

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-008714

10/11/2022

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
C. Ladden
Deputy

GALLERY COMMUNITY ASSOCIATION

PENNY JANE MANSHIP

v.

K HOVNANIAN AT GALLERY L L C, et al.

LOUIS W HOROWITZ

STEPHEN BEST
JASON J BOBLICK
LEONARD T FINK
SHANNON G HUFF
RINA K RAI
AMY WILKENS
DENNIS I WILENCHIK
JUDGE COOPER

JURY TRIAL SET

East Court Building – Courtroom 711

9:01 a.m. This is the time set for a Trial Setting Conference.

The following parties/counsel are present and appear virtually via the Court Connect platform:

- Plaintiff is represented by counsel, Craig S. Nuss and Penny Jane Manship.
- Defendants/Third Party Plaintiffs K Hovnanian at Gallery, LLC and K Hovnanian Arizona Operations, LLC are represented by counsel, Louis W. Horowitz.

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- Third Party Defendants Desert Vista, Inc. and Renco, LLC are represented by counsel, Marcus McGillivray, appearing on behalf of Rina K. Rai.
- Third Party Defendant Leblanc Building, Co., Inc is represented by counsel, Michael Ludwig, appearing on behalf of Stephen Best.
- Third Party Defendant Liberty Constructors, LLC is represented by counsel, Jason J. Boblick.
- Third Party Defendant Sargon Masonry Construction, LLC is not represented.

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

Discussion is held regarding the case status of Defendant Sargon Masonry Construction, LLC. Mr. Horowitz informs the Court that a settlement was reached with the aforementioned Defendant in December 2021 and the parties need to finalize and pay the agreed upon settlement. Counsel intends to file a Notice of Settlement.

Discussion is held regarding setting trial in this matter.

IT IS ORDERED setting this matter for a **15-day** Jury Trial on **March 13-16; 20-23; 27-30; and April 3-5, 2023 at 9:30 a.m.** in this division before:

**The Honorable Katherine Cooper
Maricopa County Superior Court
East Court Building
101 W. Jefferson
7th Floor, Courtroom 711
Phoenix, AZ 85003
Phone: 602-506-8311**

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 for **February 10, 2023 at 1:30 p.m. (time allotted: 1 hour)** in this division. All counsel and self-represented parties shall appear **in-person or via Court Connect**.

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Court Connect is the Superior Court in Maricopa County's new video court hearing platform. For more information about Court Connect, please visit:
<https://superiorcourt.maricopa.gov/court-connect>.

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

+1 917-781-4590, 860084431# United States, New York City
Phone Conference ID: 860 084 431#

All persons are strongly urged to appear by video instead of audio alone. For questions, please call Judge Cooper's division at 602.506.8311, or email this division's Courtroom Assistant Brandon Powell at Brandon.Powell@jbazmc.maricopa.gov or Judicial Assistant Avery Vaughn at Avery.Vaughn@jbazmc.maricopa.gov.

Discussion is held regarding pending Motions for Summary Judgment. A Joint Motion for Summary Judgment was filed by Third Party Defendants Renco, LLC and Desert Vista, Inc. on September 30, 2022. The Response is due November 4, 2022 and Reply will be due in the normal course. The Court will review the Motion and Response and determine if Oral Argument will be needed.

Discussion is held regarding settlement efforts.

Discussion is held regarding time allocation for Jury Selection, Opening Statements, witness examinations, and Closing Argument. You should assume **5 hours** of trial time per day, starting at 9:30am to 4:30 pm with 1.5 hours for lunch and two 15-minute breaks. Closing arguments shall be completed and the case submitted to the jury no later than **2pm** on the last day of trial.

9:15 a.m. Matter concludes.

NOTE: If/when a party files a pleading within **5 days or less** of a scheduled event, the party should also e-mail same this division's Courtroom Assistant Brandon Powell at Brandon.Powell@jbazmc.maricopa.gov or Judicial Assistant Avery Vaughn at Avery.Vaughn@jbazmc.maricopa.gov.

NOTE: All Court proceedings are recorded digitally 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

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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.

Should you want an unofficial copy (CD) of the proceedings, please email Electronic Records Services at ERS@superiorcourt.maricopa.gov or call (602) 506-7100. Please note that there is a \$30.00 fee. To obtain a copy of a hearing on the day it is conducted, you must first fill out a "Request for Daily Copy" form and pay the fee at the Court's Law Library Resource Center. Forms are available at the Law Library Resource Center. To order transcripts of digitally recorded court proceedings, call Electronic Records Services for instructions.

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 January 20, 2023.** 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*. Each side will be limited to filing no more than 5 motions *in limine*. However, either side may file a brief of unlimited length addressing evidentiary issues anticipated to arise at trial.

JOINT PRETRIAL STATEMENT. The parties shall file with the Court **no later than 5:00 p.m. on February 3, 2023,** a **Joint Pretrial Statement**, signed by all counsel (and any self-represented party) and containing the following. **This order modifies the requirements of Ariz. R. Civ. P. 16(f).**

1. **List of Claims.** The Joint Pretrial Statement must contain a list of all claims or causes of action on which a verdict is sought by any party. Such list shall specify (1) the cause of action (e.g., breach of contract, negligence, etc.), (2) each party asserting that cause of action, and (3) each party against whom that cause of action is asserted.
2. **No List of Issues.** The requirements of Ariz. R. Civ. P. 16(f)(2)(A), (B) and (C) are waived. The parties need not prepare a list of stipulations, agreed contested issues or other issues considered material. Disputes over what issues are properly in the case will be decided under Rule 26.1. The parties may, if they wish, submit one or more separate stipulations regarding facts, evidence or other matters.

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3. **Summary of the Case for Jury Selection.** The Joint Pretrial Statement must include an agreed-upon brief (generally less than 200 words) summary of the case for jury selection purposes. If the parties cannot agree, they must submit separate proposed summaries.
4. **Final Trial Witnesses.** The Joint Pretrial Statement must include an exhibit entitled Final Trial Witness List (see attached), which must list each witness a party expects to call at trial (in person or by deposition), the estimated time needed for direct, cross, and redirect, and the day on which they expect to call that witness. If the court finds that a party unreasonably included witnesses not likely to be called at trial, it may consider appropriate sanctions.
5. **Trial Exhibits.** As required by Rule 16(f)(E), all trial exhibits must 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. If the Court finds that a party unreasonably included exhibits not likely to be used at trial, it may consider appropriate sanctions.
6. **Deposition Designations.** Deposition designations and objections should not be included in the Joint Pretrial Statement, but must be submitted to the Court three judicial days before the start of trial. The Court will resolve deposition designations as follows: By 4:00 p.m. the day before a party plans to read deposition testimony, that party must provide the Court a hard copy of the deposition transcript with (1) the portions to be read highlighted, (2) any counter-designations highlighted in a different color, and (3) any objections written in the margin. The Court will rule on any objections by the next day. If the party plans to play a video deposition, the transcript must be provided by 4:00 p.m. two days before the deposition will be played.
7. **Other Matters.** The Joint Pretrial Statement must include the matters in Ariz. R. Civ. P. 16(f)(2)(H), (I), (J) and (K).

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 by 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. 5.3(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.

DUTIES AT 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 length of the trial and any time limits to complete the trial in the allotted time.
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.

TRIAL EXHIBITS

Counsel (and any self-represented party) **shall deliver all trial exhibits to the Clerk of the Court no later than 3:00 p.m. on February 20, 2023.**

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****PLEASE NOTE: FOR JURY TRIALS, ONLY PAPER EXHIBITS SHALL BE
SUBMITTED****

For in-person exhibit submission, please visit, <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission>. The webpage will provide instructions and guidance for locations for in-person submission of exhibits.

For filing paper exhibits, please adhere to the following guidelines:

1. Exhibits will be marked consecutively. *The clerk cannot reserve numbers for exhibits that will be provided at a later date.* Any missing exhibits will not be considered and the numbers of all following exhibits will be moved up. If Defendant's exhibits are received prior to Plaintiff's exhibits, the clerk may mark them first with Plaintiff's exhibits following.
2. Do not place exhibits in a notebook when submitting them to the clerk for marking and do not provide the clerk with stacks of loose paper. **Individual exhibits consisting of multiple pages shall be BOUND BY STAPLES OR TWO-PRONG FASTENERS. DO NOT use paper clips, rubber bands, binder clips or submit loose sheets of paper.**
3. Original Depositions will not be marked as an exhibit. **Original** depositions to be used for impeachment purposes shall be provided to the clerk on the first day of trial to be hand-filed.
4. Do not submit duplicate exhibits, **it is essential that the parties confer to avoid submitting duplicate exhibits.**
5. If large charts or blow-ups are anticipated to be used, please include a small version (or photo) which can be marked as the exhibit. The charts and blow-ups are used for demonstrative purpose only, are not marked as the exhibits, and are returned.
6. Do not put numbers on the exhibits themselves; instead, **use a COLORED sheet with the exhibit number on it.** Place the colored sheet in front of each exhibit, however, **DO NOT staple or paper-clip it to the exhibit itself** (this should be the only loose sheet).
7. The parties are to provide a workable list of exhibits. The list should include a title or description of each exhibit. (See blank sample of the following table as a reference).

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8. If media files or video-recordings are anticipated to be submitted for marking, please submit them on **thumb-drives**, not on a CD, and deliver them to the division for marking.

Exhibit No.	Identified By	Description <i>Should be verifiable when viewing the first page of the exhibit</i>	Stipulated in Evidence/Objection

PLEASE NOTE: Each party shall provide a binder of exhibits for the Court’s use. Each exhibit shall be separated by numbered divider tabs.

For additional assistance in preparation of exhibits contact the courtroom clerk at:
Cammille.Ladden@maricopa.gov.

NOTICE: Exhibits Marked But Not Offered

Exhibits submitted to the Court for a hearing/trial, whether through hard copy or submitted electronically, that are marked as exhibits but are not offered into evidence at the hearing/trial will be destroyed following the hearing/trial, unless a party requests that the evidence be returned at the conclusion of the hearing/trial. Such requests must be filed with the Court and served on all parties in advance of the hearing/trial or by no later than the conclusion of the hearing/trial.

WITNESS INFORMATION FORM

Allocation time for Jury Selection, Opening Statements, witness examinations, and Closing Argument. You should assume **5 hours** of trial time per day, starting at 9:30am to 4:30 pm with 1.5 hours for lunch and two 15-minute breaks. Closing arguments shall be completed and the case submitted to the jury no later than **2pm** on the last day of trial.

TOTAL ESTIMATED TRIAL TIME: **15 days.**

VOIR DIRE EXAMINATION

TIME ESTIMATE FOR:	
PLAINTIFF(S) VOIR DIRE	
DEFENDANT(S) VOIR DIRE	

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WITNESSES FOR PLAINTIFF(S)

	WITNESS NAME	DIRECT & RE-DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT, RE-DIRECT & CROSS TOTAL: _____

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WITNESSES FOR DEFENDANT(S)

	WITNESS NAME	DIRECT & RE-DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT, RE-DIRECT & CROSS TOTAL: _____

TOTAL WITNESS TIME ESTIMATE: _____

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