

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

**FILED**  
DATE: 2.1.05  
5 O'Clock P. M.  
JEANNE HICKS, CLERK  
BY: Dyh Anderson  
Deputy

DIVISION 1

JEANNE HICKS

HONORABLE DAVID L. MACKEY

Clerk of Superior Court

By: Dyhanna Anderson, Deputy Clerk

CASE NO. CV 20030399

DATE: January 31, 2005

TITLE:

COUNSEL:

JOHN B CUNDIFF and BARBARA C.  
CUNDIFF, husband and wife;  
ELIZABETH NASH, a married woman  
dealing with her separate  
property; KENNETH PAGE and  
KATHRYN POAGE, as Trustee of the  
Kenneth Page and Catherine  
Page Trust

David Wilhelmsen  
Margerite Kirk  
FAVOUR, MOORE & WILHELMSEN

Plaintiffs

(For Plaintiffs)

vs.

DONALD COX AND CATHERINE  
COX, husband and wife,

Mark Drutz  
Jeffrey Adams  
MUSGROVE, DRUTZ & KACK

Defendants

(For Defendants)

**HEARING ON:**  
ORAL ARGUMENTS

**COURT REPORTER**  
David Lundy

**START TIME:** 1:31 p.m.

**END TIME:** 2:36 p.m.

**APPEARANCES:** David Wilhelmsen, Counsel for Plaintiffs  
Marguerite Kirk, Counsel for Plaintiffs  
Mr. & Mrs. Cundiff, Plaintiffs  
Mr. & Mrs. Page, Plaintiffs  
Elizabeth Nash, Plaintiff  
Jeffrey Adams, Counsel for Defendant  
Mark Drutz, Counsel for Defendant  
Mr. & Mrs. Cox, Defendants

This is the time set for Oral Argument on pending motions.

Counsel Wilhelmsen argues Plaintiff's position regarding the Motions for Summary Judgment as to Waiver, Estoppel, Laches and Unclean Hands.

Counsel Drutz argues Defendant's position regarding the Motion for Summary Judgment as to Waiver. Counsel Adams argues Defendant's position regarding the Motions for Summary Judgment as to Estoppel, Laches and Unclean Hands.

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The Court takes the two Motions for Summary Judgment under advisement.

The Court DENIES without prejudice the Request for Court's onsite review of the property.

Counsel Kirk argues Plaintiffs' position regarding the Motion to Compel.

Counsel Adams argues Defendant's position regarding the Motion to Compel.

The Court GRANTS Plaintiffs' Motion to Compel and ORDERS Defendants to produce their Income Tax Returns for the years 1998 through 2003, including all schedules. Also if the 2004 Income Tax Return has been filed or it is anticipated to be filed within 30 days, Defendants are ORDERED to provide the 2004 Income Tax Return.

IT IS ORDERED Production is made pursuant to protective order. Counsel are not to disseminate to Plaintiffs or anyone else without further Court order. Request for protective order is DENIED. The request for attorney fees, in regards to Motion to Compel, is DENIED at this time.

Counsel Wilhelmsen argues Plaintiff's position regarding the Motion in Limine.

Counsel Drutz argues Defendant's position regarding the Motion in Limine.

The Court takes Motion in Limine under advisement.

Court and Counsel discuss pretrial issues. Counsel advise the Court that 6 days will be needed for a jury trial.

Defendants are directed to file a Comprehensive Pretrial Statement within 10 days pursuant to Rule 16(b) of the Arizona Rules of Civil Procedure.

~~~~~ THEREAFTER ~~~~~

The Court locates the Defendants' Pretrial Statement filed on October 6, 2004. The Court's direction to the Defendants to file a comprehensive Pretrial Statement is VACATED