

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-017284

07/30/2019

HON. ROSA MROZ

CLERK OF THE COURT
A. Durda
Deputy

RHESA FOWLIS

SCOTT F FRERICH

v.

VICTORIA HAYES, et al.

R COREY HILL

NEAL H BOOKSPAN
MICHAEL H ORCUTT
ROBERT B ZELMS
JUDGE MROZ

ORAL ARGUMENT SET

The Court has reviewed Ellis Defendants' Motion for Summary Judgment Against Plaintiff filed on April 1, 2019, Inspect-It First Defendants' Joinder on the issue of diminution of value damages argument, Plaintiff's Response, and Ellis Defendants' Reply.

IT IS ORDERED setting Oral Argument on **August 16, 2019 at 11:00 a.m.** in this division, before:

**HONORABLE JUDGE ROSA MROZ
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING
101 W. JEFFERSON
4TH FLOOR, COURTROOM 414
PHOENIX, AZ 85003
602-372-0384**

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-017284

07/30/2019

NOTE: The presumptive time limit for each side is **10 minutes**. The Court will start oral argument with Plaintiff arguing first. “When you are out of time, you are out of words.”

The Court offers guidance to Plaintiff for the oral argument. The Court is most interested in Ellis Defendants’ argument that Plaintiff has not offered sufficient **admissible** evidence to support Plaintiff’s claims. Indeed, Plaintiff cites to the opinions that will be given by her expert, Mr. Mark Kramoltz, in summary fashion, without a sworn affidavit. An affidavit that is not signed, dated or sworn before a notary public, under the penalties of perjury are not admissible for purposes of opposing a motion for summary judgment. *See Prairie State Bank v. IRS*, 155 Ariz. 219, 221 n. 1A, 745 P.2d 966, 968 n. 1A (App.1987) (“Generally, the ‘facts’ which the trial court will consider as ‘admissible in evidence’ in ruling on a motion for summary judgment are those which are set forth in an affidavit or a deposition; an unsworn and unproven assertion in a memorandum is not such a fact.”). Ellis Defendants raised this issue in their Motion for Summary Judgment. Yet, Plaintiff did not address this issue in her Response.

The other topic that the Court wants the parties to focus on is the attorneys’ fees issue. For the purposes of the oral argument, the Court wants Plaintiff to assume that the Court does not believe that the issue is premature.

All court proceedings are recorded by audio and video method and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for up to three hours and \$280 for any hearing in excess of three hours. This fee does not include preparation of transcripts.

Requests for interpreters, court reporters or video conference must be made at least two weeks prior to your hearing date.

Should you want an unofficial copy of the proceedings, the parties or counsel may request a CD of the proceedings for a \$30.00 charge. If a CD is requested, please obtain a form from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center**. Attach the receipt showing payment of the fee and present both the receipt and the form to the bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.**

This division requires that all motions, responses, replies and other Court requested filings in this case must be submitted individually. Counsel shall not combine any motion with a

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-017284

07/30/2019

responsive pleading. All motions are to be filed separately and designated as such. No pleadings will be accepted if filed in combination with another.

Preferred communication with this Division is via email to my Judicial Assistant, Sandra Nageotte, at nageottes@superiorcourt.maricopa.gov. We are able to respond much quicker to an email. Please make sure you endorse all parties involved in the case.

If you are not familiar with this division's electronic equipment, please make an appointment with this division's bailiff, Markus Taylor, via email at taylorm011@superiorcourt.maricopa.gov, to test the equipment at least one week prior to your hearing.