

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-009496

08/12/2015

HONORABLE JAMES T. BLOMO

CLERK OF THE COURT  
T. DeRaddo  
Deputy

COLETTE MCNALLY

STEVEN W CHEIFETZ

v.

SUN LAKES HOMEOWNERS ASSOCIATION  
# 1 INC

JENNY J WINKLER

ALTERNATIVE DISPUTE  
RESOLUTION - CCC

**EVIDENTIARY HEARING  
REFERRAL TO ALTERNATIVE DISPUTE RESOLUTION (ADR)**

East Court Building – Courtroom 411

Prior to the proceedings, Plaintiff's Exhibits 1-37 and Defendant's exhibits 38-66 were marked for identification.

9:15 a.m. This is the time set for an Evidentiary Hearing regarding Plaintiff Collette McNally's Application for Preliminary Injunction, filed on April 29, 2015. Plaintiff, Collette McNally is present and represented by counsel, Steve Cheifetz and Jacob Kubert. Appearing on behalf of Defendant is counsel, J. Winkler.

Court Reporter, Jeanne Kappedal, is present. A record of the proceedings is not made by audio and/or videotape.

Plaintiff invokes the rule of exclusion. Discussion is held as to Richard Willis Schwartz remaining in the courtroom.

LET THE RECORD REFLECT that Richard Willis Schwartz will remain in the courtroom.

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Colette McNally, Richard Willis Schwartz, Jane Gail Cournoyer and Scott Carpenter are simultaneously sworn as witnesses.

The parties stipulate to the admission of the following Exhibits for the Evidentiary Hearing only, but not for trial purposes:

Plaintiff's Exhibits 1-37; Defendant's Exhibits 38-59; and Defendant's Exhibits 61-66.

Plaintiff makes Opening Statements.

Defendant makes Opening Statements.

Plaintiff's case.

Colette McNally takes the witness stand and testifies.

Defense counsel unseals and refers to the original deposition of Colette McNally.

FILED: Original deposition of Colette McNally, taken on January 15, 2015.

Jeannie Martens is sworn and testifies.

The witness is excused.

The Plaintiff rests.

Defendant's case.

Richard Willis Schwartz takes the stand and testifies.

Defendant's Exhibit 60 is received in evidence.

The Court admonishes the people sitting in the gallery area that no outbursts or comments will be allowed.

The witness steps down.

Janis Cournoyer takes the witness stand and testifies.

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The witness is excused.  
Scott Carpenter takes the stand and testifies.

12:00 p.m. The court stands at recess.

1:31 p.m. Court reconvenes with the parties and respective counsel present.

Court Reporter, Jeanne Kappedal is present. A record of the proceedings is not made by audio and/or videotape.

Scott Carpenter resumes the stand and continues to testify.

Discussion is held regarding legal matters associated with Homeowner Association Laws.

The witness is excused.

Defense rests.

Rebuttal.

Colette McNally again takes the witness stand and continues to testify.

Ms. McNally steps down.

Closing arguments are presented by the parties.

Discussion is held regarding executive session topics and a possible remedy regarding injunctive relief for Ms. McNally that would both protect and limit each side.

After careful consideration of the evidence and testimony presented,

**IT IS ORDERED** denying Plaintiff's request for Preliminary Injunction.

At request of counsel and good cause appearing,

**IT IS ORDERED** the parties shall participate in a mandatory settlement conference. This case is referred to the Court's Alternative Dispute Resolution for the appointment of a judge *pro tempore* to conduct a settlement conference. Counsel and/or the parties will receive a minute entry from ADR appointing the judge *pro tempore*. Counsel and any "pro per" parties will contact the appointed judge *pro tempore* to arrange the date, time, and location for the settlement

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conference. The judge pro tempore is requested to conduct a settlement conference not later than **November 10, 2015**. The Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office. If counsel prefer to use a private mediator to conduct the settlement conference, a Stipulation and Order re: Alternative to ADR must be presented to the Court by no later than 5:00 p.m. on **October 12, 2015**. All counsel and their clients, or non-lawyer representatives who have full and complete authority to settle the case, shall personally appear and participate in good faith in the Settlement Conference. Sanctions may be imposed for failure to participate.

Please note: If one or both parties fail to appear at the scheduled Settlement Conference, the party failing to appear may be assessed a No Show Fee of \$100.00.

**IT IS FURTHER ORDERED** that the parties shall submit a Scheduling Order and Joint Report within 3 weeks, or no later than **September 2, 2015**.

At the request of the parties,

**IT IS ORDERED** sealing all exhibits designated as “Confidential,” not to be opened until further order of the Court, as follows:

Plaintiff’s Exhibits Nos: 9, 10, 12, 13, 14, 15-29, 31-35; and  
Defendant’s Exhibits Nos: 43, 45-49, 53, 55 and 60.

2:40 p.m. Matter concludes.