

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-019512

03/26/2004

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT
M. Johnson
Deputy

FILED: 04/01/2004

STONEGATE ESTATES HOMEOWNERS
ASSOCIATIO

MICHAEL J WHITE

v.

FULTON HOMES CORPORATION

WILLIAM A NEBEKER

JAY R GRAIF
MERTON E MARKS
ANDREW PESHEK
RINA K RAI

MINUTE ENTRY

1:33 p.m. This is the time of hearing various motions. Counsel Michael J. White and Jay Mann are present on behalf of plaintiff. Counsel Carrie Kerksmar is present on behalf of defendant Fulton Homes. Counsel Andrew Peshek, Rina Rai and Lisa Shannon are present on behalf of defendant Fyffe. All are present in person.

Court Reporter Lorraine Chalkey is present.

The court notes that so many motions were received in the last two days that the court will only hear argument on plaintiff's motion for clarification on economic waste. All other motions in limine will be considered on the first day of trial on April 7, 2004 unless the trial beginning a week before ends early in which case the court will do the motions on April 6, 2004 and the parties will be advised. The hearing will commence at 9:30 a.m.

After argument,

IT IS ORDERED taking the matter under advisement.

1:44 p.m. Matter concludes.

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LATER:

It is understood it is plaintiff's position that economic waste is an affirmative defense for defendants and the court agrees with that. The court also understands that plaintiff will sink or swim with this position that all perimeter walls have to be torn down and rebuilt. Defendants contend that would constitute economic waste and the court will send the issue to the jury. The further issues raised by the motion for clarification (1) that it is not possible for either party to present proof as to the value of the walls in their defective condition as compared to the value of the walls had they been built properly, because the Stonegate common walls are not marketable and have no market value, is an issue that should be decided prior to the trial and will be argued on the day motions in limine are argued. This is also true of the second issue as to whether the court will entertain proof of diminution of value of homes in the Stonegate community as a substitute for proof of diminution of value of the perimeter walls, which plaintiff contends would be improper. It will be argued on April 7 or April 6, 2004.