

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-051911

08/19/2016

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT  
W. Tenover  
Deputy

NORMAN ZWICKY

JON L PHELPS

v.

PREMIERE VACATION COLLECTION  
OWNERS ASSOCIATION

JOHN E DEWULF

EDWARD L BARRY

**RULING**

Courtroom 102 - NE

8:46 a.m. This is the time set for Telephonic Status Conference/Oral Argument on Plaintiff's Motion for Modification of Protective Order and Order to Disclose Owners List. Plaintiff Norman Zwicky is represented by counsel, Edward L. Barry and Cy T. Hainey. Defendant Premiere Vacation Collection Owners Association is represented by counsel, John E. DeWulf and Katherine DeStefano.

A record of the proceedings is made digitally in lieu of a court reporter.

Arguments are heard.

As to the issue of the protective order,

IT IS ORDERED the protective order set forth on the record on May 6, 2016 and memorialized in the minute entry of that date is hereby modified to permit the plaintiff or his attorneys to quote or refer to the information produced in connection with this litigation in a

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-051911

08/19/2016

complaint or other court filing in the proposed class action litigation. The protective order, as modified, shall remain in effect until 60 days after the proposed class action lawsuit is filed in the District Court, and shall then expire. Nothing in this order shall be construed as any attempt to limit the independent power of the District Court to enter its own protective order upon appropriate motion in that Court. Further, either party may apply to the District Court for further modification of the protective order prior to its expiration.

As to the owners list issue,

IT IS ORDERED that the defendant Association shall be required, pursuant to A.R.S. § 33-2210, to mail a notice to the owners or members of the Association in the form set out by the plaintiff at pages 5 and 6 of the Response, modified by adding (in the introductory sentence after the parenthetical reference to the Association) the phrase, “relating to the levying and apportionment of assessments,” set off by commas.

IT IS FURTHER ORDERED that if reasonably practicable the communication may be directed only to those owners who have protested the amount of their annual assessments. If that is not practicable, it is to be mailed to all the owners.

IT IS FURTHER ORDERED the application of this order is limited to the members of the Premier Vacation Collection Owners Association.

IT IS FURTHER ORDERED that the notification may be accomplished by mailing or electronically at the defendant’s option.

IT IS FURTHER ORDERED that the plaintiff shall pay the reasonable costs of the notification.

IT IS FURTHER ORDERED that the defendant disclose the proposed costs of any mass mailing to the plaintiff before undertaking the mailing. The plaintiff may withdraw the request at that time.

IT IS FURTHER ORDERED denying defendant’s request to brief Rule 26(c)(2). The time for making that showing was in response to the motion. The defendant chose instead to stand on the order that was entered previously. The Court declines to reopen the issue at this time.

Given that both parties are satisfied with the briefing on the attorneys’ fees,

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-051911

08/19/2016

IT IS ORDERED the Court will decide the attorneys' fees issue on the filings and issue a final judgment in the ordinary course of business. It is the Court's understanding from the discussion with counsel today that there are no other remaining issues in the case so that a final judgment pursuant to Rule 54(c) will be appropriate, although it is possible that there will be some ancillary issues that the Court might have to address at some future time.

IT IS FURTHER ORDERED that the modification of the protective order will not become effective until the Court issues a final written judgment in this case.

9:39 a.m. Hearing concludes.

LATER:

The Court provides the parties with the complete notice to owners in the form approved by the Court:

**NOTICE OF COURT ORDER**

**PLEASE TAKE NOTICE** that this Court has ordered the production, for the purpose of inspection, copying and investigation, of certain business records of Defendant Premier Vacation Collection Owners Association (the "Association") relating to the levying and apportionment of assessments, to Plaintiff Norman Zwicky, a member of the Association represented by Attorney Jon Phelps of the law firm of Phelps & Moore, PLC, 4045 East Union Hills Drive, Suite A-102, Phoenix, Arizona 85050; telephone (602) 788-2089; email [jon@phelpsandmoore.com](mailto:jon@phelpsandmoore.com).

- This Order is for your information only and requires no action by you.
- Please do not contact the Court. The Court cannot answer any questions. You may, if you wish, contact the Plaintiff's attorney.
- The Court has made no ruling on any claim of improper conduct by the Defendant. The Court's role in this matter was strictly to enforce Mr. Zwicky's rights to inspect certain business records.
- This Notice of Court Order is being sent to you by the Association pursuant to a separate order of the Court. Your name and contact information has not been disclosed to the Court, and has not been disclosed to Mr. Zwicky or his attorneys.