

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

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p align="center">Plaintiffs,</p> <p>vs.</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p align="center">Defendants.</p>	<p align="center">Case No. P1300CV20030399</p> <p align="center">NOTICE/ORDER</p>	<p align="center">FILED</p> <p>DATE: <u>MAR 06 2013</u> <u>4</u> O'Clock <u>P</u>. M.</p> <p align="center">SANDRA K. MARKHAM CLERK BY: <u>MARKHAM</u> Deputy</p>
--	---	--

<p>HONORABLE KENTON D. JONES</p> <p>DIVISION 4</p>	<p>BY: Kathleen Cartier, Judicial Assistant</p> <p>DATE: March 5, 2013</p>
--	--

THIS MATTER is addressed by the Court approximately 40 days prior to the scheduled jury trial of this issue with the Court unable to locate an appropriate facility to accommodate that trial, and with both substantial procedural matters and motions currently undecided / unaddressed.

Specifically, at the present time the Court is not advised as to how many total Parties there are; i.e., a) those represented by Counsel, b) those who have been served, have responded to Service and been categorized as "aligned property owners," c) those who have been served and *not* responded but also not been defaulted, and d) new property owners that have not been served following their purchase of property within the subdivision following the initiation of these proceedings and the initial service upon the prior owner. As the Arizona Court of Appeals has made clear, each property owner within the subdivision needs be addressed in the course of this action in order for there to be a binding Judgment entered at the culmination of these proceedings.

As the Court cannot determine that *anyone* has been defaulted, pursuant to Rule 55, Arizona Rules of Civil Procedure, the Court must ultimately prepare for and assume that all property owners have been served and will appear. It is the Court's understanding there are more than 250 separate real property parcels within the relevant subdivision, and all parcels must be/must have been made Parties to this action. As such, the Court needs plan for the possibility of having more that 250 property owner/Parties; albeit some number of those property owners

represented by a single legal Counsel, appear at trial. As such, the location of and procedures established for the trial must allow for the resultant ramifications.

If no fewer Parties exist than are listed on the current distribution list being utilized by the Parties there will be thirty one Parties at trial.

As served Parties subject to being bound by the outcome of these proceedings the identity of all property owners subject to being bound by the Judgment ultimately entered; effectively a "check off list," also needs be fixed for numerous reasons including but not limited to the size of the jury pool summoned, those persons entitled to participate in *voir dire*, the making of opening statements, the questioning of witnesses, the presentation of evidence, the interposing of objections, participation in "side-bar" discussions, and closing arguments. The Court needs the lists of property owners to be divided between Plaintiffs and Defendants.

The Court will need to undertake a "roll call" of Parties, each day of the trial, in order to fix the record as to who is present during that trial day.

The issue of the size of the jury pool is substantial as a result of the geographical size of the residential subdivision, the percentage of subdivision property owner that would actually be summoned through a County wide jury summons, the contacts/friends subdivision property owners have throughout the balance of the County, and the impact of media reports. For the Parties information, in a standard personal injury matter (two Parties) the Court summons a pool of slightly more than fifty (50) possible jurors. In this case as pointed out above, rather than two Parties, there could be two hundred Parties.

A substantial jury questionnaire needs be created and distributed with the jury summons. Upon return of the questionnaires prior to trial, the Court and Parties would need to meet and address strikes for cause. Thereafter, a series of groups of potential jurors would need to be directed to appear to complete the process of *voir dire*.

Further, as the total pool of Plaintiffs and Defendants is greater than the number of jurors, every objection interposed for which a record would need be made would likely result in the need to remove the jury from the Courtroom to allow for each property owner's position to be heard. Every objection made, even where the creation of a record was not sought, would require the Court to address each property owner's response. A process needs be established to address how that might be accomplished.

At the present time and without procedures in place to dictate otherwise, the Court does not believe the twelve days currently scheduled for trial would be nearly enough time to have this matter fully addressed so that a meaningful and binding Judgment would enter.

THEREFORE, and based upon the foregoing, the Trial currently set to commence April 16, 2013, is **VACATED**. Additionally, oral argument on pending Motion for Summary Judgment and Motion to Strike and in Limine is hereby scheduled for Tuesday, April 16, 2013 at

9:00 AM. Immediately following oral argument Counsel and the Court will proceed with a status conference/procedures conference to address the issues raised, herein, and such additional issues as the Court may have not specifically addressed but which the Parties recognize as needing to be fixed in order to establish procedure toward the trial of this matter. Once the procedures and location of the trial are established and an appropriate length of trial can be determined, the Court will thereafter make a place on its calendar toward a prompt trial.

cc: J. Jeffrey Coughlin — J. JEFFREY COUGHLIN PLLC (e)
Jeffrey Adams — THE ADAMS LAW FIRM, PLLC (e)
David K. Wilhelmsen — FAVOUR MOORE & WILHELMSEON, PLC (e)
Mark W. Drutz — MUSGROVE, DRUTZ & KACK, P.C.
Hans Clugston - HANS CLUGSTON, PLLC (e)
Robert E. Schmitt — MURPHY, SCHMITT, HATHAWAY & WILSON, P.L.L.C. (e)
Noel J. Hebets - NOEL J. HEBETS, PLC, 127 E. 14th Street, Tempe, AZ 85281 (e)
William "Bill" Jensen — 2428 W. Coronado Avenue, Flagstaff, AZ ✓
Karen L. Wargo/Michael P. Wargo — 9200 E. Spurr Lane, Prescott Valley, AZ 86315 ✓
Linda J. Hahn - 10367 W. Mohawk Lane, Peoria, AZ 85382 ✓
Jesus Manjarres - 105 Paseo Sarta #C, Green Valley, AZ 85614 ✓
Nicholas Corea - 4 Denia, Laguna Niguel, CA 92677 ✓
John and Rebecca Feddema - 9550 E. Spurr Lane, Prescott Valley, AZ 86315 ✓
Gary and Sabra Feddema - 9601 Far Away Place, Prescott Valley, AZ 86315 ✓
Jack and Dolores Richardson - 505 Oppenheimer Drive #4 12, Los Alamos, NM 87544 ✓
Eric Cleveland - 9605 E. Disway, Prescott Valley, AZ 86315 ✓
Rynda and Jimmy Hoffman - 9650 E. Spurr Lane, Prescott Valley, AZ 86315 ✓
William R. and Judith K. Stegeman Trust - 9200 E. Far Away Place, Prescott Valley, AZ 86315 ✓
Sergio Martinez and Susana Navarro - 10150 N Lawrence Lane, Prescott Valley, AZ 86315 ✓
Robert and Patricia Janis - 7685 N. Coyote Springs Rd., Prescott Valley, AZ 86315 ✓
William and Shaunla Heckethom - 9715 E. Far Away Place, Prescott Valley, AZ 86315 ✓
Leo and Marilyn Murphy - 9366 E. Turtlerock Road, Prescott Valley, AZ 86315 ✓
James and Leslie Richie - 9800 E. Plum Creek Way, Prescott Valley, AZ 86315 ✓
Rhonda Folsom - 9305 N. Coyote Springs Rd., Prescott Valley, Arizona 86315 ✓
Kenneth Paloutzian - 8200 Long Mesa Drive, Prescott Valley, AZ 86315 ✓
Robert Lee and Patti Ann Stack/Robert Lee and Patti Ann Stack Trust - 10375 Lawrence Lane, Prescott Valley, AZ 86315 ✓
John and Dusti Audsley - 10500N.OrionWay, Prescott Valley, AZ 86315 ✓
Dana E. and Sherrilyn G. Tapp - 8595 E. Easy Street, Prescott Valley, AZ 86315 ✓
Richard and Beverly Strissel - 9350 E. Slash Arrow Drive, Prescott Valley, AZ 86314 ✓
Bonnie Rosson - 8950 E. Plum Creek Way, Prescott Valley, Arizona 86315 ✓
Lloyd E. & Melva J. Self - 9250 E. Slash Arrow Drive, Prescott Valley, Arizona 86315 ✓