

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-004084

12/17/2004

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT
M. Johnson
Deputy

FILED: 01/04/2005

PATRICK SLAVIN

RAY K HARRIS

v.

HENDRICKS & PARTNERS INC, et al.

DOW GLENN OSTLUND

ROGER T HARGROVE
TRACY S MOREHOUSE

MINUTE ENTRY

10:30 a.m. This is the time of Trial Management Conference. Counsel Ray K. Harris and Roger T. Hargrove are present on behalf of plaintiffs. Counsel Dow Glenn Ostlund and Tracy S. Morehouse are present on behalf of defendants Hendricks & Partners.

No Court Reporter is present.

Discussions are held to the court regarding Plaintiff's Motion to Continue Trial.

IT IS ORDERED taking Defendants' Motion to Compel Discovery re: AIMCO, Starboard and Arcadia and Plaintiff's Motion to Compel filed in September under advisement.

Over the Defendant's objection,

IT IS ORDERED granting Plaintiff's Motion to Continue Trial and vacating the trial date set on January 10, 2005 and resetting the following trial date and deadlines.

IT IS ORDERED as follows:

1. **TRIAL DATE**: Jury Trial is set on **April 11, 2005, at 9:30 a.m.**, before Judge Ruth Hilliard, Courtroom 402, Central Court Building, 201 West Jefferson, Phoenix, AZ 85003. Counsel to be here at 9:15 a.m. Jury selection will begin as soon as the jury panel arrives.

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2. **LENGTH OF TRIAL:** 4 Days.

3. **JOINT PRETRIAL STATEMENT:** A revised Joint Pretrial Statement, additional jury instructions, voir dire for the panel as a whole and exhibits are to be delivered to this division **no later than March 18, 2005**. **NOTE:** Counsel may contact the division's clerk at (602) 506-3348 regarding exhibit procedures.

4. **TRIAL MANAGEMENT CONFERENCE:** Court and counsel will meet for a Trial Management Conference, hearing any objections to exhibits, argument on motions in limine and settlement of jury instructions on **March 25, 2005 at 1:30 p.m.** Blanket objections to exhibits and reserving objections until time of trial are not permitted. Any exhibit not exchanged before the Trial Management Conference is waived. Any objection, other than waiver by failure to exchange an exhibit, must be made before or at that conference or it is waived. The Court will rule on admission of exhibits (except illustrative exhibits made during trial) at the Trial Management Conference.

5. **MOTIONS IN LIMINE:** The last day to file motions in limine is **March 11, 2005**. Responses are due by **March 18, 2005**. Late motions for summary judgment or for dismissal are not motions in limine. See, State v. Superior Court, 108 Ariz. 396, 499 P.2d 152 (1972). Motions in Limine will be ruled on at the Trial Management Conference.

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ATTORNEYS AND ASSISTANTS—PLEASE READ PARAGRAPH **

* * *

6. **EXCHANGE AND DESIGNATION OF EXHIBITS:** Except illustrative exhibits made during trial, all exhibits are to be exchanged **thirty (30)** days before the Trial Management Conference. Counsel are directed to meet and confer regarding exhibits so that duplicates are avoided. At least seven (7) business days before the Trial Management Conference, the parties shall number their exhibits serially with Plaintiff's first, Defendant's second and provide a coordinating list of the exhibits to the Court, and the court clerk; and provide deposition originals to the court clerk of this division for filing (depositions are not listed as exhibits).

7. **JUROR NOTEBOOKS:** Jurors use and appreciate tabbed, indexed, juror notebooks. The contents must be in evidence by stipulation or, for exhibits, by court ruling. Key exhibits, diagrams, photographs, timelines, non-argumentative summaries of positions on liability and damages and other information helpful to jurors may be included.

8. **DEPOSITIONS:** Jurors prefer narrative summaries, with brief excerpts of deposition question and answer testimony, to reading many pages of testimony.

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10:45 a.m. Matter concludes.

LATER:

1. Plaintiff's Motion to Compel filed in September, 2004 and all responsive memoranda have been considered by the Court. Plaintiff seeks production of a June, 2003 appraisal of Hendricks and Partners, documentation regarding the commission on a sale of raw land in 1999 and the April, 2000 memo regarding Hyman's partnership interest.

As to the appraisal of Hendricks and Partners, the Court finds that the appraisal is discoverable. The Court is not ruling on the admissibility of said appraisal, only that the appraisal may be discovered.

IT IS ORDERED granting plaintiff's Motion to Compel as to the June, 2003 appraisal of Hendricks and Partners.

As to documentation regarding the commission from the sale of raw land in 1999, defendants' response states that no such documentation exists. While plaintiff may raise this issue during trial during examination, the Court finds there is nothing to compel.

Accordingly,

IT IS ORDERED denying plaintiff's Motion to Compel as to documentation regarding commissions on the raw land deal.

As to the April, 2000 memo regarding Hyman's partnership interest, defendants have responded that they cannot locate any memoranda other than what plaintiff's expert has located. Plaintiff now seeks defendants to pay the cost of his expert who was retained to locate the emails at issue. The Court declines to grant this request.

IT IS ORDERED denying plaintiff's Motion to Compel as to the April, 2000 memo since it cannot be located.

2. Defendants' Motion to Compel Discovery re. AIMCO, Starboard and Arcadia has been under advisement. The Court has considered all memoranda submitted and the arguments of counsel. The Court finds that defendants are entitled to Slavin's personnel file from AIMCO and it is ordered overruling AIMCO's objection.

IT IS ORDERED that AIMCO shall produce Slavin's personnel file to defendants.

IT IS ORDERED granting defendants' Motion to Compel as to AIMCO.

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As to all listing agreements between AIMCO and HPI, the Court finds that this request is not unduly burdensome or necessarily duplicative. IT IS ORDERED that AIMCO shall provide these documents to HPI. In the alternative, HPI has agreed to accept an avowal that AIMCO was not dissatisfied with the work of HPI; counsel for AIMCO has indicated during oral argument that such an avowal could not be made but such a written avowal can be submitted in place of production of these documents.

As to AIMCO's list of properties sold or listed for sale after March 1, 2002, AIMCO objects to this request as being unduly burdensome. The Court finds that this information is appropriate for production to HPI and there is not an alternative means for HPI to obtain this evidence.

IT IS ORDERED granting defendants' Motion to Compel production.

IT IS FURTHER ORDERED denying AIMCO's Motion to Quash.

3. The Court has considered plaintiff's Motion to Reconsider. The Court does not require a response to be filed by defendants.

IT IS ORDERED denying plaintiff's Motion for Reconsideration.

IT IS ORDERED granting plaintiff's Motion to File Exhibits under Seal.