

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-009859

08/04/2004

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT  
M. Johnson  
Deputy

FILED: 08/06/2004

BRIAN CATTELINO, et al.

LORI V BERKE

v.

WOODSIDE HOMES OF ARIZONA INC, et al.

THOMAS J SHORALL JR.

WADE R CAUSEY  
DONALD L MYLES JR.  
SCOTT J RICHARDSON

MINUTE ENTRY

9:06 a.m. This is the time of hearing on request to withdraw of Koeller, Nebeker, et al. law firm as attorney for defendant Standard Pacific; plaintiffs' motion to strike defendants' motion to dismiss; defendants' motion to dismiss all claims for relief alleging negligence, fraud, misrepresentation and breach of guaranties; and defendants' motion for summary judgment. Counsel Eric Petrie and Lori Berke are present on behalf of plaintiff. Counsel Larry Hirsch is present on behalf of all defendants. All are present in person.

Court Reporter Dottie Reaume is present.

After argument the court orders as follows:

1. Denying withdrawal request of Koeller, Nebeker Law Firm because there is no other counsel advising there are ready for trial and by granting the motion the court might put the trial date of August 16, 2004 in jeopardy.
2. Denying plaintiffs' motion to strike defendants' motion to dismiss as the court would rather decide the motion on the merits.
3. Denying defendants' motion to dismiss all claims for relief alleging negligence etc. because the court would require a statement of facts and a motion for summary judgment in order to adequately judge the merits of these claims.
4. Denying defendants' motion for summary judgment because fact issues are apparent but without prejudice to raising substantive motions after the court has heard

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plaintiffs' case at the trial. The court notes that with respect to the economic loss rule plaintiffs contend that trial testimony will show physical damage to personal property as well as secondary damage sufficient to eliminate the rule from the case. The court is also not prepared to say at this time without hearing testimony that the evidence and damages are so improbable to be believed; that any of plaintiffs' claims are inappropriate; that plaintiffs' failure to mitigate damages is dispositive; that stigma damages (i.e. alleged diminution in fair market value according to defendants) are not recoverable; or that plaintiffs' claims must fail because allegedly the vast majority of homeowners no longer have termites. The court realizes that of plaintiffs' seven claims for relief that four are in tort.

The parties do advise the court that only four claims remain and that at least three of those are close to settlement. The case originally began with 52 homeowners and 48 have settled.

9:14 a.m. Matter concludes.