

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-005392

08/15/2005

HONORABLE KENNETH L. FIELDS

CLERK OF THE COURT  
D. Whitford  
Deputy

FILED: 08/19/2005

MILLETT RANCH HOMEOWNERS  
ASSOCIATION INC

ROBERT E BARRY II

v.

BROWN FAMILY COMMUNITIES, et al.

LEE P BLAKE  
DENNIS REID GARREY  
TIMOTHY J THOMASON  
ANDREW R PESHEK

**ORAL ARGUMENT/TAKEN UNDER ADVISEMENT  
TRIAL VACATED/ORAL ARGUMENT SET**

10:30 a.m. This is the time set for Oral Argument on Defendant/Third-Party Plaintiff Homes by Dave Brown's Motion for Partial Summary Declaratory Judgment Re: Duty to Defend. Plaintiff Millett Ranch Homeowners Association is represented by counsel Robert E. Barry, III. Defendant/Third-Party Plaintiff Homes by Dave Brown is represented by counsel Lee Blake and counsel Harold Newman. Third-Party Defendant TCM Masonry, Inc. is represented by counsel Andrew Peshek.

The proceedings are recorded electronically by CD and videotape in lieu of a court reporter.

Oral argument having been presented,

**IT IS ORDERED** taking Defendant/Third-Party Plaintiff Homes by Dave Brown's Motion for Partial Summary Declaratory Judgment Re: Duty to Defend under advisement.

**IT IS FURTHER ORDERED** vacating the trial date of **October 19, 2005, at 9:00 a.m.** (10 days to a jury).

Docket Code 020

Form V000A

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**IT IS FURTHER ORDERED** affirming the date of the Pretrial Management Conference scheduled for **September 19, 2005 at 10:30 a.m.**, with **PLAINTIFF TO INITIATE CALL** to this Division, telephone number **602-506-2060**. **Note:** **A new trial date will be discussed at this conference.**

**IT IS FURTHER ORDERED** setting oral argument for **October 24, 2005 at 1:30 p.m.** on the following motions:

- Third-Party Defendant TCM Masonry, Inc. Motion for Partial Summary Judgment Re: Breach of Contract Re: Third-Party Plaintiff's Fourth and Fifth Causes of Action: Breach of Contract and Breach of Express and Implied Warranties;
- Third-Party Defendant TCM Masonry, Inc. Motion for Summary Judgment Re: Diminution in Value;
- Third-Party Defendant TCM Masonry, Inc. Motion for Summary Judgment Re: Third-Party Plaintiff's Sixth and Eighth Causes of Action: Declaratory Relief Regarding Duty to Defend and Negligent Procurement of Insurance;
- Third-Party Defendant TCM Masonry, Inc. Motions for Summary Judgment Re: Third-Party Plaintiff's Second and Third Causes of Action: Implied Indemnity and Express Indemnity; Alternatively, Motion Requesting that Court Find Indemnity Clause to be General;
- Third-Party Defendant TCM Masonry, Inc. Motion for Summary Judgment Re: Third-Party Plaintiff's First and Seventh Causes of Action: Negligence and Contribution;
- Third-Party Defendant TCM Masonry, Inc. Motion for Partial Summary Judgment Re: Speculative Damages to Six Inch Theme Walls; and
- Third-Party Defendant TCM Masonry, Inc. Motion for Summary Judgment re: Agency; and
- All pending motions, other than motions in limine.

**Before:**

The Honorable Kenneth Fields  
Maricopa County Superior Court

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-005392

08/15/2005

East Court Building  
Courtroom 414  
Phoenix, AZ 85003  
PHONE: 602-506-2060

11:05 a.m. Hearing concludes.

**ELECTRONIC ("E") COURTROOM**

A record of the proceedings may be made by videotape in lieu of a court reporter. Should an official transcript be required, you may request that the Court prepare it. The party ordering the transcript must pay for it. With this new technology, a court reporter is likely not required and the parties are encouraged to experience the Court's video-recording system before requesting a court reporter.

**If a court reporter is required, a written request must be received by the Court at least 48 hours before the hearing.**

**NOTICE**

**New Fee for Copies of Electronically Recorded Proceedings**

Effective Monday, January 27, 2003, a fee of \$20.00 will be charged for each copy of superior court proceedings digitally recorded and provided on compact Disc (CD) and for each copy of a superior court proceeding provided on videotape. The fee is due when the CD or videotape is picked up. Cash and in-state checks will be accepted for payment. Please make checks payable to: Clerk of the Superior Court.

Blank, unused CDs and videotapes will not be accepted in lieu of payment.

Beginning Monday, January 27, 2003, the pick up location for CD or videotape copies of superior court proceedings recorded in downtown Phoenix will be the court's Self Service Center located in the Law Library on the first floor of the East Court Building. Fees will be collected at the Self Service Center. Copies of superior court proceedings recorded at the court's Southeast Facility in Mesa and at the court's Northwest Facility in Surprise may be picked up, and fees paid, at the Self Service Centers at those locations.