

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-010929

03/01/2017

HONORABLE KERSTIN LEMAIRE

CLERK OF THE COURT
A. Arnold
Deputy

SONORAN DESIGN CONSTRUCTOR L L C

JOSHUA C BLACK

v.

LLOYD CHASE, et al.

DAN R DODDS

HEARING RESET

East Court Building- 711

Prior to hearing, Defendants' exhibits 1 through 38 and Plaintiff's exhibits 39 through 53 are marked for identification.

10:23 a.m. This is the time set for an Evidentiary Hearing. Counsel, Joshua Black is present on behalf of the Plaintiff, Sonoran Design Constructor LLC and Counterdefendants, Charles Fenimore, David Fenimore, and Samuel Ortiz. Counsel, Joshua Turner and Dan Dodds are present on behalf of the Defendants, Lloyd Chase and Pat Chase who is present.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held.

Based upon the matters presented.

IT IS ORDERED that Defendants shall file a response to Plaintiff's Rule 60 Motion for Relief from Judgment or Order by **March 10, 2017**.

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IT IS FURTHER ORDERED vacating the Trial Setting Conference set for March 7, 2017 at 9:00 a.m.

IT IS FURTHER ORDERED as follows:

1. Setting a Trial Management Conference on **May 12, 2017 at 11:00 a.m. (time allotted: 60 minutes)**. Lead counsel for all parties must appear in person and cannot appear telephonically.
2. Setting Trial to a Jury on **June 12, 2017 at 9:00 a.m. for jury selection. The remaining days of trial, June 13-15, 2017 will begin at 9:30 a.m. (time allotted: 4 days)**. PLEASE NOTE: Trial will not proceed on Fridays as Friday is Law and Motion day for this division.

Duties Prior to Trial

3. Motions in Limine: All Motions in Limine shall be filed no later than **April 21, 2017**, and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 153 (1972): The primary purpose of a Motion in Limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(d). A written response to a Motion in Limine may be filed no later than **May 8, 2017**. The Court may rule on Motions in Limine without oral argument. No replies shall be filed. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any Motion in Limine.

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

4. Pretrial Management Conference

A Pretrial Management Conference and Oral Argument Re: Motions In Limine are set on **May 12, 2017**. The lead trial counsel for each party is required to attend the Pretrial Management Conference. Self-represented litigants are also required to attend. Except as stated above, parties are not required to attend. Failure of any

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trial counsel or any self-represented litigant to attend the Pretrial Management Conference may result in sanctions.

At the Pretrial Management Conference, counsel for each party and any self-represented litigants shall be prepared to discuss:

- A. Length of *voir dire*, opening statements, examination of witnesses, and closing arguments.
- B. The number of jurors on the jury panel, and the involvement of alternate jurors in deliberation.
- C. Stipulations and objections regarding witnesses and exhibits.
- D. Preliminary and final jury instructions, juror notebooks and verdict forms.
- E. Agreed-upon deposition summaries and excerpts from deposition transcripts and/or videotaped depositions.
- F. Any special witness scheduling, interpreter or equipment-related issues.
- G. A brief summary of the case to be read to the jury.
- H. The allocation of trial time per party.
- I. Status of settlement efforts.

5. Witness Information Form

Counsel for each party and any self-represented litigant shall meet **no later than seven days prior to Pretrial Management Conference** to complete the Witness Information Form attached to this minute entry. The parties shall set forth the name of each witness and the estimated time required for direct and cross-examination. Time estimates also shall be set forth for opening statements and closing arguments. The completed form shall be submitted with the Joint Pretrial Statement. The Court will rely upon the Witness Information Form to predict the length of the trial for the jurors and to allocate the time allowed for each party to present its case to the jury.

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Attachment: Witness Information Form

6. Joint Pretrial Statement: Counsel shall file, no later than **May 2, 2017**, a Joint Pretrial Statement signed by all counsel. In addition to the information required by Rule 16, the Joint Pretrial Statement shall include a Final Trial Witness List. This list shall contain the name of each witness a party actually intends to call at Trial, the day on which they intend to call each witness and the **estimated time needed for direct, cross and re-direct examination**.
7. Jury Instructions and Voir Dire Questions: Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall file with their Joint Pretrial Statement (**counsel shall provide a copy of the jury instruction requests on a USB drive or via email, in Microsoft Word**):
- a. Proposed voir dire questions.
 - b. A joint set of agreed-upon preliminary and final jury instructions and proposed forms of verdicts.
 - c. Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 3d Standard 1 - Duty of Jurors. Non-RAJI instructions should be typed in Microsoft Word format. Each instruction should cover only one subject.

EXHIBITS

8. At least two weeks prior to trial, counsel or their assistants shall contact the Clerk of this division at **602-506-1470 or arnolda@cosc.maricopa.gov**, regarding the proper procedures for submitting exhibits to be marked for trial in this division.

No later than **May 29, 2017**, all parties shall deliver their exhibits to the clerk (**any deviation from this date must be approved by the clerk**). *The parties are directed to meet in person to exchange the exhibits before coming to court and, to the extent*

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possible, remove any duplicate exhibits. The clerk will not hold or reserve exhibit numbers for any party. If an exhibit has not been submitted by the time of marking, the clerk will assign the next exhibit with that number.

Exhibits are marked in numerical order per party, making it necessary to mark all of one party's exhibits before marking the other party's. Accordingly, the Defendant's exhibits numbering shall start at the next number following the last of Plaintiff's exhibits. (For example, Plaintiff submits 82 exhibits, which are marked Exhibit 1 through 82. Defendant submits 63 exhibits, which are marked 83 through 145). Please do not combine the parties' exhibits. Each side's exhibits must be submitted separately and in numerical order.

If counsel stipulate to any exhibits being received in evidence, counsel shall provide a signed stipulation as to said exhibits (**lack of objection to an exhibit in the Joint Pretrial Statement is not taken to signify that the exhibit is automatically received in evidence**). If large demonstrative exhibits are submitted for marking, a smaller version, such as a photograph, must also be provided in case the exhibit is received in evidence. If photographs are submitted for marking, each photograph must be marked as an individual exhibit unless counsel have stipulated to a set of photographs being admitted into evidence.

With regard to trial exhibits, the parties are strongly discouraged from marking exhibits they do not anticipate offering during trial. Each exhibit must be separately and securely bound by a staple, prong, or in a binder of some sort. Exhibits not securely bound or are bound with only a binder clip or rubber bands will not be accepted and will be returned. Exhibits must be separated using numbered tabs or a single sheet of colored paper.

9. The court would appreciate a bench copy of any exhibits or depositions in a binder.
10. One day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before the Trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.
11. 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.

The trial will take place in the Superior Court's "e-courtroom." A record of the proceedings will be made by audio and CD in lieu of a court reporter. Should you want an

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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 courtroom clerk or 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.** Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. To request a transcript, call 602-506-7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address, and telephone number.

NOTE: 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 a half-day and \$280 for a full day.

The parties are reminded to promptly notify the court of any settlement pursuant to Ariz. R. Civ. P. 5.3(d). One day's jury fees will be assessed unless the court is notified of settlement before 2:00 p.m. on the judicial day before the trial.

Discussion continues regarding scheduling.

IT IS FURTHER ORDERED resetting this Evidentiary Hearing to **March 23, 2017** at 10:00 a.m. (90 min).

IT IS FURTHER ORDERED that Plaintiff's clients shall appear for the Evidentiary Hearing.

10:50 a.m. Matter concludes.

LATER: The Court consulted with her judicial assistant and her bailiff regarding any inquiries made by counsel's staff regarding whether or not clients needed to attend today's evidentiary hearing. Ms. Kelly, this division's experienced judicial assistant, distinctly remembered the conversation with Mr. Black's office. She was asked if the Court would require clients to be present at an **oral argument**. She correctly responded that this division does not require clients to appear at oral arguments. She was not asked about their appearance at evidentiary hearings, especially if their testimony might be required of the opposing party.

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Then the Court listened to the entire FTR recording of the telephonic hearing held on February 3, 2017. Although Mr. Turner expounded at length about the issues he had with Mr. Ortiz and Mr. Fenimore's deposition testimony and disclosure of documents, there was no request that Mr. Ortiz and Mr. Fenimore appear in person for the evidentiary hearing as they would be called as witnesses rather than rely on their deposition testimony. Had counsel wanted to ensure their appearance, it would have been sensible to notify them more than a day or two before the hearing via a Pre-Hearing Statement.

Given counsels' candid appraisal of what their respective cases might be worth and the amount of attorney fees they have incurred to date, the Court encourages the parties to engage in meaningful settlement discussions in an effort to resolve this matter.

Lastly, the Court again apologizes to Mrs. Chase. Had the Court been notified of her opportunity to participate in a once in a life time event, the Court would have made an effort to accommodate her. Unfortunately, the Court was not notified of the event until the hearing was concluding.

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WITNESS INFORMATION FORM

Please note that there are approximately 5 hours of trial time per day excluding two 15-minutes breaks and 1½ hours for lunch. It generally takes a half day to select a jury unless it's a much longer trial.

VOIR DIRE EXAMINATION

TIME ESTIMATE FOR:	
PLAINTIFF(S) VOIR DIRE	
DEFENDANT(S) VOIR DIRE	

WITNESSES FOR PLAINTIFF(S)

	WITNESS NAME	DIRECT & RE-DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT, RE-DIRECT & CROSS

TOTAL:_____

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WITNESSES FOR DEFENDANT(S)

	WITNESS NAME	DIRECT & RE-DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT, RE-DIRECT & CROSS

TOTAL: _____

TOTAL WITNESS TIME ESTIMATE: _____

TIME ESTIMATE FOR:	PLAINTIFF		DEFENDANT
OPENING STATEMENT			
CLOSING ARGUMENT	1 st :	2 nd :	

TOTAL ESTIMATED TRIAL TIME: **4** days

Estimate should not exceed **20** total hours