

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

GALLERY COMMUNITY ASSOCIATION,

Plaintiff,

vs.

K. HOVNANIAN AT GALLERY, LLC,
ET AL.,

Defendants.

No. CV2020-008714

Phoenix, Arizona

April 27, 2021

10:25 a.m.

BEFORE THE HONORABLE MICHAEL W. KEMP

TRANSCRIPT OF PROCEEDINGS

Status Conference

Proceedings recorded by electronic sound recording; transcript produced by eScribers, LLC.

CATHY L. KLEINBART
Transcriptionist



I N D E X

April 27, 2021

PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS VD

None

DEFENDANTS' WITNESSES DIRECT CROSS REDIRECT RECROSS VD

None

M I S C E L L A N E O U S

	<u>PAGE</u>
Court's Ruling	18
Court's Orders	24



APPEARANCES

(All present by video or telephone)

April 27, 2021

Judge: Michael W. Kemp

For the Plaintiff:

Penny J. Manship

Witnesses:

None

For the Defendants, K. Hovnanian at Gallery, LLC; K. Hovnanian Arizona Operations, LLC; K. Hovnanian Developments of Arizona, Inc.; and K. Hovnanian Companies of Arizona, LLC:

Dennis I. Wilenchik

Witnesses:

None

For the Defendant, Sargon Masonry Construction, LLC:

David S. Schopick

Witnesses:

None

For the Defendant, Liberty Construction:

Thomas Shorall, Jr.

Witnesses:

None



APPEARANCES (CONTINUED)

For the Defendant, Gothic Landscaping, Inc.:

Amanda R. Hough

Witnesses:

None

For the Defendant, Chas Roberts Air Conditioning,
Inc.:

Teresa Hayashi Wales

Witness:

None

For the Defendants, Renco Roofing:

Shannon Huff

Witnesses:

None



Phoenix, Arizona

April 27, 2021

(The Honorable Michael W. Kemp Presiding)

STATUS CONFERENCE:

THE COURT: All right. Good morning. I apologize for the delay. My 10 o'clock ran over. We had some complications. So this is the time set for a status conference, Gallery Community Association v. K. Hovnanian Art Gallery, LLC, 2020-008714. You've already announced. For the record, this hearing is just to address the 56(d) motion that was filed by the Plaintiff and the response from Mr. Wilenchik on behalf of the Hovnanian Defendants.

So let me start with you, Ms. Childs (phonetic), it is your motion. I guess, my first question is you did fully respond to the motion for summary judgment, but now you want more time to file an amended response evidently; is that right?

MS. MANSHIP: Your Honor, this is Penny Manship for Plaintiffs. We did respond out of an abundance of caution in the case our request for relief was not granted. We do feel that we could win the motion based on the Defendant's, K. Hovnanians, lack of providing evidence to support its motion, but again, if the Court is inclined to consider the merits, we would like the opportunity to have discovery. No discovery has been conducted thus far in the case. We had agreed to wait on the exchanging initial disclosures until the case was at issue.



1 I know Mr. Wilenchik takes some issue with what that
2 term means, but my understanding was it was when all third
3 parties had appeared in the case, and which I believe there are
4 still a couple of third parties that have not appeared in the
5 case yet. So we have an early meeting scheduled for next week
6 to talk about discovery in this case and to come up with a
7 scheduling order.

8 So yes. If the Court is inclined to consider the
9 merits of the case, we think that discovery should be allowed
10 to proceed, and we should be able to learn what each
11 Defendant's involvement in the construction and in the sale of
12 the units at Gallery and the common elements was?

13 THE COURT: The rule talks about essential discovery.
14 What is it that you need? Mr. Wilenchik argues that the issues
15 that are raised are legal issues, one, is there a duty under
16 the CC&Rs, does the Defendant have a duty, and whether there
17 was an express warranty to the quitclaim deed?

18 MS. MANSHIP: Yes. And we feel that we win on the
19 law that there are implied warranties that are imposed upon
20 builder vendors and builders. There are some of the parties
21 that they admit had those roles. There is a party that we know
22 was a member of the vendor and a member of the LLC general
23 contractor, but we don't know the extent of what their personal
24 involvement was. Did they employ any people that worked on the
25 project? Did they directly participate in the obtaining of



1 permits, hiring of any subcontractors, or getting the plans
2 made? All of the documents that we've seen so far are plans
3 and permits that just say generally say, K. Hovs or Hovnanian
4 on them. They don't specify which K. Hovnanian party that is.

5 With respect to the contract, we're relying on the
6 declaration, which that talks about K. Hovnanian at Gallery,
7 who is the declarant, and related entities having certain
8 rights and responsibilities under the declaration. Who those
9 other related entities are is what we feel is relevant for who
10 may be responsible under the declaration for breach of
11 contract.

12 THE COURT: And my understanding is there's really
13 not been any formal discovery. There have been no depositions
14 taken?

15 MS. MANSHIP: No, no. There haven't even been formal
16 exchanges, initial disclosures, or documents yet, correct.

17 THE COURT: All right. Mr. --

18 MS. MANSHIP: I will --

19 THE COURT: Go ahead.

20 MS. MANSHIP: I was just going to mention that we,
21 our engineers, they recently do their invasive testing in
22 March, and so I expect that they will have their reports ready.
23 This is one of the deadlines we hope to talk about next week
24 during our early meeting, but hopefully within the next 30 to
25 60 days, they can have their reports ready.



1 I do feel that in order to take the depositions --
2 I'm only allowed to take their depositions once -- and so one
3 of the things is wanting to know what all of the defects are in
4 the case so that I can ask the same individuals about those
5 defects and the actual construction of the work. So
6 unfortunately, there's the expert reports that also would have
7 to happen before the depositions come into play.

8 THE COURT: All right. Mr. Wilenchik, it does seem
9 kind of early in the game for summary judgment, but I know
10 you're a guy who doesn't sit around and drink coffee all day.
11 So what's the prejudice to your clients if I grant them the six
12 months that they want?

13 MR. WILENCHIK: Well, thanks, Judge. First of all,
14 let me clarify a few points that are necessary. The last point
15 really has nothing to do with anything that Ms. Manship brought
16 up, which has to do with expert reports and things of that
17 nature. And those are all issues going to the actual substance
18 of whether or not there's even a defect. And I do agree on
19 that level, of course I agree, that that is going to take some
20 time, if the case proceeds, and the case will proceed in some
21 form against probably the builder, who we've admitted was the
22 builder, they've alleged was the builder, and we've admitted.

23 The problem we've got here today is this motion has
24 nothing to do with any of that. This motion, as the Court
25 correctly pointed out, has to do with a couple of basic issues,



1 one, as you pointed out, is there an express warranty? I think
2 the answer is clearly no. Second, does the declarant, as a
3 matter of law, have any responsibility under a quitclaim deed
4 and under the declaration, itself, and under the acceptance by
5 the HOA to have any implied warranty? Is it a builder? Is it
6 a vendor? The answer is no to both of those.

7 So to be blunt, this motion has nothing to do with
8 anything she just talked about. Second, the only other issue
9 that we really raised at this point is the issue of who are the
10 proper parties? And in that regard, I don't need to lecture
11 anybody or tell the Court obviously something it already knows,
12 but the fact is Rule 11 is very clear that they had time before
13 filing a complaint to do whatever research they wanted or ask
14 questions or whatever they chose to want to do to clarify who
15 the parties were. They did none of that. They just shotgun
16 this thing and sued everybody in captivity in terms of any K.
17 Hovnanian related entity that has nothing to do with being the
18 declarant.

19 And including, as she just said, members of LLCs,
20 which as the Court well knows is not a basis to sue anybody.
21 And so we pointed this out and said, look, we don't have a
22 problem with you suing the builder right now. There may be
23 other issues that we raise in summary judgment in the future on
24 that, but of course, I understand that their claim against the
25 builder may proceed, at least to a certain extent, but that's a

1 separate issue, and we haven't even raised that issue.

2 The issue we've raised is whether the declarant has
3 duties and responsibilities as declarant. And the case they
4 cite is not on point. I was actually involved in that case at
5 the beginning of it. It's not a case on point at all. There
6 is no law in the state that's really on point. We believe by
7 analogy to other cases that we cited that there clearly is no
8 such duty and that the law has been limited in terms of who
9 implied warranties run from. And so that's as simple as I can
10 say it, Judge, and therefore, there is no basis.

11 I'm very familiar with the rule on continuances.
12 I've litigated them in the Court of Appeals. You can't just
13 ask for continuances for the sake of them. You have to show
14 that there's a specific fact that you were unable to obtain
15 under Rule 11 or any duty of inquiry under it, that you are
16 unable to obtain, and you have to be specific about what that
17 is and how are you going to obtain it? You just don't shotgun
18 again every defendant you can think of, and then later say,
19 well, I need assistance under Rule 56(d) to fish around and
20 hope that maybe I find something.

21 That's not what Rule 56(d) -- that's not what the
22 continuance rule is about. Never has been. They changed the
23 number of it, but it never has been about that. It's about
24 specifically knowing and advising the Court of what, in
25 particular, you need to respond to this motion that you don't



1 already have or couldn't have. And I don't know of anything
2 that's been stated anywhere to that effect, and that's why we
3 oppose it. So that's basically a summary, as much as I can,
4 Your Honor, quickly, of our position on this, unless you have
5 some questions.

6 THE COURT: All right. Well, let me ask, Ms.
7 Manship, what specifically do you need to respond to this
8 motion? I think Mr. Wilenchik is right about that. I think
9 you have to do a showing under the rule of exactly what you
10 need that you don't have now.

11 MS. MANSHIP: I need to know what the involvement of
12 the K. Hovnanian Developments entity was. One thing he said,
13 I'm struck by -- I apologize. I'm not in my office. I don't
14 have his motion for summary judgment directly in front of me.
15 But my understanding was that he was arguing that none of the
16 Defendants have any responsibilities under the cause of action
17 that we've alleged in this case, including the builder. So I
18 was a little surprised that he said that the case would proceed
19 in some form against every builder, which is K. Hov Operations.

20 So yes. I would need the information regarding K.
21 Hovnanian Development and what their direct involvement may
22 have been. They signed the declaration, which is the basis of
23 our contract claim. So from that standpoint, what they're
24 involvement again in preparing the declaration and the
25 executing of the response, rights, and responsibilities under

1 the declaration would be the information that we would need in
2 discovery.

3 If Mr. Wilenchik is trying to frame this as a motion
4 for judgment on the pleadings as opposed to an evidentiary
5 motion, then I could understand the Court considering it now,
6 but again, I just -- I think given the status of discovery that
7 it is very early to be doing a motion for summary judgment at
8 this point.

9 THE COURT: All right. I guess, your point, Mr.
10 Wilenchik, is that the issues raised in your motion for summary
11 judgment are purely legal issues, and there's really no dispute
12 about the facts on these legal issues; is that your position?

13 MR. WILENCHIK: Yeah. In terms of -- exactly. In
14 terms of who the builder is, there's no dispute. Again, I want
15 to be clear in what I'm saying. This is a very complicated
16 area of law because it's not really well fleshed out in some
17 manners. So candidly, it's difficult to deal with these
18 issues.

19 But I am saying that at the end of the day, there
20 probably -- the Court probably will hesitate to grant summary
21 judgment against a builder with respect to the HOA. I
22 understand that, and that's why I haven't pushed that issue
23 now. But with respect to the other parties, there's just no
24 basis, legally or otherwise, to have them as parties. And
25 secondly -- except maybe for the declarant, which is the issue

1 that's on the table, and that issue we believe should be ruled
2 in our favor as a matter of law. That's something we'll argue
3 at the appropriate time.

4 But we want to clean up the complaint. We want to
5 get rid of unnecessary parties, and just with all due respect
6 to Ms. Manship saying, well, we want to know more information
7 about this and that, it's interesting, but it has nothing to do
8 legally in the end with who is a proper party. And that's why
9 I said, it's really just fishing around for information that
10 has no relevance at the end of the day to anything. It's just
11 really trying to expand litigation to be a hassle to everybody.

12 At the end of the day with respect to the parties
13 that are also on the line, we need to know what exactly the
14 issues are that they're suing on -- I get all that -- so that
15 we can rifleshoot who should be proper parties in the end in
16 terms of subcontractors. We just bring in everybody that they
17 complain about, and if those become issues, well, you should
18 pare that down as well, I'll just say, but we need to pare down
19 what the complaint is in the first instance and who the proper
20 parties are and who we should be bringing in as third parties
21 from those parties.

22 And it's really very simple at this point, the
23 builder, we're not making a real issue of at this right now.
24 We may later. The declarant is the real issue, and the other
25 parties have absolutely no involvement that's been stated,



1 except being members of companies or people that are members of
2 companies or whatever. There's no cause of action even stated.
3 So on that basis, it is sort of a judgment on the pleadings
4 motion.

5 In abundance of caution, I filed it as a summary
6 judgment, but terminology aside, there's no basis for suing
7 anybody else that they've stated anywhere, and that's why we
8 raised the issue in summary judgment. They haven't come back
9 with any evidence on any of that. Instead, they want to take
10 six month, basically fish around with a bunch of people that
11 have no business being in this lawsuit, and so that's the
12 issue, and I don't understand with all due respect to anybody
13 how that requires any discovery that wasn't available to them
14 to find out who the builder is. They know who the declarant
15 is. That's the issue in contention.

16 And the rest of these people, if you look at the
17 complaint, Judge, there's just nothing stated that's in my 43
18 years any relevance, at all, to being a party in this lawsuit.

19 THE COURT: All right. If I grant the extension,
20 what, if any, prejudice is there to your client?

21 MR. WILENCHIK: Oh, there's prejudice in that we have
22 a bunch of parties who are being involved in a lawsuit that
23 she's told us she's going to send a bunch of irrelevant
24 discovery to and waste everybody's time when there's no basis
25 for it at all, and they haven't stated any basis. And they

1 haven't even come back in the 56(d) affidavit and stated
2 exactly why those parties should be involved.

3 They do respond in substance in their summary
4 judgment response as to why they believe those parties should
5 be involved, and you can review that and if you think there's
6 even a scintilla of propriety stated in that as to why those
7 parties should be in this case, then of course, I would agree
8 that at that point, they can do discovery on it, but there
9 isn't any, and I think we're putting the cart before the horse.

10 And she wants to just do a bunch of wasteful
11 discovery, and that's not how it works. You have to state a
12 claim, and you have to state one with specificity as to why
13 parties are being sued, and if you can't articulate at this
14 point why you've sued them and you're just saying, well, Judge,
15 give me more time so I maybe can figure it out, that, I repeat
16 is what the law. Wells Fargo v. Smith, other cases are very
17 clear on this that that is not what the rule is about.

18 THE COURT: Okay. Ms. Manship, I'll give you the
19 last word.

20 MS. MANSHIP: Your Honor, I just want to stress again
21 that we did do our due diligence. We requested documents from
22 the building department. We saw documents from our clients
23 with some plans. They all just said K. Hovnanian on them.
24 They don't state K. Hovnanian Gallery, they don't state K.
25 Hovnanian Operations. And so from that standpoint, we were

1 able to obtain certain information, publicly available
2 information, and from our clients, and that was the basis for
3 the parties that we included in this.

4 We allege in the complaint that the fourth entity, K.
5 Hovnanian Companies was involved in the development, design,
6 construction, and sale of Gallery. They admit that in their
7 answer. So they, themselves, K. Hovnanian, admits that that
8 entity, K. Hovnanian Company, was involved in development,
9 design, construction, and sale. Similar to K. Hovnanian
10 Gallery and K. Hovnanian Operations.

11 And so again, the only entity that we were seeking
12 privileged discovery from regarding was K. Hovnanian
13 Developments, which signs the declaration as member and
14 fleshing that out and seeing whether or not they were involved
15 in any of this directly.

16 If the Court does not grant the extension, we do feel
17 that the extension is warranted. If the Court is going to
18 consider evidence on the matter, if the Court wants to consider
19 it as a motion for judgment on the pleadings, we can entertain
20 that. I would also be willing to talk to Mr. Wilenchik in a
21 meet-and-confer about, perhaps if we're only talking about K.
22 Hovnanian Development, perhaps dismissing them without
23 prejudice, so that we can conduct discovery, and then we can
24 deal with that issue later. But again, my reading of his
25 motion for summary judgment is that he was arguing that there

1 were no claims against any of these entities.

2 THE COURT: All right. Well, it's early on in this
3 litigation. I've reviewed the motion for summary judgment. I
4 don't have a draft ruling or anything. I didn't review it in
5 that depth. I do think that primarily what is raised are legal
6 issues. Could subsequent discovery and factual discovering
7 things that are factually relevant, could that affect the
8 motion for summary judgment? Maybe. I don't know. It's hard
9 for me to tell.

10 But the fact that there hasn't been any discovery
11 done to this point or any meaningful discovery and there hasn't
12 been any depositions, my inclination, out of an abundance of
13 caution, is to grant the extension. I really don't think
14 there's any prejudice to the Defendants who oppose this
15 extension. There are a number of third parties who have just
16 gotten involved or are not involved yet. We're really at the
17 early stage of this whole thing.

18 So my inclination, out of an abundance of caution, is
19 to grant the 56(d) motion. It was filed March 22nd. So you
20 can file an amended response, Ms. Manship, no later than
21 September 24th, which is about six months from the filing of
22 your motion to extend. I think that's sufficient.

23 Then, Mr. Wilenchik, you would have the normal time
24 to reply, to file an amended reply, if you deem that
25 appropriate. But I'm just not in a position now where I



1 think -- I think that an extension is appropriate, and I don't
2 think that there's really any prejudice to the Defendant. So I
3 am going to grant the 56(d) motion with the deadlines that I
4 just outlines.

5 MR. WILENCHIK: May I ask a question, Judge?

6 THE COURT: Sure.

7 MR. WILENCHIK: Thanks. I think I understand your
8 ruling -- whether I agree with it or not, it's irrelevant --
9 with respect to the party issues, but with respect to the issue
10 that's teed up on whether a declarant owes any duties as a
11 matter of law, is there any reason the Court can think of --
12 because I can't -- as to why that should be put off for six
13 months? That's a straight legal issue, and it has nothing to
14 do with the party issue that I just addressed and spoke about,
15 which is what I think she needed the time allegedly for?

16 I don't see why that needs to be continued. It's a
17 straight issue of law as you've pointed out, and I agree, and
18 there either is a duty or there isn't. If there is one, then
19 we'll proceed, or if the Court finds there is one, depending on
20 whether we special action it or whatever we choose to do,
21 obviously, but I don't see any reason, candidly, why that would
22 be put off.

23 THE COURT: So you want me to parse that out of the
24 summary judgment motion, and just rule on that?

25 MR. WILENCHIK: Yeah. Yeah. Because we combined



1 those two issues. Maybe that was a mistake, but we combined it
2 into one motion, whether or not these ancillary parties have
3 any business being in the suit, which I understand your ruling
4 would probably apply to see if there's anything there, but I
5 don't know what or why the ruling would apply to the straight
6 issue which she's fully briefed on the legal duty of the
7 declarant, if any, to an HOA.

8 THE COURT: What about the position --

9 MS. MANSHIP: Your Honor --

10 THE COURT: What about the positions of the other
11 third parties?

12 MR. WILENCHIK: They're not really relevant to that
13 issue. It's a straight issue as to whether the declarant is a
14 proper party.

15 THE COURT: All right. Ms. Manship?

16 MS. MANSHIP: Your Honor, the declarant was also the
17 vendor who sold the units and the common area to the
18 association. So I don't see how any party would be eliminated,
19 and our basis for the declarant's duties is a breach of
20 contract claim. I guess, I'm not sure what part of the motion
21 for summary judgment he's talking about. They claimed there's
22 no basis for our breach of contract action against anybody, one
23 of those people is the declarant, and we cite lots of parts of
24 the declaration that put duties and responsibilities on the
25 declarant.

1 And then there's the implied warranty, the breach of
2 the implied warranty claim is based on the declarant's position
3 as a vendor, not just because it's the declarant. So I'm guess
4 I'm not sure exactly what part of his motion for summary
5 judgment. Perhaps, he could file a different motion for like a
6 determination of question of law or something like that so that
7 we could be clear on what that part is?

8 THE COURT: Or a motion to dismiss --

9 MR. WILENCHIK: May I be heard, Your Honor?

10 THE COURT: Sure.

11 MR. WILENCHIK: Yeah. Well, regardless of whether
12 it's a motion to dismiss or a motion of summary judgment, not
13 worthy of our time really. The bottom line is I'm not sure
14 what she's confused about. It's really very simple. The issue
15 is whether, under any law, including Arizona law, that there's
16 a duty of a declarant to an HOA that was formed when it was
17 formed. And we didn't sell the declarant anything to the HOA.
18 So I don't know what she's talking about in terms of a vendor
19 relationship.

20 In terms of a breach of contract claim, the issue
21 teed up is there is no breach of contract because there's no
22 contract. There's a unilateral tender by a declarant accepted
23 by the HOA. They can inspect. They can do whatever they want
24 before they take it over, and there is no contract. There's no
25 promise to do anything. So the question is, there's no vendor

1 relationship, no contract relationship. That is teed up
2 completely in our motion.

3 And the issue is whether or not any case -- and she
4 cites one case, which I'm very familiar with, I said, the Lofts
5 of Fillmore, which I won't go into length here, but we have
6 distinguished as not being relevant, and the issue was never
7 raised in the Lofts of Fillmore case that I've teed up. That's
8 it. So I don't know what she's confused about. She spent 17
9 pages discussing it. So there's no confusion here. There's
10 just an attempt to try to put this off, and there's no reason
11 to put it off.

12 If the Court finds there is a duty, then as I said,
13 we'll either special action it because I think it's an issue of
14 first impression, and if the Court finds there clearly isn't
15 any case law that she has that's right on point that supports
16 it, then we'll be gone, or at least that party will be gone.
17 And then, as I said, the question of who the builder was, we
18 haven't even contested. So that's where we are on this, and
19 the only confusion is the one she's created. There's no
20 confusion in the motion.

21 THE COURT: All right. Ms. --

22 MR. WILENCHIK: We've fully briefed it.

23 THE COURT: Ms. Manship? Ms. Manship?

24 MS. MANSHIP: Your Honor, this is -- yeah. Again, I
25 just want to make sure, so he wants the Court to decide if



1 there are any claims against K. Hovnanian at Gallery, who was
2 the declarant and was also the vendor and quitclaim deed,
3 deeded the common elements to the association. Is that --

4 MR. WILENCHIK: There is no vendor there.

5 MS. MANSHIP: Well, K. Hovnanian Gallery sold the
6 units to the owners --

7 MR. WILENCHIK: You're not the owner --

8 MS. MANSHIP: -- so the vendor. I'm just -- I'm
9 not -- I'm just saying, K. Hovnanian Gallery sold the units to
10 the homeowners, and it quitclaim deeded the common elements to
11 the association under the terms of the quitclaim deed. So
12 you're trying to have the Court decide if there are causes of
13 action that the association can assert against K. Hovnanian
14 Gallery; is that correct?

15 MR. WILENCHIK: That's what you responded to in your
16 motion. Of course, it's correct.

17 MS. MANSHIP: Yeah. I just want to make sure I'm
18 correct in what you're asking the Court to decide; is that what
19 you're asking the Court to decide?

20 MR. WILENCHIK: I don't think there's any confusion
21 anywhere along the line.

22 MS. MANSHIP: Is that a yes? I just want to make
23 sure that's a yes.

24 THE COURT: I think that's a yes. Well --

25 MS. MANSHIP: Okay --



1 MR. WILENCHIK: I don't know what she's doing, Your
2 Honor. So I apologize. Is she putting me under oath, or what
3 is she doing?

4 THE COURT: No, no.

5 MR. WILENCHIK: The motion is very clear. I stated
6 very clearly what the motion is. She knows what the motion is
7 because she responded to it in full. Now, she's sort of
8 dancing around it. There is no vendor relationship. There is
9 no contractual relationship, other than a quitclaim deed. So
10 that's it, and that's the issue, whether there's any duty from
11 the declarant to the HOA, and I haven't found anything on point
12 that relates to the facts of this case as I just said.

13 The Lofts case is something, but the issue was never
14 raised there. I know it wasn't raised because as I said, I was
15 involved originally in the case, and the case doesn't even
16 discuss that issue, so and that's the issue.

17 And I don't see what discovery -- getting back to the
18 point -- is needed at all. I understand discovery, she said as
19 to the parties and what their involvement was. I don't agree
20 with any of that. But the Court has ruled, and I'm not going
21 to quibble with it, but I don't understand why this aspect of
22 the case can't proceed clearly. There's nothing to be
23 discovered.

24 We admitted who the declarant was. We all know who
25 it was. We all know what the operative documents are. She

1 cited them at length in her response. The issue is whether in
2 any of that pile of whatever, there's any nugget of law or fact
3 that would bind a declarant to a contractual obligation or to
4 an implied warranty, and I haven't found anything on point.

5 And I think based on the analogies I've made to the
6 Richards (phonetic) case and so forth, that clearly, given the
7 facts of this case, the Court would be hard-pressed to find any
8 such implied warranty to the HOA. Whether or not there's an
9 implied warranty to homeowners is irrelevant to the motion and
10 irrelevant to our discussion. Whether a builder vendor owes
11 duties to homeowners is not on the table. They're not the
12 homeowners. They're an HOA with respect to common areas that
13 were quitclaimed to them that they accepted, and that's it.
14 It's not really rocket science. The only issue is I don't
15 think any Arizona case has directly dealt with the issue that
16 are raised.

17 THE COURT: All right. I'm going to go back to my
18 initial ruling. I'm going to grant the 56(d) motion. I'm not
19 going to try to parse out any rulings from this at this time.
20 The Plaintiff has until September 29th to file an amended
21 response after discovery, at least some discovery has been
22 undertaken.

23 MS. MANSHIP: Your Honor, I think you just -- Your
24 Honor, I apologize. This is Manship. I think you just said
25 September 29th. I had written September 24th previously in my

1 notes. Is it the 24th or the 29th?

2 THE COURT: 29th?

3 MS. MANSHIP: 29th.

4 THE CLERK: You said the --

5 THE COURT: Oh, I'm sorry. It is the 24th.

6 MS. MANSHIP: Okay.

7 THE COURT: You're right. September 24th.

8 MS. MANSHIP: I just loss five days.

9 THE COURT: Okay.

10 MS. MANSHIP: Okay. Thank you, Your Honor.

11 THE COURT: All right. Thank you.

12 (Proceedings concluded at 10:55 a.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

eScribers has a current transcription contract with the Maricopa County Superior Court under contract # 13010-001, as such, eScribers is an "authorized Transcriber".

I, CATHY L. KLEINBART, a court-approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

/s/

CATHY L. KLEINBART,
Transcriber

March 26, 2023

