notice in generic terms, without indicating that the notice came from her lawyer. No reference that correspondence came from counsel shall be made without first obtaining permission from the Court.
6. The attorney-client privileged documents may be used to refresh Defendant's recollection, but shall not be offered in evidence in front of the jury until counsel and the Court consider this issue again, if it becomes necessary to do so in light of the prior findings. If such documents are admitted in evidence, they will need to be substantially redacted.

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7. Perhaps the best way to navigate this area expeditiously is for the parties to prepare a stipulation of fact in advance, and have the stipulation read to the jury.

Good cause appearing,

**IT IS ORDERED** denying *Defendant's Motion in Limine Number One RE: Excluding Correspondence Between Plaintiff's Counsel With Prior Attorney for Defendant In Different Case*, filed May 26, 2020. The denial is without prejudice as to the grounds raised pursuant to Rule 403, *Arizona Rules of Evidence*.

**IT IS FURTHER ORDERED** affirming the Final Pretrial Conference for **October 16, 2020, at 9:00 a.m.** in this division. **This hearing will be an in-person hearing.** The in-person appearance of counsel is necessary and required because, in addition to handling the regular matters resolved at a pretrial conference, counsel need to observe and understand the physical and procedural Covid-19 precautions and adjustments made by the Maricopa County Superior Court, and to plan for trial accordingly.

Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a court facility to wear a mask or face covering at all times they are in the court facility. With limited exceptions, the court will not provide masks or face coverings. Therefore, any individual attempting to enter the court facility must have an appropriate mask or face covering to be allowed entry to the court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the court facility or asked to leave. In addition, all individuals entering a court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the court facility.

**IMPORTANT NOTICE REGARDING ONLINE PROFILE**

Judge Coury maintains an online profile that answers many questions about courtroom and division procedures. Litigants and their attorneys should familiarize themselves with the online profile. You can find the online profile at the following link:

<http://www.superiorcourt.maricopa.gov/JudicialBiographies/judges/profile.asp?jdgID=272&jdgUSID=9683>.