

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

<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 align="center">NOTICE SETTING BRIEFING SCHEDULE AND ORAL ARGUMENT</p>	<p align="center">FILED</p> <p>DATE: <u>AUG 24 2007</u> ✓</p> <p><u>12</u> O'Clock <u>P</u>.M.</p> <p align="center">JEANNE HICKS, CLERK</p> <p>BY: <u>S. Shaemake</u> Deputy</p>
--	---	--

<p>HONORABLE DAVID L. MACKEY</p> <p>DIVISION 1</p>	<p>BY: Cheryl Wagster Judicial Assistant</p> <p>DATE: August 23, 2007</p>
--	---

The Court has considered the Defendants Notice of Lodging Judgment On Mandate, Plaintiffs' Objection To Cox's Lodged Form Of Judgment On Mandate and Defendant's Response. The Court notes that oral arguments have been requested. The Court pursuant to Rule 7.1(c)(2), Ariz.R.Civ.P. has determined that oral argument will not assist the Court in the determination of this motion.

The Court declines to sign the form of Judgment on Mandate lodged by the Defendants. First, it is unnecessary. The Court of Appeals did not remand the case with a direction that the Judgment be vacated. The Court of Appeals already Ordered that the Judgment against the Plaintiffs is vacated. An Order from this Court is not warranted.

Next, the lodged form of Judgment on Mandate misinterprets the Court of Appeals decision. The Court of Appeals in essence granted the Defendants' Motion For Joinder finding that "the absent property owners are necessary parties given the issue to be decided in this case." The Court of Appeals directed that "[t]he trial court must determine on remand whether these parties are also indispensable under Rule 19(b)."

The Court of Appeals did not direct who should join "the absent property owners". They are not joined at this point. Therefore, the question for this Court is whether this action can proceed without "the absent property owners". Rule 19(b), Ariz.R.Civ.P. provides the Court with the factors that must be considered in determining whether the action can proceed in the absence of necessary parties. This Court finds that the Plaintiffs bear the burden of establishing that joinder is not feasible and that the Court should proceed with this action based upon the factors set forth in Rule 19(b), Ariz.R.Civ.P.

AUG 24 2007

Cundiff v. Cox
CV2003-0399
Page Two
August 23, 2007

THEREFORE, IT IS ORDERED Plaintiffs shall have until **September 24, 2007** to file a legal memorandum setting forth their position that joinder is not feasible and that the Court should proceed with this action based upon the factors set forth in Rule 19(b), Ariz.R.Civ.P.

IT IS ORDERED Defendants shall have until **October 22, 2007** to file a response to Plaintiffs' memorandum.

IT IS ORDERED Plaintiffs shall have until **November 5, 2007** to file a reply.

IT IS ORDERED continuing the Pretrial Conference previously set by the Court and setting Oral Arguments on the issues set forth in the briefing on **Tuesday, November 20, 2007 at 9:00 a.m. with one hour allotted.** By this ruling, the Court does not foreclose the very real possibility that an evidentiary hearing may ultimately be necessary to resolve whether "the absent property owners" are "indispensable under Rule 19(b)."

cc: David K. Wilhelmsen – Favour Moore & Wilhelmsen, P.O. Box 1391, Prescott, AZ 86302
Mark W. Drutz/Jeffrey Adams/Sharon Sargent-Flack – Musgrove, Drutz & Kack,
1135 Iron Springs Road, Prescott, AZ 86302