

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-052655

11/21/2017

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT
W. Tenoever
Deputy

MICHAEL BERENT, et al.

MICHAEL BERENT
17974 N 167TH DR
SURPRISE AZ 85374

v.

GRAZYNA MROCZKOWSKA, et al.

DEBRA S BROCKWAY

NANCY BERENT
17974 N 167TH DR
SURPRISE AZ 85374
MARIA R KUPILLAS
JOHN L LOHR JR.

RULING

Courtroom 102 - NE

10:17 a.m. This is the time set for Case Management Conference. Plaintiffs Michael Berent and Nancy Berent are present telephonically on their own behalves. Defendants Grazyna Mroczkowska, Miroslaw Mroczkowski and Marta Mroczkowska are represented by counsel, Debra S. Brockway. Defendant Bell West Ranch Homeowners Association Inc. is represented by counsel, Maria R. Kupillas and Louis T. Seletos.

Court Reporter, Lori Thielmann, is present. A record of the proceedings is also made digitally.

Discussion is held.

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IT IS ORDERED that the parties go forward with mediation.

IT IS FURTHER ORDERED plaintiffs' motion to request mediator Shawn Aiken is denied.

IT IS FURTHER ORDERED defendant Bell West Ranch Homeowners Association's request to appoint Sharon Ng is denied.

IT IS FURTHER ORDERED plaintiffs' request to assign case to court-appointed mediator is granted.

IT IS FURTHER ORDERED the request by Ms. Brockway today that this Court conduct the mediation is denied.

This Court will appoint a judge or commissioner of the Superior Court to conduct a settlement conference in this case.

IT IS ORDERED that all parties participate in the settlement proceeding in good faith.

IT IS FURTHER ORDERED that the parties address in the settlement conference the global issues, meaning all of the issues that exist between the parties which may need to be resolved in order for there to be a permanent resolution of the disputes between these parties.

IT IS FURTHER ORDERED that the judge that conducts the settlement conference report to this Court on the result of the proceeding and on that judge's opinion of whether each party participated in good faith. The positions of the parties and their statements during the mediation or settlement conference shall not be disclosed to this Court.

IT IS FURTHER ORDERED that defendant Grazyna Mroczkowski be permitted to participate by telephone. All other parties shall be personally present at the settlement conference.

The judge who is going to conduct the settlement conference will contact the parties to schedule the proceeding.

IT IS ORDERED defendant Bell West Ranch Homeowners Association's motion to strike the third amended complaint filed October 24, 2017 is denied.

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The plaintiffs' filing of October 30, 2017 that is titled "Response to Motion to Strike Plaintiffs' Third Amended Complaint" is in substance an explanation of the Third Amended Complaint and a request for permission to file it.

IT IS THEREFORE ORDERED that filing will be treated as a motion to amend the complaint.

IT IS FURTHER ORDERED that responses or objections to the plaintiffs' proposed motion to amend (Third Amended Complaint) are due by December 11, 2017. The plaintiffs' reply is due by December 22, 2017.

IT IS FURTHER ORDERED that any motion to amend by defendants Mroczkowska is due on December 22, 2017.

IT IS FURTHER ORDERED that the response to that motion to amend will be due on January 8, 2018 and any reply on that motion will be due not later than January 15, 2018.

As to plaintiffs' filing entitled "ARCP Rule 26.1 Violation by Defendants Failure to Disclose Unfavorable Info HOA Application for Driveway Install,"

IT IS ORDERED the Court takes no action. The Court's understanding of this filing is that there is no ongoing disclosure issue here but there may be a request for sanctions for not disclosing the application sooner. That request is denied.

IT IS FURTHER ORDERED plaintiffs' filing entitled "Article 26.1 Violation by Farmers Ins. Suppression of Insurance Adjusters Report from Jan 2017 Rana Sammanni" treated as a motion to compel the disclosure of communications between the adjuster and the plaintiffs' prior counsel and any report by the adjuster relating to the Berents and their property is denied.

IT IS FURTHER ORDERED that the plaintiffs' former attorney, Mr. Lohr, shall turn over to the plaintiffs any correspondence between himself and the Farmers' adjuster. That includes correspondence that he sent or correspondence that he received from the adjuster and any reports or other materials that he was given by the adjuster.

IT IS FURTHER ORDERED that this minute entry is to be endorsed on Mr. Lohr.

The Court notes that former counsel has an obligation to turn over the plaintiffs' file, as set forth in several State Bar opinions. Mr. Lohr is to review the matter and ensure that he has complied with his obligation to provide the contents of the file to his former clients.

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With respect to plaintiffs' filing entitled "Public Records Request from Farmers Insurance Co. from Jan 2017 Investigation on 17986 N 167th Dr. Surprise AZ,"

IT IS ORDERED that the plaintiffs' former counsel turn over to the plaintiffs all correspondence that was received by him from the defendants or their lawyers or any third parties in this litigation excepting only correspondence that purely relates to the business affairs of counsel. Any correspondence relating to the representation of the plaintiffs in this case (whether to or from counsel) shall be provided by counsel to the former clients forthwith as part of counsel's obligation to turn over the file to his former client when he withdraws from the litigation.

IT IS FURTHER ORDERED that counsel for defendants Mroczkowska shall review Rule 26.1(a)(10) with her clients and ensure that the disclosure required by Rule 26.1(a)(10) regarding insurance has been made. If counsel believes that there is nothing to be disclosed then she is to notify the plaintiffs in writing of that by December 11, 2017. Any disclosures are also due by that date.

As to Plaintiffs' filing dated November 13, 2017 referring to the Bell West Ranch application violating several CC&R's,

IT IS ORDERED that the parties meet and confer concerning an amended scheduling order that takes into account all of the proposed amendments of the complaint.

IT IS FURTHER ORDERED that by January 26, 2018, the parties shall submit a proposed amended scheduling order or if the parties are not able to agree then each party may submit its own proposed form of order. The Court will then expect that the parties will comply with the new scheduling order and that there will not be further extensions absent extraordinary circumstances.

IT IS FURTHER ORDERED the objection to the defendants' request to reschedule filed November 13, 2017 is overruled. No further action need be taken by any party in that respect.

With respect to Defendant Bell West Ranch Homeowners Association's Motion to Designate Plaintiffs as Vexatious Litigants,

IT IS ORDERED as follows with respect to the conduct of the plaintiffs:

- Any request for information shall be directed first to the defendants' attorneys, before the filing of a motion or request to the Court. The request shall be made in writing. If the information is not provided and the plaintiffs move to compel production, the motion

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shall include the letter to defendants' counsel, attached to the motion as proof that there has been a request directly to counsel. Any request to compel information that does not have attached to it the letter showing that counsel was first asked for that information will not be considered by the Court.

- All filings shall include a statement in the caption of specifically what is being requested in that filing. A general description is not sufficient. The caption shall say "motion to" or "request to" and then it shall specify what it is that the plaintiffs are asking the Court to order, and which defendant(s) specifically it is being directed to. If it is directed to both defendants it shall specifically say that. Any defendant who is not named in the caption as being the party at whom this motion or request is directed will not be required to respond and the Court will take no action.
- The Plaintiffs shall refrain from arguing their case in filings that have no purpose other than to argue the case. The content of the filings is to be directed to whatever request is being made in that filing. The Court will not consider pretrial filings that are meant as arguments of the plaintiffs' position on the merits in the case and the defendants will not be required to respond to any such filings.
- Counsel for the defendants are not required to respond to, and the Court will not consider, any accusations of wrongdoing or misconduct unless the Court orders a response.
- The motion to designate the plaintiffs as vexatious litigants is otherwise denied.

IT IS ORDERED vacating the existing scheduling order.

IT IS FURTHER ORDERED that if the settlement conference has not taken place by the time the revised scheduling order is due, the parties shall include a deadline for the settlement conference in the new scheduling order.

IT IS FURTHER ORDERED that the plaintiffs shall afford access to their property to an appraiser for the defendants Mroczkowska at a reasonable time in a reasonable manner, after the first of the year.

IT IS FURTHER ORDERED that the appraiser shall be given such access to the property and the home as the appraiser deems necessary to perform the appraisal.

12:11 p.m. Hearing concludes.