

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-017609

11/22/2013

JUDGE DOUGLAS L. RAYES

CLERK OF THE COURT
T. Springston
Deputy

PENELOPE JOHNSON

CHRISTOPHER A LAVOY

v.

POINTE SOUTH MOUNTAIN RESIDENTIAL
ASSOCIATION, THE

BRIAN W MORGAN

PAUL R NEIL

MINUTE ENTRY

Central Court Building – Courtroom 704

1:32 p.m. This is the time set for Oral Argument on Motion for Extension of Time to File Application for Award of Attorneys' Fees, filed September 3, 2013; Any pending motions. Plaintiff is present with counsel, Christopher A. Lavoy. Defendant is represented by counsel, Paul Neil. Also present to observe the proceedings on behalf of Defendant is Board President, B. David Cathell.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Case status, remaining issues and rulings from the bench trial of August 12-13, 2013 are discussed.

Discussion is held regarding Defendant's Request for Clarification of Court's Ruling and Objection to Plaintiff's [Proposed] Findings of Fact and Conclusions of Law, filed August 27, 2013. Based thereon,

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IT IS ORDERED Plaintiff shall file a responsive brief by **5:00 p.m. November 29, 2013** addressing only balconies, patio covers, trellises, boundary walls and the rod iron features in the gates incorporated in the boundary walls. Defendant shall file a reply by **5:00 p.m. December 4, 2013**.

Discussion is held regarding Plaintiff's [Proposed] Findings of Fact and Conclusions of Law Regarding Use of Courthouse Exterior Maintenance Assessments to Maintain the Common Area, filed August 23, 2013. Based upon matters presented, objections are ruled on as follows:

IT IS ORDERED:

Paragraph 1D: Granted
Paragraph 10: Overruled
Paragraph 22-23: Overruled
Paragraph 25-28: Sustained
Paragraph 32: Overruled
Paragraph 33-34: Sustained
Paragraph 35: Overruled
Paragraph 36-37: Sustained

Discussion is held regarding the definition of separately metered and/or separately charged. Plaintiff's counsel request the Court's definition of separately metered and/or separately charged.

The Court defines separately metered and/or separately charged as when each unit is metered separately and each unit is charged an individual amount.

Discussion is held regarding the Court's previous rulings including the phrase "good faith".

The Court clarifies that the phrase "good faith" was a term of art not intended to be a legal finding of good faith. Good faith was not an issue at trial. The phrase "good faith" was used as a term of art because of the volunteers' hard work.

The Court directs counsel to work together to create a proposed form of judgment. Counsel agree to submit it by **5:00 p.m. December 4, 2013**. If counsel cannot reach an agreement on the proposed form of judgment, then they shall submit separate forms.

Discussion is held regarding attorneys' fees.

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2:14 p.m. Matter concludes.

BEFORE FILING ANY DISCOVERY MOTION, parties are instructed to contact this division for an informal teleconference. Division contact information: Judicial Assistant, Mary Farmer, phone: (602)506-0816.

For copies of hearings or trial proceedings recorded, please call Electronic Records Services at (602)506-7100. Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. To request a transcript, call (602)506-7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address, and telephone number.

Pursuant to Part 1, Chapter 6, Section 1-602 D (4)(a), of the Arizona Code of Judicial Administration, **if a court reporter is present**, the court reporter's record is the official record and requests for transcripts shall be made by contacting the court reporter at (602)506-6100 or email request to lineburgc@superiorcourt.maricopa.gov.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.