

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-008175

03/03/2006

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
B. Navarro
Deputy

FILED: 03/08/2006

FRANK CUPERO, et al.

RICHARD C GRAMLICH

v.

COURTLAND HOMES INC

SCOTT MCCLURE

DOCKET-CIVIL-CCC

TRIAL VACATED AND RESET

3:13 p.m. This is the time set for a Trial Management Conference. Plaintiffs are represented by counsel, Richard C. Gramlich. Defendant is represented by counsel, Scott McClure.

Court Reporter, Rochelle Dobbins, is present.

Discussion is held.

IT IS ORDERED vacating the Jury Trial set for March 28, 2006 and resetting same to **April 4, 2006 at 9:30 a.m.**, in this division.

Estimated length of trial: **8 days**

Discussion is held.

IT IS ORDERED amending the caption in this matter to read as follows:

TRUDY HACKNEY, a single woman; ROD AND DINI FRYE, husband and wife; and SUSAN BIMBA, a single woman; and FRED WHELEN, a single man,

Plaintiffs,
Form V000A

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v.

COURTLAND HOOMES, INC., an Arizona corporation,

Defendant.

Oral argument and/or discussion is presented on the following motions in
limine:

- 1) Plaintiffs' Motion in *Limine* No. 1 to Preclude Evidence of Other Appraisals Taken on Plaintiffs' Homes by Financial Institutions (for the Purpose of Refinancing).
- 2) Plaintiffs' Motion in *Limine* No. 2 to Preclude Evidence of Alleged Prior Bad Acts of Plaintiffs Who Did Not Disclose this Litigation or Problems With Their Homes to the Lenders When They Refinanced.
- 3) Plaintiffs' Motion in *Limine* No. 3 to Preclude Negative Evidence Inference Testimony Regarding Other Homes in This Subdivision That Were Allegedly Damaged and Repaired by Courtland.
- 4) Plaintiffs' Motion in *Limine* No. 4 to Preclude Defendant from Eliciting Expert Testimony Concluding that Plaintiffs' Homes Would Not Suffer Residual Stigma or Diminution in Value.
- 5) Plaintiffs' Motion in *Limine* No. 5 to Preclude Defendant from Eliciting Cumulative Expert Testimony from their Appraiser, Paul Johnson, and a Real Estate Broker, Roger Williams, as to Marketability, Resale Value and any Diminution in Value of the Homes in Arrowhead Lakes.
- 6) Plaintiffs' Motion in *Limine* No. 6 to Preclude Defendant from Introducing Cumulative Expert Testimony from Randy Marwig and Russell Scharlin (Geotechnical Engineers) and Earl Gibbons (a Geotechnical Expert from CIT) Regarding the Cause of the Damage in Plaintiffs' Homes, and the Effectiveness of Cutoff Walls of Soil Injections.
- 7) Plaintiffs' Motion in *Limine* No. 7 to Preclude Defendant from Admitting Cumulative Expert Engineering Testimony Regarding the Cause and Extent of the Damage in Plaintiffs' Homes.
- 8) Plaintiffs' Motion in *Limine* No. 8 to Preclude Defendant from Attempting to Apportion Fault to Third Parties or to Plaintiffs.

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- 9) Plaintiffs' Motion in *Limine* No. 9 to Preclude Defendant's Appraisal Expert, Paul Johnson, from Rendering Opinions Outside His Expertise.
- 10) Plaintiffs' Motion in *Limine* No. 10 to Preclude Defendant's Appraiser, Paul Johnson, from Testifying as to What He Thinks Purchasers Such as the Dirkmatts (Who Purchased the Hockensmith Home) Knew or Would Have Been Aware of When They Purchased the Home.
- 11) Plaintiffs' Motion in *Limine* No. 11 to Preclude Defendant's Appraiser, Paul Johnson, from Testifying that Plaintiffs' home Purchase "Was a Good Investment" or They Have "Profited" from the Appreciation in Their Home.
- 12) Plaintiffs' Motion in *Limine* No. 12 to Preclude Defendant from Impeaching Plaintiffs' Expert or Bolster Defendant's Expert With Testimony that Undersigned Counsel and Plaintiffs' Expert had Hired Defendant's Expert on Other Cases.
- 13) Plaintiffs' Motion in *Limine* No. 13 to Preclude Defendant from Admitting Into Evidence that One of the Original Plaintiffs, the Tammalas, Dropped Out of the Litigation and Opted to Have Repairs Done by Courtland.
- 14) Plaintiffs' Motion in *Limine* No. 14 to Preclude Defendant from Introducing the Warranty Limitations and "As-Is" Clauses in Its Contract.
- 15) Defendant's Motion in *Limine* No. 1 to Preclude Reference to Insurance.
- 16) Defendant's Motion in *Limine* No. 2 to Preclude Phil Coppola's Testimony Regarding "Cut-Off" Walls.
- 17) Defendant's Motion in *Limine* No. 3 to Preclude References to or Testimony Regarding Alleged Damages Other Than Breach of Implied Warranty Damages.
- 18) Defendant's Motion in *Limine* No. 4 to Preclude Any Testimony/Reference to Any Alleged Emotional Distress of Plaintiffs.
- 19) Defendant's Motion in *Limine* No. 5 to Preclude Videotape of News 15 Investigators Aired May 24, 2005
- 20) Defendant's Motion in *Limine* No. 6 to Preclude Testimony by Dwight Dirkmatt.
- 21) Defendant's Motion in *Limine* No. 7 to Preclude "Golden Rule" Arguments.

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IT IS ORDERED as follows:

- 1) Granting Plaintiffs' request for a telephonic deposition of Mr. Dirkmatt.
- 2) Plaintiffs' Motion in *Limine* No. 1 is denied as moot.
- 3) Plaintiffs' Motion in *Limine* No. 2 is denied as moot.
- 4) Plaintiffs' Motion in *Limine* No. 3 is denied in part and the testimony shall be limited to the seven (7) homes referenced as having been monitored.
- 5) Plaintiffs' Motion in *Limine* No. 4 is denied in part and granted in part as stated on the record.
- 6) Plaintiffs' Motion in *Limine* No. 5 is granted.
- 7) Plaintiffs' Motion in *Limine* No. 6 is granted.
- 8) Plaintiffs' Motion in *Limine* No. 7 is granted.
- 9) Plaintiffs' Motion in *Limine* No. 8 is deemed moot.
- 10) Plaintiffs' Motion in *Limine* No. 9 is granted to the extent of the agreement of the parties that Mr. Johnson cannot personally render opinions referenced in the report as his own if they are the opinions of another expert.
- 11) Plaintiffs' Motion in *Limine* No. 10 is denied.
- 12) Plaintiffs' Motion in *Limine* No. 11 is granted in part. The expert cannot testify what is a good investment and whether there was a problem or not.
- 13) Plaintiffs' Motion in *Limine* No. 12 is granted.
- 14) By agreement of the parties as to Plaintiffs' Motion in *Limine* No. 13, they cannot discuss work done on the Tammalas' residence.
- 15) Plaintiffs' Motion in *Limine* No. 14 is granted in part. Defendant may reference provisions in the manual that were not followed as more particularly stated on the record.
- 16) Defendant's Motion in *Limine* No. 1 is granted without objection.
- 17) Defendant's Motion in *Limine* No. 2 is denied.

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18) Defendant's Motion in *Limine* No. 3 is granted in part for the reasons outlined in Plaintiff's response to this motion in *limine*.

19) Defendant's Motion in *Limine* No. 4 is granted.

20) Defendant's Motion in *Limine* No. 5 is granted.

21) Defendant's Motion in *Limine* No. 6 is denied.

22) Defendant's Motion in *Limine* No. 7 is granted.

IT IS FURTHER ORDERED that this Trial Management Conference will be continued on **March 31, 2006 at 1:30 p.m.** to begin the settling of jury instructions.

4:33 p.m. Matter concludes.

IN CHAMBERS:

Plaintiffs' counsel is present. Defendant's counsel is present.

A court reporter is not present.

Discussion is held re: exhibits.

4:40 p.m. Matters conclude.

LATER:

IT IS ORDERED that the Docket/ICIS system shall be updated to reflect the amended caption as follows:

TRUDY HACKNEY, a single woman; ROD AND DINI FRYE, husband and wife; and SUSAN BIMBA, a single woman; and FRED WHELEN, a single man,

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