

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-019512

03/16/2004

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT
D. Whitford
Deputy

FILED: 03/17/2004

STONEGATE ESTATES HOMEOWNERS
ASSOCIATIO

MICHAEL J WHITE

v.

FULTON HOMES CORPORATION

WILLIAM A NEBEKER

JAY R GRAIF
MERTON E MARKS
ANDREW PESHEK
JAY M MANN
CARRIE A KERCSMAR
RINA K RAI

ORAL ARGUMENT/UNDER ADVISEMENT/LATER:RULINGS

9:30 a.m. This is the time set for continued oral argument on various motions. Plaintiff is represented by counsel Michael J. White and Jay M. Mann. Defendant Fulton Homes is represented by counsel William Nebeker and Carrie Kerksmar. Defendant Fyffe Masonry is represented by counsel Rina Rai, Andrew Peshek and Lisa Shannon.

Court reporter Lorraine Chalkey is present.

After extended argument,

IT IS ORDERED taking the matters under advisement.

11:50 a.m. Oral argument concludes.

LATER:

After further consideration, the Court now orders as follows:

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1. Denying Third-Party Defendant Fyffe Masonry's Motion for Summary Judgment re: Indemnity at this time, to be determined after the jury verdict. The Court is inclined to rule that this is a general indemnity clause and the same is defeated if Fulton is at least one percent at fault, Busy Bee (82 Ariz. 192) and Herstam (186 Ariz.110, 118).
2. Denying Fulton Homes' Motion for Summary Judgment re: Indemnity for the same reasons set forth above.
3. Denying Fulton Homes' Motion for Partial Summary Judgment re: Extrapolation, determining that the better course is to proceed to trial, at which time the motion may be renewed before the matter goes to the jury.
4. Denying Fulton and Fyffe's Joint Motion for Summary Judgment re: Economic Waste, and Plaintiff's Cross Motion re: Economic Waste and Diminution in Value. This is an issue that the Court would revisit at the end of Plaintiff's case at the trial, but it is premature to decide it now.
5. Denying Fyffe and Fulton's Joint Motion for Partial Summary Judgment re: Structural Defects, the Court being of the view there are fact issues to be determined by the trier of fact.
6. Denying Fulton and Fyffe's Joint Motion for Summary Judgment re: Standing, and granting Plaintiff's Cross-Motion for Partial Summary Judgment re: Standing. The Court specifically holds that the walls next to or on common areas and the walls at the back of the lots bounding the perimeter of the project (even though owned by the individual lot owners) are the walls in dispute and that Plaintiff has the authority to bring this lawsuit concerning such walls. The parties have stipulated that the party walls dividing the lots are not in this case.