

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-005288

02/05/2013

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT  
K. Carter  
Deputy

PACIFIC CAPITAL GROUP L L C

MICHAEL R ROSS

v.

LAWYERS TITLE INSURANCE  
CORPORATION, et al.

DANIEL E FREDENBERG

PATRICK J DAVIS  
NATHANIEL ROSE  
JEFFREY T PYBURN

JURY TRIAL CONTINUED

Courtroom 701 – Central Court Building

10:13 a.m. This is the time set for oral argument on Defendant Lawyers Title of Arizona's Motion for Summary Judgment re: Damages and Defendants Lawyers Title Insurance Corporation, Fidelity National Financial and Fidelity National Title Group's Motion for Summary Judgment, filed October 10, 2012. Plaintiff is represented by counsel, Michael R. Ross and Jeffrey T. Pyburn. Party representative Larry Fink is also present. Defendants are represented by counsel, Daniel E. Fredenberg and Nathaniel Rose.

Court Reporter Michele Kaley is present; a record of the proceedings is also made by audio and/or videotape.

Arguments are presented. For the reasons stated on the record,

IT IS ORDERED denying Defendants' Motions for Summary Judgment.

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Discussion is held regarding motions in limine. As stated on the record, the Court finds that the following issues are irrelevant and/or might confuse a jury and therefore cannot be presented at trial: that Plaintiff failed to obtain the credit score on the borrower, failed to obtain the borrower's tax returns, failed to verify the borrower's stated income, failed to verify the borrower's stated assets, failed to obtain an appraisal of the property, failed to verify the purchase price such that it was unaware that the borrower had financed 100% of the purchase price, and failed to request information from the borrower regarding its intended use of the property.

11:30 a.m. Court stands at recess.

1:39 p.m. This is the time set for Daubert Hearing to address Defendants' Motion for Evidentiary Hearing Pursuant to Rule 702 and Frye, filed December 7, 2012. Respective counsel and parties are present.

Court Reporter Michele Kaley is present; a record of the proceedings is also made by audio and/or videotape.

Clifford W. Saylor is sworn and testifies.

Defendants' Exhibits 1-7 are marked for identification; Defendants' Exhibits 1-5 are received in evidence.

The witness is excused.

2:51 p.m. Court stands at recess.

3:05 p.m. Court reconvenes with respective counsel and parties present.

Court Reporter Michele Kaley is present; a record of the proceedings is also made by audio and/or videotape.

Donald Duncan is sworn and testifies.

The witness is excused.

Arguments are presented. For the reasons stated on the record, the Court does find that Mr. Saylor possesses sufficiently reliable principles, methodology, and specialized technical knowledge for a jury to evaluate his opinions. Accordingly,

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IT IS ORDERED denying Defendants' Motion with respect to excluding Mr. Saylor as an expert witness.

Trial matters are discussed.

- The Court will conduct voir dire. At the conclusion of the Court's questioning, each side will have an opportunity to ask questions of the panel.
- There will be 8 jurors and 2 alternate jurors selected for trial.
- A verdict of 8 out of 10, 7 out of 9, or 6 out of 8 jurors shall be sufficient to render a verdict.
- The Court will determine alternate jurors by lot as prescribed by the rules unless the parties stipulate to allow the alternate jurors to deliberate.

Discussion is held regarding exhibits and non-disclosure of a potential witness.

4:20 p.m. Court stands at recess.

4:25 p.m. Court reconvenes with respective counsel and parties present.

Court Reporter Michele Kaley is present; a record of the proceedings is also made by audio and/or videotape.

Discussion is held regarding the status of the case. As a result of a key witness for Plaintiff not having been properly disclosed to Defendants, trial will be reset to allow Defendants time to depose the witness.

IT IS ORDERED setting a final trial management conference for **June 14, 2013, at 1:30 p.m. (30 minutes)** in this division.

IT IS FURTHER ORDERED vacating the 4-day Jury Trial set for February 6, 2013, and resetting the same to **July 29, 2013<sup>1</sup>, at 9:30 a.m.** in this division.

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<sup>1</sup> One day's jury fees will be assessed unless the court is notified of settlement by 2:00 p.m. on the judicial day before trial.

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Trial days and hours are as follows: Monday through Thursday from 9:30 a.m. to 4:30 p.m. daily. The Court will take two 15 minute recesses, one in the morning and one in the afternoon. The lunch recess will be from 12:00 p.m. to 1:30 p.m.

The Court uses the “struck” method of selecting a jury. Counsel will be permitted to conduct their own voir dire examination after the Court has completed its voir dire of the jury panel. Counsel should be prepared to read a list of witnesses they intend to call during the course of the trial.

**LET THE RECORD REFLECT that counsel who will be the lead trial attorneys on the case are required to be in Court for the Pretrial Management Conference.**

FAILURE OF TRIAL COUNSEL TO ATTEND THE PRETRIAL MANAGEMENT CONFERENCE MAY RESULT IN PERSONAL SANCTIONS.

**Final Joint Pretrial Statement:** The Final Joint Pretrial Statement shall be prepared in accordance with Rule 16 [d] and is due in this division by **5:00 p.m. on June 5, 2013.**

**Counsel who will be lead trial lawyers** are required to meet and prepare the final Joint Pretrial Statement.

4:27 p.m. Matter concludes.

IT IS ORDERED that the Clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked or their written designee.

IT IS FURTHER ORDERED that counsel/party or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit Release Form(s)

FILED: Exhibit Worksheet

FILED: Trial/Hearing Worksheet

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.