

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-005392

11/03/2005

JUDGE PRO TEM GLENN M. DAVIS

CLERK OF THE COURT
L. Muhammad
Deputy

FILED: 11/07/2005

MILLETT RANCH HOMEOWNERS
ASSOCIATION INC

ROBERT E BARRY II

v.

BROWN FAMILY COMMUNITIES, et al.

J GREGORY CAHILL
LEE P BLAKE

TCM MASONRY INC

ANDREW R PESHEK

TIMOTHY J THOMASON

MINUTE ENTRY

8:51 a.m. This is the time of Status Conference and Oral Argument on Various Motions.

Plaintiff is represented by counsel Robert E. Barry II. Defendant/Third-Party Plaintiff Homes By Dave Brown is represented by counsel Elizabeth J. Zanon for trial counsel J. Gregory Cahill and trial counsel Lee P. Blake. Third-Party Defendant TCM Masonry Inc. is represented by counsel Andrew R. Peshek.

Court reporter: Jane Westlund 602-329-0093.

Court and counsel discuss the status of the case.

**ORDER SETTING TRIAL DATE AND
TRIAL MANAGEMENT CONFERENCE**

IT IS ORDERED:

1. This matter is set for trial to a jury on **March 15, 2006 at 9:30 a.m.** in this division.

Estimated length of trial is: **8 days.**

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THIS IS A FIRM TRIAL SETTING.

IT IS ORDERED setting Oral Argument on Plaintiff's Motion to Bifurcate or Sever Third-Party Claims for Purpose of Trial on **January 30, 2006 at 9:00 a.m. (30 minutes) (30 days before Pretrial Management Conference)** in this division.

ORDER SETTING FINAL PRETRIAL MANAGEMENT CONFERENCE

2. A final Pretrial Management Conference is set for **March 1, 2006 at 9:00 a.m. (30 minutes)** in this division.
3. Prior to the Pretrial Management Conference, counsel are directed to meet and confer with respect to pre-marking all exhibits directly into evidence. Any objections to exhibits will be heard at the Pretrial Management Conference. Counsel shall present all exhibits with a list of exhibit descriptions to the Clerk of this Court **before 9:00 a.m. two Court days prior to the Pretrial Management Conference. Please advise the Clerk, by signed stipulation or on the record, which exhibits may be marked directly into evidence.**
4. Discussion will be held regarding the creative and effective use of courtroom technology, deposition summaries and extracts, summaries of direct testimony, juror notebooks and any and all other matters that will make this case interesting for the jury and assist counsel in making the maximum and most effective use of their time allocation.
5. Pursuant to Civil Rule 7.2, prior to filing any motions in limine, counsel are directed to personally meet and confer to discuss the subjects of any proposed motions in limine. All motions in limine are to be filed not later than thirty days before the Pretrial Management Conference. Each side may file one motion, not to exceed 15 pages, containing not more than five separate subjects. Motions in limine, if any, will be argued at the Pretrial Management Conference. Motions in limine must meet the test of State v. Superior Court 108 Ariz. 396, 499 P.2d 152 (1972): "The primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial."
6. The joint pretrial statement in accordance with Rule 16, Rules of Procedure, is due by **5:00 p.m., five days prior** to the Pretrial Management Conference. In addition to the information required by Rule 16, counsel are to identify in/with the joint pretrial statement all deposition or other transcribed testimony that may be offered at trial. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony, and the reasons for such objections, are also to be set forth.

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7. Jury Instructions, voir dire questions, and verdict forms shall be delivered to the Court at the Pretrial Management Conference. Counsel shall deliver copies of:
 - a. Proposed voir dire questions.
 - b. A joint set of agreed-upon preliminary and final jury instructions and form(s) of verdict.
 - c. Separate sets of requested instructions that have not been agreed upon.
 - d. A statement of the case for the Court to read to the jury.
 - e. Proposed findings of fact and conclusions of law (if a request for findings has been or will be filed).
8. All motions (except motions in limine) shall be filed no later than **seventy-five (75) days prior** to trial so they can be scheduled, briefed, argued and decided prior to trial.
9. Opinions of experts fairly sought and revealed in deposition or other discovery shall not be supplemented at trial.
10. The witness and exhibit lists shall contain no surprises; any information sought by other discovery devices and revealed for the first time on the witness or exhibit lists will be inadmissible at trial.
11. All documents and pleadings described above shall be delivered or telefaxed to opposing counsel on the date they are delivered to the Court.
12. Jurors get upset if they have to wait, so counsel shall make sure that they have witnesses available to fill the day.

9:02 a.m. Hearing recesses.

ORAL ARGUMENT ON VARIOUS MOTIONS

9:36 a.m. Hearing reconvenes with respective counsel present.

Court reporter: Jane Westlund 602-329-0093.

Arguments are presented. Ms. Zanon joins the Motion for Summary Judgment regarding diminution in value with respect to damages against Plaintiff.

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MATTERS TAKEN UNDER ADVISEMENT

IT IS ORDERED taking all matters under advisement.

The Court preliminarily is inclined to deny the Plaintiff's Motion to Bifurcate or Sever Third-Party Claims for Purpose of Trial, but will take it under advisement for final ruling at a later time.

10:50 a.m. Hearing concludes.