

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-009096

12/08/2017

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT  
C. Mai  
Deputy

YANKE SCOTTSDALE PROPERTY L L C

AMY MARIE WILKINS

v.

HAVEN OF SCOTTSDALE L L C

JEROME J BROMIEL

BENCH TRIAL SET

Courtroom 911 (ECB)

9:26 a.m. This is the time set for telephonic Trial Setting Conference and Oral Argument on Yanke's Application for Court-Appointment of Third Appraiser filed on November 1, 2017. Plaintiff/ Counterdefendant is represented by counsel, Amy Marie Wilkins and Robert H. McKirgan. Defendant/ Counterclaimant is represented by counsel, Jerome J. Bromiel and Brad D. Terry.

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

After this Oral Argument was set, the Court received Defendant/ Counterclaimant Haven of Scottsdale, LLC's Motion for Authorization to Deposit Rents with the Court, or Alternately to Pay Rents into a Third-Party Escrow Account. The Motion is not fully briefed and will be addressed at a later date.

Argument is heard regarding Plaintiff/ Counterdefendant Yanke's Application for Court-Appointment of Third Appraiser.

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Counsel for Plaintiff/ Counterdefendant presents argument to the Court.

Counsel for Defendant/ Counterclaimant presents argument to the Court.

Further argument is presented to Court.

By the agreement of the parties,

**IT IS ORDERED** that the parties shall provide the opposing party with each parties' expert file by **December 20, 2017**.

**IT IS FURTHER ORDERED** that all depositions shall be completed by **January 19, 2018**.

**IT IS FURTHER ORDERED** setting a Final Trial Management Conference on **January 23, 2018 at 9:30 a.m. (time allotted: 1 hour)** before this Division.

**IT IS FURTHER ORDERED** setting a 4-Day Bench Trial on **January 29, 2018** before this Division. Scheduled Trial days are **January 29, 2018 through February 1, 2018**. Counsel shall appear at **9:00 a.m.** on the first day of Trial.

**HON. DANIEL J. KILEY**  
**Maricopa County Superior Court**  
**East Court Building**  
**101 West Jefferson Street**  
**9<sup>th</sup> Floor, Courtroom 911**  
**Phoenix, AZ 85003**

**NOTE:** All court proceedings are recorded digitally 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.

**IT IS FURTHER ORDERED** that no later than **close of business on January 22, 2018** the parties shall submit the Joint Pretrial Statement setting out the disputed and undisputed issues to the Court. The parties shall also email a copy of the Joint Pretrial Statement to the Court.

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If the parties request findings of facts and conclusion of law, they shall file proposed findings of facts and conclusion of law to the Court prior to the commencement of trial.

**IT IS FURTHER ORDERED** that the parties shall submit all exhibits they intend to present to the Clerk no later than **12:00 p.m. on January 22, 2018**. Prior to delivering exhibits to the Clerk, counsel shall meet and confer to exchange exhibits and remove any duplicates.

Counsel shall contact the Division Clerk at **(602) 506-3443** or by email **maic@cosc.maricopa.gov** to schedule an appointment to deliver exhibits and to address any exhibit questions. Please see attached instructions on submitting exhibits.

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.

**PLEASE NOTE:** If/when a party files a pleading within 48 hours of a scheduled event, the party should also e-mail same to the Court's Judicial Assistant and Bailiff at the following:

- **gomezr002@superiorcourt.maricopa.gov**
- **cummingsk003@superiorcourt.maricopa.gov**

**NOTE: COUNSEL SHALL UPLOAD AND E-FILE ALL PROPOSED ORDERS IN WORD FORMAT ONLY TO ALLOW FOR POSSIBLE MODIFICATIONS BY THE COURT.**

Further discussion is held regarding Plaintiff's Application.

Pursuant to paragraph 25.2 of the Lease,

**IT IS FURTHER ORDERED** the parties' respected appraisers shall meet and attempt to set a purchase price of the property. If unable to set a purchase price of the property, the appraisers shall identify a third appraiser who meets the qualifications within the Lease.

The Court at this time will not order that the third appraiser conduct an appraisal.

Discussion is held regarding the scope of the trial to the Court.

Discussion is held regarding damages.

**IT IS FURTHER ORDERED** that the parties shall file any Motions in Limine by **January 9, 2018**.

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Further discussion is held regarding Plaintiff's Application.

**IT IS FURTHER ORDERED** granting in part and denying in part Plaintiff's Application for a Court Appointed Third Appraiser. Granted in the respect that each parties' appraisers shall meet and attempt to set a purchase price of the property and if unable to set a purchase a price, they shall identify a qualified third appraiser. The Motion is denied in all other respects.

10:28 a.m. Matter concludes.

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**Procedures for Submitting Exhibits**

- **Depositions will NOT be marked as exhibits. If you plan to read from a deposition or use the deposition for impeachment purposes, you will need to supply an ORIGINAL to the courtroom clerk for filing. Copies will not be filed with the clerk.**
- A list with a generic description of each exhibit should be provided. Descriptions should be concise and can be as simple as “letter,” “email”, or “photo”. The list should contain the case number, the caption, scheduled trial date and the party submitting the exhibits. **The exhibit list should be emailed in a WORD to the Clerk at maic@cosc.maricopa.gov.**
- Exhibits will be marked numerically and consecutively.
  - Plaintiff(s) exhibits will be marked first followed by Defendant(s).
  - Numbers will **NOT** be skipped or “saved” in anticipation of additional exhibits to be submitted.
  - Subsections of exhibits will be marked as the next available number. Do **NOT** use subsections of exhibits (ex: 4a or 4.1). Please use the next consecutive number.
  - Parties should confer with each other to eliminate duplicate exhibits before presenting to the clerk. Duplicate exhibits will **NOT** be marked, therefore, if duplicates exist and they are removed and not marked, the Court’s numbering will not be consistent with the list you provided. Please confer regarding exhibits to insure there are not duplicates.
- Each exhibit shall be clipped or bound if too large to be stapled. **Please do not submit multiple exhibits in binders, please only use binders when a single exhibit is so large that it requires a binder.**
- **Exhibits should be separated by a colored sheet of paper OR a tabbed divider sheet. The colored sheet or tabbed divider shall reflect the number of the exhibit and should be placed on top of the exhibit.**
- Blow-ups and large items may only be used for demonstrative purposes. You may bring them to court to use during trial; however, if you would like them to be marked as an exhibit, please submit an 8 ½ x 11 photo of the item.

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- Counsel shall provide a list of any exhibits that have been stipulated into evidence.