

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-024457

11/30/2004

THE HONORABLE MICHAEL A. YARNELL

CLERK OF THE COURT
M. L. Smith
Deputy

FILED: 12/06/2004

FIREROCK RESORT CASITAS
CONDOMINIUMS HOMEOWNERS
ASSOCIATION

MICHAEL D DICKS

v.

MIRAGE HOMES L L C, et al.

JILL ANN HERMAN

ADAM B CAMPBELL
WILLIAM H DOYLE
STEPHEN E JACKSON
KENNETH JANUSZEWSKI
RINA K RAI
RICHARD L RIGHI
JAMES M SHINN
LEE P BLAKE
JOHN J BELANGER
SEAN M PLUNKETT
STEVEN R JANSSEN

MINUTE ENTRY

8:30 a.m. In the courtroom.

Time set for oral argument on Motion to Compel Mediation. Counsel, Steven R. Janssen, is present for Michael D. Dicks who represents Plaintiff. Counsel, Lee P. Blake, is present as co-counsel for the Mirage Defendants. Counsel, Kenneth Januszewski, is present for Defendant Chas Roberts Air Conditioning, Inc. Counsel, John Belanger, is present for Rina K. Rai who represents Defendant Structures, Inc. Counsel, Adam B. Campbell, is present for Defendant Leach Painting & Drywall. Counsel, James M. Shinn, is present for Defendants Century Roofing and Structures, Inc. Counsel, Sean Plunkett, is present for Castle Drywall, Inc

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and Shaw & Sons Plastering. Counsel, Robert Clark, is present for Stephen E. Jackson, who represents Combined Energies Corporation.

Court Reporter, Steve King, is present.

Oral Argument and comments are heard as to Defendant Mirage Homes' Motion to Compel Attendance at Mediation, filed October 12, 2004.

After discussion, as reflected on the record,

IT IS ORDERED all parties shall and must continue to meet and confer and carry through with the continuing planned private mediation sessions before mediator Steve Scott.

FURTHER ORDERED clarifying the court's prior order requiring private mediation, pursuant to Rules 1 and 16, Rules of Civil Procedure, and the inherent power of the court, as follows:

1. The parties in this action must and shall meet and confer, on an ongoing and periodic basis, concerning private mediation procedures, times, places, attendance, and cost sharing.
2. All parties must and shall, from time to time, attend and participate in good faith private mediation in this case.
3. Reasonable mediation conferences must be held and the parties must participate in good faith even if no settlement is expected.
4. While personal attendance of party decision makers is preferred and requested by this court (including personal attendance of insurance adjustors when the insurance company has the primary or sole authority to authorize settlement); telephonic appearance is acceptable upon agreement of the parties.
5. Any disagreements concerning private mediation procedures, times, places, attendance, and cost sharing may, from time to time, be submitted to the court for ruling, upon served and noticed motion.

Note: While *Armstrong v. Hooker*, 135 Ariz. 358 (Ariz. App., Div. 2, 1982), appears to be authority that the court may not ordinarily compel the personal attendance of an out-of-state party, authorities related to the court's power to sanction a bad faith failure to participate in court ordered mediation are collected at *Alternative Dispute Resolution: Sanctions For Failure To Participate In Good Faith In, Or Comply With Agreement Made In, Mediation*, 43 A.L.R. 5th 545 (2004).

9:05 a.m. Hearing concludes.