

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-010080

09/21/2010

HON. GARY E. DONAHOE

CLERK OF THE COURT
S. Yoder
Deputy

JAIME G MATTAN

MICHAEL J DOYLE

v.

MICHAEL A DEBELL, et al.

OLIVIER A BEABEAU

SCOTT M BENNETT
GREGORY M MONACO
YVONNE YRAGUI
JILL J CHASSON

MINUTE ENTRY

Courtroom ECB 511

9:30 a.m. This is the time set for Oral Argument on Plaintiff's Motion for Leave to File First Amended Complaint; and Defendants Daniel Leboffe and ZipRealty's Motion to Dismiss. Counsel Gary T. Doyle appears on behalf of Plaintiff Jaime G. Mattan. Counsel Monaco appears on behalf of Defendants Castro and Homesmart, Inc. Counsel Yvonne Yragui appears on behalf of Defendants Mary L. Klane and KGI National Appraisal Services, LLC. Defendants Michael and Robyn DeBell, Daniel Leboffe and ZipRealty are neither present nor represented by counsel.

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

This hearing was set for 9:00 a.m. Court staff have unsuccessfully attempted to contact Scott Bennett, counsel for Daniel Leboffe and ZipRealty.

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Discussion is held.

IT IS HEREBY ORDERED granting Plaintiff's Motion for Leave to File First Amended Complaint.

IT IS FURTHER ORDERED granting Defendants Leboffe and ZipRealty's Motion to Dismiss based on Plaintiff's consent and dismissing the fourth cause of action in the first amended complaint for consumer fraud.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss the fraudulent misrepresentation claim is withdrawn

IT IS FURTHER ORDERED granting Defendants' Motion to Dismiss regarding the breach of fiduciary duty claim and dismissing that part of the fifth cause of action in the first amended complaint raising a claim for breach of fiduciary duty only.

IT IS FURTHER ORDERED denying Defendants' motion for an award of attorney's fees.

9:30 a.m. Matter concludes.

Later:

The Court received Mr. Bennett's e-mail regarding missing the hearing.

FILED: E-mail

ORDER TO FILE JOINT PROPOSED SCHEDULING ORDER

On the Court's own motion based on the information provided at the hearing,

IT IS HEREBY ORDERED as follows:

Counsel and/or the parties are to meet personally to discuss all of the matters set forth in Rule 16(b), Ariz.R.Civ.P. Counsel and/or the parties shall prepare and file with the Court on or before **5:00 p.m. on October 21, 2010** a Joint Proposed Scheduling Order for discovery, motion,

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and disclosure deadlines.

If the parties agree to the dates, they should prepare an Order in the form attached hereto, containing the provisions which are applicable to their case. For example, paragraph one of the Order set forth below need not be included in the parties' proposed Order if the parties intend to disclose their experts' identity and opinions at the same time they disclose their experts' areas of testimony. Similarly, if the parties agree to simultaneously disclose the identity and opinions of their expert witnesses, they need not include in their proposed Order the language set forth in paragraph 2a. and b., below.

The proposed Order shall include specific dates (June 5, 2010 rather than "45 days from close of discovery"). Do not incorporate a firm trial date in the proposed Order.

If counsel are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in their proposed Order.

The Court will review the proposed Scheduling Order. If all is in order, the Court will set a status conference close to the discovery cutoff date. At the status conference, if the parties have completed discovery and are ready for trial, the Court will set firm dates for the final pretrial management conference and the trial. If the parties are not ready for trial, the matter will be placed on the Inactive Calendar for dismissal within 60 days.

If counsel feel a pretrial conference is still necessary at this stage of the litigation, they should address the reasons why in the first paragraph of the proposed Scheduling Order.

If a Joint proposed Scheduling Order is not timely submitted, the Court will place the matter back on the Inactive Calendar for dismissal.

NOTE: This Court utilizes FTR for an electronic record of the proceedings. However, any party may request the presence of a court reporter by contacting the division three (3) court business days before the scheduled hearing.

**THE HONORABLE GARY E. DONAHOE
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING
101 WEST JEFFERSON STREET
5TH FLOOR, COURTROOM 511
PHOENIX, ARIZONA 85003**

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602-506-3712 TEL
602-506-6648 FAX

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>

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**[PROPOSED]
SCHEDULING ORDER**

The Court has reviewed the parties' Joint Proposed Scheduling Order and adopts and/or modifies the days as follows:

IT IS ORDERED as follows:

1. The parties shall mutually and simultaneously disclose areas of expert testimony by **5:00 p.m. on _____, 20___. [or]**
 - a. Plaintiffs shall disclose areas of expert testimony by **5:00 p.m. on _____, 20___.**
 - b. Defendants shall disclose areas of expert testimony by **5:00 p.m. on _____, 20___.**
2. The parties shall mutually and simultaneously disclose the identity and opinions of their expert witnesses by **5:00 p.m. on _____, 20___. [or]**
 - a. Plaintiffs shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on _____, 20___.**
 - b. Defendants shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on _____, 20___.**
3. Any and all discovery requests shall be served by **5:00 p.m. on _____, 20___.**
4. The parties shall disclose all non-expert witnesses by **5:00 p.m. on _____, 20___. [or]**
 - a. Plaintiffs shall disclose areas of non-expert testimony by **5:00 p.m. on _____, 20___.**
 - b. Defendants shall disclose areas of non-expert testimony by **5:00 p.m. on _____, 20___.**
5. The parties shall mutually and simultaneously disclose their rebuttal expert witnesses

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and opinions by **5:00 p.m. on _____, 20__.**

6. All discovery shall be concluded by **5:00 p.m. on _____, 20__.**
7. The parties shall have exchanged up-to-date final Rule 26.1 Supplemental Disclosure Statements by **5:00 p.m. on _____, 20__.** This Order does not replace the parties' obligation to seasonably disclose on an on-going basis under Rule 26.1 as information becomes available.
8. Settlement conference (choose one):

The parties shall participate in private mediation by **5:00 p.m. on _____, 20__;**

OR

The parties shall participate in a mandatory Settlement Conference and this matter is referred to the court's Alternative Dispute Resolution for the appointment of a judge *pro tempore* to conduct a settlement conference. Counsel and any "pro per" parties will contact the appointed judge pro tempore to arrange the time and location for the settlement conference. The judge pro tempore is requested to conduct a settlement conference not later than _____, 20__. The Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office. If counsel prefer to use a private mediator to conduct the Settlement Conference, a Stipulation and Order re: Alternative to ADR must be presented to the Court by **5:00 p.m. on _____, 20__.**

9. No expert witnesses, expert opinions, lay witnesses, or exhibits shall be used at trial other than those disclosed in a timely manner, except for good cause shown or written agreement of the parties.
10. All pretrial motions, other than motions *in limine*, must be filed by **5:00 p.m. on _____, 20__.**
11. A **Telephonic Pretrial Status/Scheduling Conference** is set for _____ at _____ a.m./p.m. for the purpose of assigning a trial date if the case has not settled. Counsel shall have their trial calendars available. Counsel for Plaintiff shall initiate the telephonic conference by first arranging the presence of all other counsel on the conference call and by calling this division at: **(602) 506-3712 promptly** at the

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scheduled time.

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12. Should any discovery disputes arise, counsel, prior to filing discovery motions, shall meet and confer pursuant to Rule 37, Ariz.R.Civ.P.
13. 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.
14. This case is removed from the Inactive Calendar and all requirements of Rule 38.1, Ariz.R.Civ.P., are waived unless and until otherwise ordered by the Court.