

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

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| <p>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,</p> <p align="right">Plaintiff,</p> <p align="center">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p align="right">Defendant.</p> | <p>Case No. CV2003-0399</p> <p>RULING RE: MOTIONS</p> | <p align="center">FILED</p> <p>DATE: <u>7/18/05</u> <u>12</u> O'Clock <u>P</u>.M. ✓</p> <p align="center">JEANNE HICKS, CLERK SHEETAL PATEL</p> <p>BY: _____ Deputy</p> |
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| <p>HONORABLE DAVID L. MACKEY</p> <p>DIVISION 1</p> | <p>BY: Cheryl Wagster Judicial Assistant</p> <p>DATE: July 18, 2005</p> |
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The Court has considered the motions filed in this case and determines that some of the motions can be resolved without further response or reply.

The Court notes that some of the motions requested oral argument. The Court pursuant to Rule 7.1(c)(2), Arizona Rules of Civil Procedure has determined that oral argument will not assist the Court in the determination of these motions.

The Court has considered the Defendants' Motion To Join Indispensable Parties. The Court finds that such a motion is not well founded and is untimely in a case that was filed on May 16, 2003 and Answered on May 21, 2003. The motion also requests dismissal in the alternative, the Court finds that such a request is not supported by the law cited.

IT IS ORDERED the Defendants' Motion To Join Indispensable Parties is **DENIED**.

Next, the Court has considered the Defendants' Motion For Summary Judgment Re: Declaration Vagueness and Ambiguity. A legal finding of vagueness and ambiguity is not supported by the authority cited.

IT IS ORDERED the Defendants' Motion For Summary Judgment Re: Declaration Vagueness and Ambiguity is **DENIED**.

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Attorneys/parties have been notified by phone/fax
Date: 7/18/05

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Next, the Court has considered the Plaintiffs' Motion In Limine To Preclude Defendants' Introduction Of The Defense of Waiver and the Response. For the same reasons set forth in the Court's ruling regarding the previous motion for summary judgment,

IT IS ORDERED the Plaintiffs' Motion In Limine To Preclude Defendants' Introduction Of The Defense of Waiver is **DENIED**.

The Court has considered the Defendants' Motion To Continue Trial.

IT IS ORDERED the Defendants' Motion To Continue Trial is **DENIED**.

The Court notes that there is still pending the following motions:

1. Defendants' Motion For Summary Judgment Re: Agricultural Activities.
2. Defendants' Motion In Limine Re: Yavapai County Planning and Zoning witness and exhibits.
3. Plaintiffs' Motion In Limine To Preclude Defendants' Inappropriate Questioning of Alfie Ware.
4. Plaintiffs' Motion to Compel Plaintiffs'[sic] Production of Documents Pursuant To Court's January 31, 2005 and June 29, 2005 Rulings.

IT IS ORDERED responses to the Defendants' motions are due by **July 19, 2005**.

IT IS ORDERED response to the Plaintiffs' motions are due by **July 22, 2005**.

IT IS FURTHER ORDERED there shall be **NO REPLIES** filed to any of the pending motions.

IT IS ORDERED setting Oral Argument on the pending motions on Tuesday, **July 26, 2005 at 1:30 p.m.** with **one hour allotted**.

The Court confirms its prior Orders setting trial to commence on August 2, 2005 at 9:00 a.m. and that the parties shall file a Joint Pretrial Statement, Proposed Voir Dire, Proposed Jury Instructions and Proposed Forms of Jury Verdicts no later than 10 days prior to trial.

IT IS FURTHER ORDERED the parties shall deliver to the Clerk of the Court for marking **ALL EXHIBIT** to be used at trial no later than 5:00 p.m. on **July 25, 2005**.

cc: David K. Wilhelmsen – Favour Moore & Wilhelmsen, P.O. Box 1391, Prescott, AZ 86302
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