


SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2005 JUL 12 PM 4:15

JEANNE HICKS, CLERK

BY: 

1 Mark W. Drutz, #006772
2 Jeffrey R. Adams, #018959
3 Sharon Sargent-Flack, #021590
4 **MUSGROVE, DRUTZ & KACK, P.C.**
5 1135 Iron Springs Road
6 Prescott, Arizona 86305
7 (928) 445-5935

8 *Attorneys for Defendants*

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF YAVAPAI**

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

17 Plaintiffs,

18 v.

19 DONALD COX and CATHERINE COX,
20 husband and wife,

21 Defendants.

Case No. CV 2003-0399

Division No. 1

**RESPONSE TO PLAINTIFFS' MOTION
IN LIMINE TO PRECLUDE
DEFENDANTS' INTRODUCTION OF
THE DEFENSE OF WAIVER**

(Assigned to the Honorable David L.
Mackey)

22 Defendants, through counsel undersigned, respond to Plaintiffs' Motion In Limine To
23 Preclude Defendants' Introduction of the Defense of Waiver and move the Court to deny the Motion.

24 This Response is supported by the following Memorandum of Points and Authorities and the record
25 on file herein.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 Plaintiffs have filed a Motion *In Limine* which is nothing but a rehash of their Motion for
28 Summary Judgment and Motion for Reconsideration, both of which the Court denied. There is no

DLM

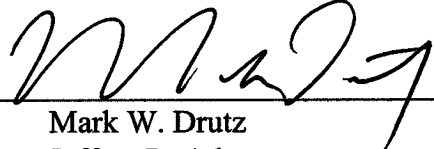
1 reason for Plaintiffs to have filed this Motion *In Limine* as Plaintiffs' objection to Defendants'
2 introduction of evidence regarding the defense of waiver has already been preserved for appeal based
3 upon Plaintiffs' two (2) unsuccessful motions. See Lemons v. Showcase Motors, Inc., 207 Ariz. 537,
4 541, 88 P.3d 1149 (App 1, 2004) wherein it was stated, "[I]legal issues and arguments must be
5 presented to the trial court and generally cannot be raised for the first time on appeal."
6

7 Plaintiffs' Motion *In Limine* is not procedurally proper and does nothing to advance their
8 position. Rather, it simply required Defendants to file a Response and further increase the costs
9 of litigation.
10

11 Defendants request that the Court deny Plaintiffs' Motion *In Limine* and award Plaintiffs
12 the sum of \$250.00 for their attorneys' fees incurred in responding to Plaintiffs' unnecessary
13 motion.
14

15 RESPECTFULLY SUBMITTED this 12th day of July, 2005.

16 MUSGROVE, DRUTZ & KACK, P.C.

17
18 By 
19 Mark W. Drutz
20 Jeffrey R. Adams
21 Sharon Sargent-Flack
22 *Attorneys for Defendants*

23 COPY of the foregoing mailed
24 this 12th day of July, 2005, to:
25 Honorable David L. Mackey
26 Yavapai County Superior Court
27 Division 1
28 Yavapai County Courthouse
Prescott, Arizona 86301

1 David K. Wilhelmsen, Esq.
2 Marguerite M. Kirk, Esq.
3 Favour, Moore & Wilhelmsen, P.A.
4 1580 Plaza West Drive
5 Post Office Box 1391
6 Prescott, Arizona 86302-1391
7 *Attorneys for Plaintiffs*



A handwritten signature in black ink, appearing to read 'M M Kirk', is written over a horizontal line. The signature is cursive and somewhat stylized.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28