



Clerk of Superior Court

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Clerk
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Chief Deputy

March 16, 2006

Mr. Philip G. Urry, Clerk
Court of Appeals, Div. 1
1501 West Washington
Phoenix, AZ 85007

1:55 **FILED** O'Clock, *J* M
MAR 16 2006
JEANNE HICKS, Clerk
BY *Tina Fenton*
Deputy

Dear Mr. Urry:

RE: John B. Cundiff, et al VS Donald Cox, et ux
YAVAPAI COUNTY SUPERIOR COURT CV 2003 0399

Pursuant to the **Notice of Appeal filed February 17, 2006**, enclosed are my Clerk's Certification sheet, two copies of an Interspersed Index listing all pleadings in said case as of this date, and any pertinent articles to this Appeal, as marked by the asterisks thereon.

Should the entire original case record be required by your Court, it will most certainly be transmitted upon written Order.

Yours very truly,

Tina Fenton
Tina Fenton
Appeals Clerk

cc: David K. Wilhelmsen
Marguerite Kirk
P.O. Box 1391
Prescott, AZ 86302
Counsel for Plaintiffs

Mark Drutz
Musgrove Drutz & Kack, P.C.
P.O. Box 2720
Prescott, AZ 86302
Counsel for Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

March 16, 2006

John B. Cundiff, et al,

Plaintiff s

Donald Cox, et ux,

Defendants

)
) **Yavapai County Superior Court**
) **CV 2003 0399**
)
)
)
)

STATE OF ARIZONA)
) **ss**
County of Yavapai)

I, JEANNE HICKS, Clerk of the Superior Court of the State of Arizona, in and for the County of Yavapai, DO HEREBY CERTIFY that the enclosed Index itemizes the entire record in the above-entitled action as of this date, consisting of all Pleadings, Minute Entries, and/or Exhibits, Reporters' Transcripts and Depositions.

I FURTHER CERTIFY that the enclosed copies of instruments and minute entry orders forwarded herewith are true copies of the originals on file in this office.

IN WITNESS WHEREOF I hereunto set my hand and affix the seal of said Superior Court this 16th day of March, 2006.

JEANNE HICKS, Clerk

By:



Tina Fenton
Appeals Clerk

NUMBER	TITLE OF DOCUMENT	DATE FILED
20	ORDER TO SHOW CAUSE	06-02-2004
21	STIPULATION	06-07-2004
22	ORDER	06-08-2004
23	PLAINTIFF'S MOTION TO DISQUALIFY	06-30-2004
24	PLAINTIFF'S MOTION TO AMEND CAPTION	07-01-2004
25	RESPONSE TO MOTION TO AMEND CAPTION	07-07-2004
26	ME: ORDER SETTING ORAL ARGUMENT	07-12-2004
27	RESPONSE & OBJECTION TO MOTION TO DISQUALIFY DEFT'S COUNSEL & MOTION FOR PROTECTIVE ORDER	07-14-2004
28	ME: ORAL ARGUMENT ON MOTION TO DISQUALIFY	07-20-2004
29	PLAINTIFF'S REQUEST FOR THE COURT'S ON-SITE INSPECTION OF SUBJECT REAL PROPERTY SUBDIVISION	07-28-2004
30	PLAINTIFF'S SEPARATE STATEMENT OF FACTS	07-28-2004
31	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT	07-26-2004
32	ORDER AMENDING CAPTION	07-29-2004
33	NOTICE OF FILING	07-30-2004
34	STIPULATION FOR EXTENSION OF TIME	08-02-2004
35*	REPORTER'S TRANSCRIPTS FILED: M. LISA EDGAR ORAL ARGUMENT ON MOTION TO DISQUALIFY	08-04-2004
36	RESPONSE TO PLAINTIFF'S REQUEST FOR THE COURT'S ONSITE INSPECTION OF SUBJECT REAL PROPERTY SUBDIVISION	08-11-2004
37	PLAINTIFF'S REPLY TO DEFT'S RESPONSE TO PLAINTIFF'S REQUEST	08-12-2004

NUMBER	TITLE OF DOCUMENT	DATE FILED
38	REQUEST FOR ORAL ARGUMENTS ON PLAINTIFF'S REQUEST	08-16-2004
39	PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFT'S REQUEST	08-18-2004
40	DEFT'S REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFT'S REQUEST FOR ORAL ARGUMENTS	08-25-2004
41	NOTICE OF ERRATA	09-02-2004
42	PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE DEFT'S INTRODUCTION OF LAY WITNESS OPINION TESTIMONY	09-09-2004
43	RESPONSE TO PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE DEFT'S INTRODUCTION OF LAY WITNESS OPINION TESTIMONY	09-23-2004
44	PLAINTIFF'S COUNSEL'S CERTIFICATION	09-28-2004
45	PLAINTIFF'S MOTION TO COMPEL	09-28-2004
46	CONTROVERTING STATEMENT IN RESPONSE	09-29-2004
47	NOTICE OF ERRATA	09-29-2004
48	RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT	09-29-2004
49	PLAINTIFF'S REPLY TO DEFT'S RESPONSE TO PLAINTIFF'S MOTION IN LIMINE	09-29-2004
50	PLAINTIFF'S REPLY TO DEFT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT	10-05-2004
51	COMPREHENSIVE PRETRIAL MEMORANDUM	10-06-2004
52	PLAINTIFF'S COMPREHENSIVE PRETRIAL STATEMENT	10-07-2004
53	RESPONSE TO PLAINTIFF'S MOTION TO COMPEL & DEFT'S MOTION FOR PROTECTIVE ORDER	10-12-2004

NUMBER	TITLE OF DOCUMENT	DATE FILED
54	ME: ORDER	10-15-2004
55	PLAINTIFF'S REPLY TO DEFT'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL	10-21-2004
56	PLAINTIFF'S SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT	12-01-2004
57	MOTION TO CONSOLIDATE ORAL ARGUMENTS	12-01-2004
58	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT	12-01-2004
59	ME: RULING ON MOTION TO CONSOLIDATE ORAL ARGUMENTS	12-03-2004
60	STIPULATION TO EXTEND TIME LIMITS WITHIN WHICH TO FILE RESPONSE & REPLY	12-07-2004
61	ORDER EXTENDING RESPONSE & REPLY TIMES RE MOTION FOR SUMMARY JUDGMENT	12-10-2004
62	RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT	01-11-2005
63	CONTROVERTING STATEMENT IN RESPONSE TO PLAINTIFF'S SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	01-11-005
64	NOTICE OF FILING EXHIBITS TO CONTROVERTING STATEMENT	01-12-2005
65	ME: RETURN OF CORRESPONDENCE	01-26-2005
66	PLAINTIFF'S REPLY TO DEFT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT	01-28-2005
67	ME: ORAL ARGUMENTS	01-31-2005
68	SUPPLEMENTAL CITATION OF AUTHORITIES	02-01-2005
69	SUPPLEMENTAL CITATION OF LEGAL AUTHORITY	02-01-2005

NUMBER	TITLE OF DOCUMENT	DATE FILED
70	PLAINTIFF'S OBJECTION TO DEFT'S SUPPLEMENTAL AUTHORITIES	02-03-2005
71	PLAINTIFF'S OBJECTION TO DEFT'S SUPPLEMENTAL AUTHORITIES	02-03-2005
72	PLAINTIFF'S OBJECTION TO DEFT'S SUPPLEMENTAL AUTHORITIES	02-10-2005
73	PLAINTIFF'S MOTION TO WITHDRAW OBJECTION TO DEFT'S SUPPLEMENTAL AUTHORITIES	02-10-2005
74	RESPONSE TO PLAINTIFF'S OBJECTION TO DEFT'S SUPPLEMENTAL AUTHORITIES RE: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT	02-14-2005
75	RESPONSE TO PLAINTIFF'S OBJECTION	02-15-2005
76	Me: UNDER ADVISEMENT RULING	04-04-2005
77	ME: ORDER	04-05-2005
78	ME: NOTICE OF HEARING	04-08-2005
79	PLAINTIFF'S COUNSEL'S CERIFICATION	04-13-2005
80	PLAINTIFF'S MOTION TO COMPEL PLAINTIFF'S PRODUCTION OF DOCUMENTS PURSUANT TO COURT'S JANUARY 31, 2005 RULING	04-13-2005
81	PLAINTIFF'S WITHDRAW OF MOTIONS TO COMPEL	04-20-2005
82	PLAINTIFF'S MOTION FOR RECONSIDERATION RE: DENIAL OF SUMMARY JUDGMENT ON AFFIRMATIVE DEFENSE OF WAIVER	04-22-2005
83	ME: RULING RE: MOTION FOR RECONSIDERATION	04-26-2005
84	OBJECTION TO PLAINTIFF'S SUBPOENA DUCES TECUM	05-09-2005

NUMBER	TITLE OF DOCUMENT	DATE FILED
85	PLAINTIFF'S RESPONSE TO DEFT'S OBJECTION TO PLAINTIFF'S SUBPOENA DUCES TECUM	06-02-2005
86	STIPULATION RE: EXPERT & NON EXPERT DISCLOSURES, COMPLETION OF DISCOVERY & DISPOSITIVE MOTIONS	06-06-2005
87	ORDER	06-08-2005
88	REPLY TO PLAINTIFF'S RESPONSE TO OBJECTION TO PLAINTIFF'S SUBPOENA DUCES TECUM	06-13-2005
89	ME: ORAL ARGUMENT RE: AWARD OF ATTORNEY FEES	06-20-2005
90	SEALED DOCUMENT RE: SETTLEMENT CONFERENCE MEMORANDUM	06-20-2005
91	MOTION TO JOIN INDISPENSABLE PARTIES	06-24-2005
92	DEFT'S MOTION FOR SUMMARY JUDGMENT RE: DECLARATION VAGUENESS & AMBIGUITY	06-24-2005
93	DEFT'S MOTION FOR SUMMARY JUDGMENT RE: AGRICULTURAL ACTIVITIES	06-24-2005
94	DEFT'S SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	06-24-2005
94 A	STIPULATION TO EXTEND TIME LIMITS WITHIN WHICH TO DISCLOSE WITNESSES, EXPERT WITNESSES, DISPOSITIVE MOTIONS & TO COMPLETE DISCOVERY	06-24-2005
95	PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE DEFT'S INAPPROPRIATE QUESTIONING OF ALFIE WARE	06-29-2005
96	PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE DEFT'S INTRODUCTION OF THE DEFENSE OF WAIVER	06-29-2005

NUMBER	TITLE OF DOCUMENT	DATE FILED
97	ME: RULING RE: OBJECTION TO SUBPOENA DUCES TECUM	06-29-2005
98	ORDER EXTENDING TIME LIMITS TO DISCLOSE WITNESSES EXPERT WITNESSES DISPOSITIVE MOTIONS AND TO COMPLETE DISCOVERY	06-29-2005
99	NOTICE OF FILING DEFT'S WITNESS LIST	06-30-2005
100	MOTION IN LIMINE	07-01-2005
101	ME: RULING RE: DEFT'S WITNESS LIST	07-07-2005
102	RESPONSE TO PLAINTIFF'S MOTION IN LIMINE	07-12-2005
103	PLAINTIFF'S COUNSEL' S CERTIFICATION PURSUANT TO RULE 37(a)(2)(c)	07-12-2005
104	PLAINTIFF'S MOTION TO COMPEL PLAINTIFF'S PRODUCTION OF DOCUMENTS	07-12-2005
105	MOTION TO CONTINUE TRIAL	07-14-2005
106	NOTICE OF ERRATA REGARDING	07-15-2005
107	ME: RULING RE: MOTIONS	07-18-2005
108	RESPONSE TO PLAINTIFF'S MOTION IN LIMINE	07-18-2005
109	PLAINTIFF'S RESPONSE TO DEFT'S MOTION IN LIMINE	07-18-2005
110	PLAINTIFF'S REPSONSE TO DEFT'S MOTION FOR SUMMARY JUDGMENT	07-18-2005
111	PLAINTIFF'S CONTROVERTING STATEMENT OF FACTS IN SUPPORT OF PLAINTIFF'S RESPONSE TO MOTIONS FOR SUMMARY JUDGMENT	07-18-2005
112	NOTICE OF FILING DEFT'S AMENDED WITNESS LIST	07-18-2005

NUMBER	TITLE OF DOCUMENT	DATE FILED
113	PLAINTIFF'S OPPOSITION TO DEFT'S AMENDED WITNESS LIST & MOTION IN LIMINE	07-19-2005
114	PLAINTIFF'S PRETRIAL STATEMENT	07-21-2005
115	PLAINTIFF'S PROPOSED FORM OF VERDICT RE: ADVISORY JURY	07-22-2005
116	PLAINTIFF'S REQUESTED VOIR DIRE	07-22-2005
117	PLAINTIFF'S MOTION FOR CLARIFICATION RE: ADVISORY JURY	07-22-2005
118	PLAINTIFF'S REQUESTED JURY INSTRUCTIONS	07-22-2005
119	RESPONSE TO PLAINTIFF'S OPPOSITION TO DEFT'S AMENDED WITNESS LIST & MOTION IN LIMINE	07-22-2005
120	RESPONSE TO PLAINTIFF'S MOTION TO COMPEL PLAINTIFF'S PRODUCTION OF DOCUMENTS	07-22-2005
121	DEFT'S PROPOSED JURY INSTRUCTIONS	07-22-2005
122	DEFT'S PRETRIAL STATEMENT	07-22-2005
123	MOTION IN LIMINE RE: PLAINTIFF'S JOINT PRETRIAL STATEMENT	07-22-2005
124	NOTICE OF FILING JURY VERDICT FORMS	07-22-2005
125	DEFT'S REQUESTED JURY VOIR DIRE QUESTIONS	07-22-2005
126	DEFT'S NOTICE OF FILING EXHIBITS & EXHIBIT LIST	07-25-2005
127	MOTION FOR RECONSIDERATION	07-25-2005
128	NOTICE OF FILING LIST OF WITNESSES & EXHIBITS	07-25-2005
129	ME: ORAL ARGUMENTS	07-26-2005
130	DISPOSITION OF EXHIBITS	08-01-2005

NUMBER	TITLE OF DOCUMENT	DATE FILED
131*	REPORTER'S TRANSCRIPTS FILED: DAVID W. LUNDY RE: HEARING ON MOTION FOR SUMMARY JUDGMENT (7-26-2005)	08-04-2005
132	PLAINTIFF'S COUNSEL'S CERTIFICATION PURSUANT TO RULE 37(a)(2)(c)	08-04-2005
133	PLAINTIFF'S MOTION FOR PROTECTIVE ORDER & MOTION TO QUASH SUBPOENA DUCES TECUM	08-08-2005
134	DEFT'S MOTION FOR AWARD OF ATTORNEY'S FEES	08-15-2005
135	DEFT'S STATEMENT OF COSTS	08-15-2005
136	RESPONSE TO OPPOSITION TO PLAINTIFF'S MOTIONS FOR PROTECTIVE ORDER & MOTION TO QUASH	08-23-2005
137	CERTIFICATION PURSUANT TO RULE 37(C)	08-23-2005
138	NOTICE OF LODGING PARTIAL FINAL JUDGMENT	08-24-2005
139	PLAINTIFF'S REPLY TO DEFT'S RESPONSE TO PLAINTIFF'S MOTION	08-29-2005
140	PLAINTIFF'S OBJECTION TO DEFT'S MOTION FOR ATTORNEYS' FEES	08-29-2005
141	PLAINTIFF'S OBJECTION TO DEFT'S FORM OF PARTIAL FINAL JUDGMENT	08-30-2005
142	DEFT'S REPLY TO PLAINTIFF'S OBJECTION TO DEFT'S MOTION FOR AWARD OF ATTORNEYS' FEES	09-06-2005
143	DEFT'S REPLY TO PLAINTIFF'S RESPONSE TO MOTION TO COMPEL	09-06-2005
144	RESPONSE TO PLAINTIFF'S OBJECTION TO DEFT'S FORM OF PARTIAL FINAL JUDGMENT	09-07-2005
145	PLAINTIFF'S REQUEST FOR SCHEDULING OF ORAL ARGUMENT	11-07-2005

NUMBER	TITLE OF DOCUMENT	DATE FILED
146	ME: NOTICE SETTING ORAL ARGUMENT	11-08-2005
147	ME: ORAL ARGUMENT	11-23-2005
148	ME: UNDER ADVISEMENT RULING	01-10-2006
149	NOTICE OF LODGING PARTIAL FINAL JUDGMENT	01-19-2006
150*	PARTIAL FINAL JUDGMENT	02-14-2006
151*	NOTICE OF APPEAL	02-17-2006
152*	NOTICE OF CROSS APPEAL	03-08-2006
153*	NOTICE OF POSTING CASH BOND FOR COSTS ON CROSS APPEAL	03-08-2006

TRANSCRIPTS: Already Part of The Record

#35 Oral Argument on Motion to Disqualify 7-20-04 filed on 8-4-04

by Court Reporter; M. Lisa Edgar

#131 Hearing on Motions for Summary Judgment 7-26-05 filed on 8-04-05

by Court Reporter; David W. Lundy

EXHIBITS: