

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

FILED
DATE: March 10, 2008
10:08 O'Clock A . M.
JEANNE HICKS, CLERK
BY: Lilly Miller
Deputy

DIVISION 1

JEANNE HICKS, CLERK

HON. DAVID L. MACKEY

BY: Lilly Miller, Deputy Clerk

CASE NO. CV 2003-0399

DATE: March 10, 2008

TITLE:

COUNSEL:

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

David K. Wilhelmsen, Esq.
Marguerite Kirk, Esq.
FAVOUR, MOORE & WILHELMSSEN, PA

(For Plaintiffs)

-vs-

DONALD COX and CATHERINE COX, husband and wife,
Defendants.

Jeffrey R. Adams, Esq
ADAMS & MULL, PLLC
(For Defendant)

HEARING ON:
Oral Argument

NATURE OF PROCEEDINGS

COURT REPORTER
Holly Draper

START TIME: 10:08 a.m.

APPEARANCES: John Cundiff, Plaintiff
David Wilhelmsen, Counsel for Plaintiff
Donald Cox, Defendant
Catherine Cox, Defendant
Jeffrey Adams, Counsel for Defendants

The Court notes, the time is set for an Oral Argument on the Joinder of indispensable Parties issue. The Court has reviewed the Memorandum.

Counsel Wilhelmsen addresses the Court regarding the Court of Appeals' decision and the Memorandum and presents further argument on the issue.

Counsel Adams presents argument on the issue of joinder of indispensable Parties and the Court of Appeals' decision.

The Court discusses the declaratory action issue and notes that it has not reviewed all of the files to see whether or not an Amended Complaint was filed

Counsel Adams addresses the Court regarding that issue and presents further argument.

Court notes, it has reviewed the Answer, and inquires if another Answer was filed that brings a counterclaim for declaratory action.

Counsel Adams notes that the declaratory action issue has not been raised in a counterclaim.

Counsel Wilhelmsen presents further argument on the declaratory judgment and the joinder issues.

For reasons as stated on the record, the Court **finds**, based upon rule 19(a), Arizona Rules of Civil Procedure, and the language of the Declaration of Restrictions, as well as the fact that it is Plaintiff's choice to bring this action, and the Defendants are simply defending and not bringing a separate action, counter-claim, or cross-claim to invalidate the Declaration, that it is appropriate to **ORDER** that the Plaintiff shall join all landowners subject to the Declaration of Restrictions dated June 12, 1974.

IT IS ORDERED that within 60 days of today's date, the Plaintiff shall file a notice with this Court that includes a map of the properties subject to the Declaration of Restrictions as well as a list designating the parcel numbers as well as names and address of each property owner.

The Court advises that upon filing that notice, the Plaintiff shall also file a plan for joinder of all the property owners subject to the Declaration of Restrictions. The Defendants shall have the time provided by the Rules to file a response or objection to Plaintiff's notice and designation of plan. The Court will proceed based upon that plan, as well as the Defendants' response or objection.

The Court discusses the possibility of the matter being more suited to a class action and whether or not the additional Parties should be added as Plaintiffs or Defendants. The Court will give the Plaintiff the opportunity to make a determination on that issue.

Counsel Wilhelmsen inquires how to bring the matter to the Court's attention as a class action matter.

The Court advises, if the matter is to be brought as a class action matter, it needs to be in accordance with the Rules of Civil Procedure.

The Court **does not find**, given that these are property owners for property in Yavapai County, that the designation of those additional Parties would deprive this Court of jurisdiction.

Court and Counsel Wilhelmsen discuss what the Court would like to see in terms of the plan for joinder.

END TIME: 10:51 a.m.