

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-019190

12/12/2013

HONORABLE MARK H. BRAIN

CLERK OF THE COURT
A. Melchert
Deputy

STEPHEN F SURFACE

HENRY ALZATE

v.

MANDALAY AT SOUTH MOUNTAIN H O A, et RYAN J MCCARTHY
al.

TRIAL CONTINUED/RESET

East Court Building- Courtroom 413

10:31 a.m. This is the time set for a telephonic Emergency Hearing. Plaintiff is represented by counsel, Henry Alzate and Robert Ducomb. Defendant Mandalay at South Mountain HOA is represented by counsel, Ryan McCarthy.

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

Discussion is held regarding the status of the case.

IT IS ORDERED deeming withdrawn Defendant's Motion to Dismiss Plaintiff's Request for Preliminary Injunction.

IT IS FURTHER ORDERED vacating Jury Trial on January 13, 2014, and resetting same to **March 25-27, 2014 at 9:30 a.m.** in this division.

IT IS FURTHER ORDERED vacating Final Pretrial Conference on December 19, 2013,
Docket Code 064

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and resetting same to **March 7, 2014 at 11:00 a.m.** in this division. *All pending motions will be held in abeyance until this date.*

DUTIES PRIOR TO THE FINAL PRETRIAL CONFERENCE

JOINT PRETRIAL STATEMENT. Counsel shall deliver to the Trial Judge no later than **5:00 p.m. on February 28, 2014** a copy of the **Joint Pretrial Statement** signed by all counsel.

a) **Deposition Summary:** In addition to the information required by Rule 16(d), counsel shall at the Final Pretrial Conference provide to the Court copies of any deposition transcripts to be read to the jury. The offering party will highlight the portions to be read, the other side will highlight Rule 106 additions, and any objections for the Court to rule on will be clearly marked in the margin. The parties are encouraged to agree on narrative summaries of deposition testimony, using brief question and answer excerpts only to emphasize very important testimony or to cover areas of testimony that cannot be summarized to the satisfaction of all counsel. No stipulation should be unreasonably refused.

b) **Final Trial Witnesses:** In addition to the information required by Rule 16(d), the Joint Pretrial Statement shall include an exhibit titled: **Final Trial Witness List**. This list shall contain the name of each witness a party actually intends to call at Trial, the day on which they intend to call each witness and the **estimated time needed for direct, cross and re-direct examination**.

JURY INSTRUCTIONS; VOIR DIRE QUESTIONS. Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall deliver to the Trial Judge, with their Joint Pretrial Statement, copies of:

- c) Proposed voir dire questions.
- d) A joint set of agreed-upon preliminary and final jury instructions and proposed forms of verdicts.
- e) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

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typed and submitted in WORD format. Each instruction should cover only one subject.

DUTIES AT FINAL PRETRIAL CONFERENCE

Counsel shall be prepared to discuss:

- f) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
- g) Stipulations for the foundation and authenticity of exhibits.
- h) Preliminary jury instructions, juror notebooks (counsel shall bring any proposed juror notebooks to the conference), mini opening statements and voir dire.
- i) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
- j) Use of Short-Trial or Summary Jury Trial.
- k) Any special scheduling or equipment issues.

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. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.

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.

**JUDGE MARK H. BRAIN
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING
101 WEST JEFFERSON
4th FLOOR, COURTROOM 413
PHOENIX, AZ 85003
602-372-1141 TEL**

Please Note: Judge Brain's division is now an FTR division. Any requests for a court reporter will need to be made three (3) days prior to a hearing.

10:44 a.m. Matter concludes.

ATTORNEYS AND ASSISTANTS

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PLEASE READ THE FOLLOWING PARAGRAPHS CAREFULLY

- Exhibits to be offered at trial shall be delivered no later than **March 4, 2014** along with a brief description of each exhibit to the Division's clerk for marking. If you have any questions regarding the guidelines set forth below or anything related to exhibits, contact this division's clerk at (602) 372-3189.
- Exhibits should be submitted to the clerk in a three-ring binder, each separated by a tabbed numbered divider. The parties may submit them stapled and separated by a sheet of colored paper. ***Both Plaintiff and Defendant's exhibits shall be submitted in the same form, either both separated by colored paper or both sets in binders.***
- The list of exhibits should contain the case number and caption, the scheduled trial date, the party submitting the exhibits, the exhibit number, and a simple description of the exhibit. Keep the descriptions of the exhibits *simple*. Do not use a description that cannot be verified by looking at the document or item. ***Do not include Bates numbers*** in your description of the exhibits.
- Exhibits shall be marked numerically and consecutively beginning with Plaintiff's exhibits and continued sequentially with Defendant's exhibits (i.e. Plaintiff's exhibits 1, 2, 3, Defendant's exhibits 4, 5, 6. ***Do not skip numbers.*** Numbers will not be skipped or saved in anticipation of additional exhibits to be submitted. Any missing or skipped exhibits shall be designated as "*Unused.*" Additional exhibits, if necessary, may be marked during the course of trial.
- Counsel shall eliminate duplication of exhibits as duplicate exhibits *will not* be marked. If duplicate exhibits exist and they are removed by the clerk and not marked, the court's numbering will not be consistent with the list counsel provide. Counsel shall, therefore, confer regarding exhibits to insure that there are no duplicates.
- ***Do not list depositions*** on the exhibit description list as depositions will not be marked as exhibits. Original depositions shall be provided to the clerk at the time of trial for filing into the court record. Counsel shall retain a copy of the depositions for their use during the trial as the original depositions remain with the clerk to be used as reference by the trial judge during testimony.
- Blow-up charts and large items may only be used for demonstrative purposes. Counsel may bring blow-up charts and large items to court to use during trial; however, if counsel

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would like any blow-up charts or large items marked as an exhibit, they must provide the clerk with an 8-1/2 x 11 photograph of the item.

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.