

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

FILED
DATE: JUL 29 2005
3 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: July 26, 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

Plaintiffs

David Wilhelmsen
Margerite Kirk
FAVOUR, MOORE & WILHELMSEN

(For Plaintiffs)

vs.

DONALD COX AND CATHERINE
COX, husband and wife,

Defendants

Mark Drutz
Jeffrey Adams
MUSGROVE, DRUTZ & KACK

(For Defendants)

HEARING ON:
ORAL ARGUMENTS

COURT REPORTER
David Lundy

START TIME: 1:33 p.m.

APPEARANCES: David Wilhelmsen, Counsel for Plaintiffs
Marguerite Kirk, Counsel for Plaintiffs
Jeffrey Adams, Counsel for Defendants
Mark Drutz, Counsel for Defendants
Mr. & Mrs. Cox, Defendants

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

Counsel Drutz argues Defendant's position regarding the Motion for Summary Judgment as to agricultural activity. Counsel Wilhelmsen argues Plaintiff's position.

The Court FINDS no factual issue which precludes this Court from making a legal determination whether the conduct of Defendant on the property violates paragraph 2 of the Declaration of Restrictions.

The Court FURTHER FINDS as a matter of law that the conduct of Defendant does not violate paragraph 2 of the Declaration of Restrictions as it is not a trade, business or commercial profession initiated on the property. The Court also FINDS as a matter of law that Plaintiff is not

entitled to relief on count I of the First Amended Complaint. Therefore, the Court GRANTS the Motion for Summary Judgment as to agricultural activity.

Court and Counsel discuss the Defendant's Motion *in Limine* which precludes a witness from the Yavapai County Planning and Zoning and accompanying exhibits.

The Court recesses briefly to allow Plaintiff's Counsel to contact their client.

Court and Counsel discuss pretrial issues. Counsel request the trial be vacated and the other counts of the First Amended Complaint be held in abeyance.

IT IS ORDERED vacating the trial previously set.

IT IS FURTHER ORDERED that Counts II, III, IV and V be held in abeyance pending Appellate review of the Court's decision regarding Count I of the First Amended Complaint.

Counsel for Defendants are directed to submit a form of judgment and application for attorney fees and costs pursuant to the Rules of Civil Procedure.

The Court deems any pending motions moot subject to the anticipated Appellate review.

END TIME: 2:36 p.m.

THEREAFTER:

The Court FINDS that the exhibits Defendant attached to the Response to Plaintiff's Motion to Compel Production of Documents are not relevant to the determination of discovery issue. Therefore, IT IS ORDERED returning the exhibits to Defendant's Counsel pursuant to Rule 5(g)(2)(B) of the Arizona Rules of Civil Procedure, and the Court strikes the exhibits from the record. Defendant's Counsel is directed to contact the Exhibit Clerk to arrange pickup of the exhibits.

cc: Div 1
Exhibit Clerk