

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-001877

08/11/2017

HON. ROSA MROZ

CLERK OF THE COURT
B. Randhawa
Deputy

JAN AITKEN, et al.

GREGORY G MCGILL
HERMAN JASON COHEN

v.

JAMES SMITH, et al.

CLAIR W LANE

HOWARD C MEYERS

PRETRIAL MANAGEMENT CONFERENCE

East Court Building – Courtroom 414

9:02 a.m. This is the time set for a Final Pretrial Management Conference. Plaintiffs are represented by counsel, Gregory G. McGill and *Pro Hac Vice* co-counsel, H. Jason Cohen who is present telephonically. Defendant James Smith is represented by counsel, Clair W. Lane. No one else appears.

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

Discussion is held regarding the status of the parties in this case. The Court clarifies that that only remaining Defendant is James Smith and that all of the other Defendants have either been dismissed or reached resolution via the American Arbitration Association.

Further discussion is held regarding the Trial to a Jury currently set for September 11, 2017 through September 27, 2017. Counsel concur that the length of trial may be reduced. Therefore,

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IT IS ORDERED vacating the trial days September 11 - 14, 2017, and affirming the eight-day Trial to a Jury commencing at 9:30 a.m. on September 18 - 21 and September 25 - 28, 2017. (The parties shall note that on September 27, 2017, the trial day shall commence at 1:30 p.m.).

Further lengthy discussion is held regarding preliminary jury instructions, pre-trial matters and the parties' disagreements.

Oral argument on Plaintiff's Motion in Limine No. 1 Re: "The Market" & "Reputation" filed July 21, 2017 is presented by counsel, Mr. McGill. For the reasons stated on the record,

IT IS ORDERED denying Plaintiff's Motion in Limine No. 1 Re: "The Market" & "Reputation".

Oral argument on Plaintiff's Motion in Limine No. 2 Re: Matters Outside This Case filed July 21, 2017 is presented by counsel, Mr. McGill. For the reasons stated on the record,

IT IS FURTHER ORDERED denying the Plaintiffs' Motion in Limine No. 2 Re: Matters Outside This Case.

Oral argument on Plaintiffs' Motion in Limine No. 3 Re Sale Data & Non-Recourse Law filed July 21, 2017 is presented by counsel, Mr. McGill. For the reasons stated on the record

IT IS FURTHER ORDERED denying Plaintiffs' Motion in Limine No. 3 Re Sale Data & Non-Recourse Law.

The Court addresses Defense counsel regarding the late filings of Defendant James Smith's Motions in Limine.

Oral argument is presented on Plaintiffs' Motion to Strike Smith's Untimely Motions in Limine [Rule 7.1(f); 7.2(b)] filed August 11, 2017. For the reasons stated on the record,

IT IS ORDERED granting Plaintiffs' Motion to Strike Smith's Untimely Motions in Limine [Rule 7.1(f); 7.2(b)]. Accordingly,

IT IS FURTHER ORDERED deeming moot Defendant James Smith's Motions in Limine No. 1 Re Jan Sales Appraisal Report, Motion in Limine No. 2 Re Evidence of Fair Market Value at the Time of Purchase filed August 4, 2017, and Motion in Limine No. 3 Any Testimony That the Price Sold to Smith's Students Would be no Less Than 10% Below Current Value and Would Appreciate, all filed August 4, 2017.

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THE COURT NOTES that the Rule of Exclusion of Witnesses has been invoked by the parties this day.

THE COURT FURTHER NOTES that counsel have agreed to eight (8) jurors and one (1) alternate juror from a panel of fifty (50) prospective jurors. Six (6) of the eight (8) jurors will be necessary to return a verdict in this case. The alternate juror will not be required to deliberate providing none of the jurors are lost.

The Court's jury selection process, available technology, and trial procedures are discussed.

Based upon the matters presented to Court,

IT IS ORDERED that the parties shall meet and confer with respect to Disclosures and the compilation of one set of Exhibits, without duplication, by no later than **September 1, 2017**.

IT IS FURTHER ORDERED that the parties shall ensure that they bring to trial all Disclosure Statements that have been made, including mailing certificates for same.

IT IS FURTHER ORDERED that Plaintiffs' counsel, Mr. McGill, shall provide to Defense counsel, Mr. Lane, a copy of Don Bays' report by no later than **5:00 p.m. today**.

IT IS FURTHER ORDERED that the parties shall email to the Court's Judicial Assistant (see contact details below) a revised Statement of Facts to be read to the jury by no later than **September 11, 2017**.

IT IS FURTHER ORDERED that Exhibits are due to the division Clerk for marking by no later than **September 5, 2017**. The Clerk, Bal Randhawa, may be reached at **602-506-8806** or randhawab@cosc.maricopa.gov for any questions regarding the submission of exhibits.

NOTE: 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.

NOTE: If you are not familiar with this Division's electronic equipment, please make an appointment with this Division's Bailiff, Timothy O'Pry, via email at opryt@superiorcourt.maricopa.gov to test the equipment at least one week prior to your

10:10 a.m. Matter concludes.