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LAW OFFICES OF  
**MARTINEZ, CURTIS, GOODWIN & KARASEK**  
1402-1000 FIRST FEDERAL SAVINGS BUILDING  
PHOENIX, ARIZONA 85012  
(602) 274-1614

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,  
Plaintiff,  
vs.  
WILSON AUSTIN and JANE DOE  
AUSTIN, d/b/a WILSON AUSTIN,  
SURVEYS AND MAPS,  
Defendants.

No. **C420852**  
COMPLAINT

FILED  
1980 SEP 24 14 09 15  
WILSON D. PALMER, CLERK  
SEP.

30-

Plaintiff, for her cause of action against the Defendant,  
alleges as follows:

COUNT ONE

1. Plaintiff is a resident of Maricopa County, State of Arizona. Defendant is a resident of Maricopa County, State of Arizona, and is licensed and registered to engage in the surveying business in Maricopa County, State of Arizona. All acts and events hereinafter alleged occurred and transpired within Maricopa County, State of Arizona and the land in question is located in Maricopa County, Arizona. JANE DOE AUSTIN is the wife of WILSON AUSTIN, who at all times herein alleged acted on behalf of his marital community.

2. On or about the 11th day of February, 1979, the Plaintiff entered into an agreement to purchase a parcel of land, approximately 4.70 acres in size, south of the Carefree Highway on the west side of 12th Street. It is believed that the parcel number, County Assessor's number, with respect to such realty, is 211-74-012F.

3. The legal description of said property is set forth as follows:

**C420852**

1 The S½ of the NE¼ of the NE¼ of the  
2 NW¼ of Section 9, Township 5 North,  
3 Range 3 East of the GSRB&M; EXCEPTING  
4 all coal and other minerals as reserved  
5 into the United States of America in  
6 the patent of said land.

7 4. Plaintiff, at the time of purchasing said property,  
8 had the intent of moving her home which she had in Glendale,  
9 Arizona, to the location and site in question through a process  
10 of lifting the home physically in its entirety and moving it  
11 through the use of special movers to the new location. To this  
12 end, the Plaintiff expended costs for movers, the erection of  
13 foundation, and stem footings and footing walls, grading, site  
14 preparation, soil leveling and numerous other expenses all which  
15 shall be proven in detail at the time of trial.

16 5. Approximately two or three months after entering into  
17 an agreement to purchase said property and after buying the  
18 property in question, the Plaintiff did, in fact, enter into  
19 an agreement to retain the services of WILSON AUSTIN, the  
20 Defendant, as a licensed and competent surveyor to survey the  
21 property in question and provide her with a survey map showing  
22 her boundaries of the subject property and correctly laying out  
23 and staking the dimensions of the property for purposes of  
24 permitting the Plaintiff to construct and erect the improvements  
25 above referenced and to make preparations to deliver her home  
26 to the site.

27 6. The Defendant did, in fact, prepare a survey of certain  
28 property in the area which survey the Plaintiff alleges does not  
29 in any sense describe or accurately survey the Plaintiff's pro-  
30 perty, but, in fact, fails to correctly and accurately survey the  
31 subject property.

32 7. Plaintiff alleges that the survey and surveying which  
was done by the Defendant WILSON AUSTIN was done so grossly, neg-  
ligently, and recklessly so as to be totally and completely

1 incorrect and unreliable. The Plaintiff was unaware of the  
2 inaccuracy of the subject survey and expended in excess of  
3 twenty five thousand (\$25,000.00) dollars in site preparation  
4 and in the building of a barn and other improvements on the  
5 property in anticipation of moving her home to the land which  
6 she thought she owned. Plaintiff alleges that WILSON AUSTIN  
7 so negligently, grossly, and recklessly performed his work and  
8 surveyed the property that he did not provide a correct and  
9 accurate survey and, in fact, provided a totally misleading,  
10 inaccurate and improper survey which resulted in extreme loss  
11 and damage to the Plaintiff. Such survey described property  
12 the Plaintiff did not own. However, in reliance on such survey,  
13 your Plaintiff caused her home to be moved and improvements to  
14 be built on land she does not own.

15 8. Your Plaintiff alleges that as a proximate result of the  
16 said WILSON AUSTIN improperly surveying and in failing to  
17 survey her land as agreed, the Plaintiff has been proximately  
18 damaged in a sum exceeding twenty five thousand (\$25,000.00)  
19 dollars all of which shall be proven in greater detail at the  
20 time of trial.

21 WHEREFORE, Plaintiff prays as follows:

22 1. For general damages against the said WILSON AUSTIN in  
23 an amount not less than twenty five thousand (\$25,000.00) dollars,  
24 which exact amount shall be proven at the time of trial.

25 2. By reason of the gross and reckless manner in which  
26 the survey was made by the said WILSON AUSTIN, your Plaintiff  
27 alleges that she is entitled not only to compensatory damages,  
28 but punitive damages in a sum not less than fifty thousand  
29 (\$50,000.00) dollars, which sum shall be proven at the time of  
30 trial.

31 3. For such other and further relief as to the Court seems  
32 just and proper in the premises.

COUNT TWO

1  
2  
3 1. Plaintiff incorporates herein by reference all of the  
4 allegations of Count One hereof.

5 2. During the Spring of 1979, the Plaintiff entered into an  
6 agreement with the Defendant WILSON AUSTIN whereby the Defen-  
7 dant WILSON AUSTIN was to perform an accurate and correct survey  
8 of the Plaintiff's property described in Count One hereof.

9 3. The Defendant WILSON AUSTIN did, in fact, perform a  
10 survey of certain property which was inaccurate, incorrect, and  
11 improper. Said survey did not comport to the legal description  
12 provided to the said WILSON AUSTIN by the Plaintiff and the said  
13 WILSON AUSTIN proximately breached his contract and agreement  
14 with the Plaintiff by failing to provide a proper, accurate,  
15 and correct survey of the Plaintiff's property.

16 4. As a result of the breach of contract by the said  
17 WILSON AUSTIN, the Plaintiff has been damaged to an extent as  
18 yet undetermined, but in any event, no less than the sum of  
19 twenty five thousand (\$25,000.00) dollars.

20 5. Your Plaintiff alleges that pursuant to the provisions  
21 of A.R.S. § 12-341.01, the Plaintiff is entitled to recover all  
22 her costs of suit including reasonable attorney's fees.

23 WHEREFORE, Plaintiff prays as follows:

24 1. That she be awarded judgment against the Defendant  
25 WILSON AUSTIN for damages in a sum not less than twenty five  
26 thousand (\$25,000.00) dollars.

27 2. For recovery of all costs of suit incurred herein in-  
28 cluding reasonable attorney's fees pursuant to contract and/or  
29 A.R.S. § 12-341.01.

30 3. For such other and further relief as to the Court seems  
31 just and proper in the premises.

32 DATED this 22nd day of September, 1980.

MARTINEZ, CURTIS, GOODWIN & KARASIK

By



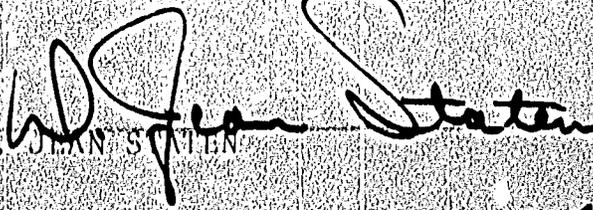
JAY M. MARTINEZ  
3003 North Central  
Suite 1600  
Phoenix, Arizona 85012

VERIFICATION

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa     )

D. JEAN STATEN, being first duly sworn upon her oath, deposes and says:

1. I am the Plaintiff herein and I have read the foregoing Complaint. The matters and thing stated therein are true of my own knowledge and belief except as to those matters stated upon information and belief, and as to such, I believe them to be true.



D. JEAN STATEN

SUBSCRIBED AND SWORN TO before me this 22<sup>nd</sup> day of September, 1980.



Notary

My Commission Expires:

My Commission Expires July 13, 1984

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ARIZONA SUPERIOR COURT, County of Maricopa

WILSON D. PALMER, CLERK  
BY DEPT.

FILED  
*M. Colorado*  
1980 SEP 29 AM 10:50

D. JEAN STATEN,  
Plaintiff,

vs.

WILSON AUSTIN, d/b/a  
WILSON AUSTIN, SURVEYS AND MAPS,  
Defendant.

C420852

CIVIL ACTION NO: [REDACTED]

SUMMONS

THE STATE OF ARIZONA TO THE DEFENDANTS:

WILSON AUSTIN

1803 W. Heatherbrae Drive  
Phoenix, AZ 85015

YOU ARE HEREBY SUMMONED and required to appear and defend, within the time applicable, in this action in this Court. If served within Arizona, you shall appear and defend within 20 days after the service of the Summons and Complaint upon you, exclusive of the day of service. If served out of the State of Arizona - whether by direct service, by registered or certified mail, or by publication - you shall appear and defend within 30 days after the service of the Summons and Complaint upon you is complete, exclusive of the day of service. Where process is served upon the Arizona Director of Insurance as an insurer's attorney to receive service of legal process against it in this state, the insurer shall not be required to appear, answer or plead until expiration of 40 days after date of such service upon the Director. Service by registered or certified mail without the State of Arizona is complete 30 days after the date of filing the receipt and affidavit of service with the Court. Service by publication is complete 30 days after the date of first publication. Direct service is complete when made. Service upon the Arizona Motor Vehicle Superintendent is complete 30 days after filing the Affidavit of Compliance and return receipt or Officer's Return. RCP 4; ARS §§ 20-222, 28-502, 28-503.

YOU ARE HEREBY NOTIFIED that in case of your failure to appear and defend within the time applicable, judgment by default may be rendered against you for the relief demanded in the Complaint.

YOU ARE CAUTIONED that in order to appear and defend, you must file an Answer or proper response in writing with the Clerk of this Court, accompanied by the necessary filing fee, within the time required, and you are required to serve a copy of any Answer or response upon the Plaintiffs' attorney. RCP 10(d); ARS § 12-311; RCP 5.

The name and address of plaintiffs' attorney is: Jay M. Martinez,  
MARTINEZ, CURTIS, GOODWIN & KARASEK  
3003 North Central, Suite 1600  
Phoenix, Arizona 85012

Attorney Firm Name and Address

Jay M. Martinez  
MARTINEZ, CURTIS, GOODWIN & KARASEK  
3003 North Central, Suite 1600  
Phoenix, Arizona 85012

SIGNED AND SEALED this date: SEP 24 1980

WILSON D. PALMER

Clerk

By *M. Colorado*  
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,

Plaintiff

VS.

WILSON AUSTIN, d/b/a  
WILSON AUSTIN, SURVEYS  
AND MAPS,

Defendant

NO. C. 420852

AFFIDAVIT OF SERVICE OF  
PROCESS BY PRIVATE PERSON

STATE OF ARIZONA }  
COUNTY OF MARICOPA }

SS.

ROBERT G. ZAK, being sworn, states:

That he is fully qualified to serve process in this cause, having been appointed by the Court; that he received the SUMMONS AND COMPLAINT in this action from (MARTINEZ) KARASEK CURTIS GOODWIN & Attorneys for the Plaintiff on the 24th day of September 19 80 at the hour of 11:00 o'clock A. M; That he personally served the same on those named below, in the manner and at the time and place shown:

UPON: WILSON AUSTIN, d/b/a WILSON AUSTIN, SURVEYS AND MAPS, by leaving a true copy of the SUMMONS & COMPLAINT with his wife, NELLA AUSTIN, in person, of suitable age and discretion, in their usual place of abode, who resides therein, located at 1803 West Heatherbrae Drive, Phoenix, Maricopa County, Arizona on September 25th 1980, at the hour of 1:58 P.M., of said day.

That service in each instance consisted of leaving with the Party named a true copy of the SUMMONS & COMPLAINT

*Robert G. Zak*

Subscribed and sworn to before me this 26th day of September 19 80

My Commission Expires:

April 20, 1982

*Devin J. H. ...*  
NOTARY PUBLIC

Service 1 @ \$ 5.50  
Notary Fee @ \$ 2.00  
Mileage 7 @ \$ 8.75  
Fees Paid @ \$  
Total \$ 16.25

**JIM BEARD PROCESS SERVICE, LTD.**  
707 Luhrs Building  
Phoenix, Arizona 85003  
Telephone 254-8703  
Radio Equipped Cars

CT CASE# 420852  
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN, )  
 )  
 ) Plaintiff, ) No. C420852  
 )  
 ) v. ) ANSWER  
 )  
 ) WILSON AUSTIN, d/b/a WILSON )  
 ) AUSTIN, SURVEYS AND MAPS, ) ISSUED SUMMONA  
 )  
 ) Defendant. )

FILED  
OCT 10 1983  
WILSON & BARNES, P.C.  
PHOENIX, ARIZONA

Defendant Wilson Austin, by and through his attorneys, Bass and Bookspan, as and for his answer admits, denies and avers as follows:

COUNT ONE

1. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs 2 and 4 and accordingly denies same.

2. Denies each and every allegation contained in Paragraph 5 except admits that Plaintiff did enter into an agreement with Defendant to survey certain real property and to provide a survey map showing the boundaries of Plaintiff's property and correctly laying out and staking the property boundaries.

3. Denies each and every allegation contained in Paragraphs 6, 7 and 8 of Plaintiff's Complaint.

COUNT TWO

4. Defendant denies each and every allegation contained in Paragraphs 3, 4 and 5 of Count Two of Plaintiff's Complaint.

WHEREFORE, Defendant requests that:

1. Plaintiff take nothing by her Complaint.
2. Defendant recover all costs of suit incurred herein including reasonable attorneys' fees pursuant to contract or A.R.S. § 12-341.01.
3. For such other and further relief as to the Court

LAW OFFICES OF  
BASS AND BOOKSPAN  
1724 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

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seems just and proper.

DATED this 10<sup>th</sup> day of October, 1980.

BASS AND BOOKSPAN

By Stephen E. Bass  
Stephen E. Bass  
1224 East Missouri  
Phoenix, Arizona 85014  
Attorneys for Plaintiff

Copy of the foregoing  
mailed this 10<sup>th</sup> day  
of October, 1980, to:

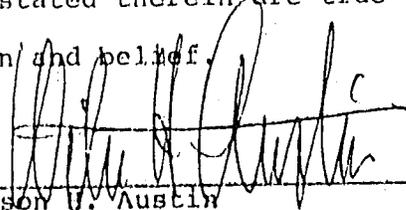
Jay M. Martinez, Esq.  
Martinez, Curtis, Goodwin & Karasek  
3003 North Central, Suite 1600  
Phoenix, Arizona 85012

M. McCarthy

LAW OFFICES OF  
BASS AND BOOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

1 STATE OF ARIZONA )  
2 County of Maricopa ) ss.

3 WILSON H. AUSTIN, being first duly sworn upon oath,  
4 deposes and says: He is the Defendant in the above-entitled  
5 cause. He has read the foregoing Answer and knows the contents  
6 thereof. The matters and things stated therein are true to the  
7 best of his knowledge, information and belief.

8   
9 \_\_\_\_\_  
10 WILSON H. AUSTIN

11  
12 SUBSCRIBED AND SWORN TO before me this 9th day of  
13 October, 1980.

14   
15 \_\_\_\_\_  
16 Notary Public

17 My Commission Expires:  
18 My Commission Expires July 11, 1981

LAW OFFICES OF  
BASS AND BOOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,  
Plaintiff,  
v.  
WILSON AUSTIN, d/b/a WILSON  
AUSTIN, SURVEYS AND MAPS,  
Defendant.

[REDACTED]  
No. C420852

THIRD PARTY COMPLAINT

WILSON AUSTIN and NELLA AUSTIN,  
his wife,  
Third Party Plaintiffs,  
v.  
MARICOPA COUNTY, ARIZONA,  
Third Party Defendants.

Third Party Plaintiffs, Wilson Austin and Nella Austin,  
by and through their attorneys, Bass and Bookspan, for their  
Third Party Complaint against Third Party Defendant allege as  
follows:

1. At all times hereinafter mentioned Third Party Plaintiffs were residents of Maricopa County, Arizona, and were husband and wife.
2. Third Party Plaintiff Wilson Austin is a licensed and registered surveyor in the State of Arizona.
3. On or about May 15, 1980, Third Party Plaintiff Wilson Austin contracted with Plaintiff D. Jean Staten to survey and place boundary markers and stakes on her real property south of Carefree Highway on the west side of 12th Street in Maricopa County, Arizona.
4. Third Party Plaintiff Wilson Austin initially checked for survey monuments along Carefree Highway. None was visible.
5. Third Party Plaintiff Wilson Austin obtained from

WILSON D. PLEASANT  
FILED  
OCT 10 PM 4:37

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1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 265-8484

LAW OFFICES OF  
BASS AND BOOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

1 the Maricopa County Highway Department, County Central Files, the  
2 section corner tie measurements for the North 1/4 Corner of  
3 Section 9, T5N, R3E which is kept available to the public as a  
4 record in the County Central Files.

5 6. Third Party Plaintiff Wilson Austin completed the  
6 survey and staking out Plaintiff's real property using the  
7 section corner tie documentation obtained from Maricopa Highway  
8 Department Central Files.

9 7. Thereafter Plaintiff moved a house to the surveyed  
10 site.

11 8. After moving the house Plaintiff requested that  
12 the survey be verified by Third Party Plaintiff Wilson Austin.

13 9. Third Party Plaintiff Wilson Austin purchased from  
14 the Maricopa County Highway Department a map of the area known as  
15 Carefree Road Sheet 12, prepared by Williams and Ellis, Consult-  
16 ing Engineers, signed and sealed by Robert A. Murphy and dated  
17 March, 1968.

18 10. The section corner ties for the North 1/4 Corner  
19 of Section 9, T5N, R3E, as shown on the above-mentioned map is the  
20 same as shown on the Central File cards.

21 11. Third Party Plaintiff Wilson Austin thereafter  
22 informed Plaintiff that the starting point had been verified by  
23 him.

24 12. Thereafter Plaintiff claimed that Third Party  
25 Plaintiff Wilson Austin had performed an inaccurate survey.

26 13. Third Party Plaintiff Wilson Austin then used an  
27 old map entitled Desert Lake Branch of Desert Hills, NW 1/4 Sec-  
28 tion 9, T5N, R3E, signed by Gregg R. Irvine dated December 31,  
29 1957, and measured distances only northward from the center of  
30 Section 9, northward across Carefree Highway the total distance  
31 shown on the map and discovered a 1-inch pipe stake and located  
32 the original intersection corners. This 1-inch pipe stake is the

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BASS AND BOOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

1 North 1/4 corner of Section 9.

2 14. The survey monument set by Maricopa County on the  
3 Williams and Ellis map is 122.80' foot south of the North 1/4  
4 corner of Section 9, and 19.94' east of the North to South mid-  
5 section line.

6 15. Third Party Defendant Maricopa County negligently  
7 and recklessly placed a monument as shown on the central file  
8 card and on the Williams and Ellis map claiming it to be the  
9 North 1/4 corner of Section 9 when in fact it was not the North  
10 1/4 corner of Section 9.

11 16. Third Party Defendant, Maricopa County, negli-  
12 gently and recklessly placed the erroneous section tie information  
13 in the Highway Department Central Files for public use when it  
14 knew or should have known that the information contained therein  
15 was false and erroneous.

16 17. Plaintiff has alleged that she placed her home off  
17 or partially off of her real property due to the inaccurate  
18 survey and staking performed by Third Party Plaintiff Wilson  
19 Austin and has claimed damages from Third Party Plaintiff Wilson  
20 Austin.

21 18. If this Court should determine that Third Party  
22 Plaintiff Wilson Austin is liable to Plaintiff D. Jean Staten,  
23 then Third Party Defendant Maricopa County is liable to Third  
24 Party Plaintiffs Wilson Austin and Nella Austin, his wife.

25 WHEREFORE, Third Party Plaintiffs Wilson Austin and  
26 Nella Austin demand judgment against Third Party Defendant  
27 Maricopa County as follows:

28 1. For judgment in the same amounts as may be re-  
29 covered by Plaintiff D. Jean Staten against Wilson Austin.

30 2. For Defendant's reasonable attorneys' fees and  
31 costs.

32 3. For such additional and further relief as this

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Court may deem just and proper under the circumstances.

DATED this 10th day of October, 1980.

BASS AND BOOKSPAN

By Stephen E. Bass  
Stephen E. Bass  
1224 East Missouri  
Phoenix, Arizona 85014  
Attorneys for Defendant and Third  
Party Plaintiffs

Copy of the foregoing  
mailed this 10th day  
of October, 1980, to:

Jay M. Martinez, Esq.  
Martinez, Curtis, Goodwin & Karasek  
3003 North Central, Suite 1600  
Phoenix, Arizona 85012

M. McCarty

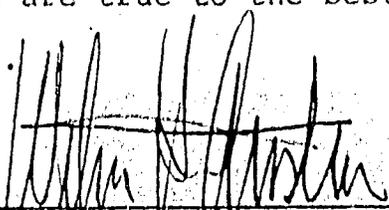
LAW OFFICES OF  
BASS AND BOOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

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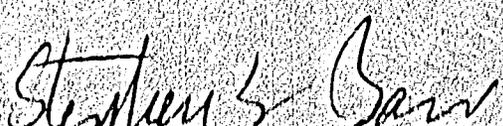
VERIFICATION

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

WILSON H. AUSTIN, being first duly sworn upon oath, deposes and says: He is the Defendant and one of the Third Party Plaintiffs in the above-entitled cause. He has read the foregoing Third Party Complaint and knows the contents thereof. The matters and things stated therein are true to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Wilson H. Austin

SUBSCRIBED AND SWORN TO before me this 9<sup>th</sup> day of October, 1980.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
My Commission Expires July 11, 1981

SAN JOK  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

ARIZONA SUPERIOR COURT, County of Maricopa

WILSON D. PALMER, CLERK

BY *[Signature]* DEPT.

1980 OCT 17 PM 4:26

D. JEAN STAPEN,

Plaintiff,

v.

WILSON AUSTIN, d/b/a WILSON  
AUSTIN, SURVEYS AND MAPS,

Defendant.

WILSON AUSTIN and NELLA AUSTIN,  
his wife,

Third Party Plaintiffs,

v.

MARICOPA COUNTY, ARIZONA,

Third Party Defendant.

CIVIL ACTION NO: C 420852

SUMMONS

THE STATE OF ARIZONA TO DEFENDANTS:

MARICOPA COUNTY, ARIZONA

YOU ARE HEREBY SUMMONED and required to serve upon the plaintiffs' attorney an answer to the complaint which is herewith served upon you, within 20 days, exclusive of the day of service, after service of this summons upon you if served within the State of Arizona, and within 30 days, exclusive of the day of service, if served without the State of Arizona. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. RCP4, 5, 10(d).

The name and address of the Plaintiffs' attorney is: Stephen E. Bass, Esq.  
BASS AND BOOKSPAN  
1224 East Missouri  
Phoenix, Arizona 85014

SIGNED AND SEALED this date: OCT 10 1980

WILSON D. PALMER

Clerk

By *[Signature]*  
Deputy Clerk

Attorney Firm Name and Address

LAW OFFICES OF  
BASS AND BOOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014

SUMMONS

In the SUPERIOR

Court of the State of Arizona in and for the County of Maricopa

Cause Number: C 420852

D. JEAN STATEN,
vs.
WILSON AUSTIN, d/b/a WILSON
AUSTIN, SURVEYS AND MAPS,
ETC.

Affidavit of Service
of Process by a
Private Person

State of Arizona ) ss: The Affiant, being sworn, states: I am fully
County of Maricopa) qualified to serve process in this cause, having
been so appointed by the Court; that (s)he
received the following judicial documents from
the following attorney(s) in the following manner:

Summons and Complaint
October 14, 1980
Bass and Bookspan

Documents Received
Date Received
Received From

That I personally served the same on those named hereafter at the time,
place and in the manner indicated and/or pursuant to Rule 4dl. A.R.S. Rules
of Civil Procedure, copy(s) was/were left at the defendant(s) usual place of
abode with a person of suitable age and discretion who resides therein at
the defendant(s) usual place of abode.

If the named defendant(s) was/were named as a partner in a partnership
he/she/they was/were served both individually and as a partner in said
partnership.

That if the defendant(s) so named was/were a corporation, that the person
served as stated below is an officer, general managing agent, director or
statutory agent of said corporation(s).

UPON: MARICOPA COUNTY, ARIZONA, by leaving one copy with LYNN BREWER,
in person, authorized to accept service on their behalf, while at 111 S.
3rd Avenue, Phoenix, Arizona, on October 15, 1980, at the hour of 3:56
p.m. of said day.

That service in each instance consisted of leaving with the party(s)
named a true copy(s) of the above described judicial document(s).

SUBSCRIBED AND SWORN TO BEFORE ME ON

[Signature]
s/ Joseph N. Bacon

October 16, 1980

AFFIANT

[Signature]
s/ Barbara J. Shackell
NOTARY PUBLIC

October 19, 1980

MY COMMISSION EXPIRES

1 5.50 Service
min 4.00 Miles
Miles
Miles
2.00 Notary Fee
& Surcharge
Fees Paid
11.50 Total

MICHAEL J. FLEMING
PRIVATE PROCESS SERVICE
P. O. BOX 3882
PHOENIX, ARIZONA 85030
253-1155

WILSON D. J. CLERK  
CITY  
1960 NOV -4 PM 3:08

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,  
Plaintiff,

vs.

WILSON AUSTIN, d/b/a WILSON  
AUSTIN, SURVEYS AND MAPS,  
Defendant.

No. C 420852

MOTION TO DISMISS

WILSON AUSTIN and NELLA AUSTIN,  
his wife,  
Third Party Plaintiffs,

(Assigned to the Hon.  
Marilyn Riddell, Div. 11)

vs.

(Oral Argument Requested)

MARICOPA COUNTY, ARIZONA,  
Third Party Defendant.

Third Party Defendant, Maricopa County, by and through  
undersigned counsel, pursuant to Rule 12(b)(1), Rules of Civil  
Procedure, 16 A.R.S., moves for dismissal of Third Party Plain-  
tiffs' Complaint on the grounds of lack of jurisdiction over the  
subject matter.

Further, pursuant to Rule 12(b)(6), Rules of Civil Pro-  
cedure, 16 A.R.S., Third Party Defendant moves for dismissal of  
the Complaint on the grounds of failure to state a claim for  
which relief can be granted.

Pursuant to Rule 12(b)(7), Rules of Civil Procedure, 16  
A.R.S., Third Party Defendant moves for dismissal of Third  
Party Plaintiffs' Complaint on the grounds of failure to join a  
party under Rule 19.

Reasons in support of Third Party Defendant's position are  
set forth in the attached Memorandum of Points and Authorities

CHARLES F. HYDER  
MARICOPA COUNTY ATTORNEY  
400 SUPERIOR COURT BUILDING  
PHOENIX, ARIZONA 85003

1 which is hereby incorporated by reference.

2 RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of November, 1980.

3 CHARLES F. HYDER  
4 MARICOPA COUNTY ATTORNEY

5  
6 By Cleon M. Duke  
7 Cleon M. Duke  
8 Deputy County Attorney

9 MEMORANDUM OF POINTS AND AUTHORITIES

10  
11 In his Complaint, Third Party Plaintiff, Wilson Austin,  
12 claims to be a licensed and registered surveyor. In May of 1980,  
13 Mr. Austin apparently agreed to survey and stake the boundaries  
14 of private property owned by D. Jean Staten. The parcel is  
15 located near the Carefree Highway.

16 After searching for survey monuments along the Carefree  
17 Highway, which he claims he could not find, Mr. Austin went to  
18 the Maricopa County Highway Department to check their records.  
19 There he states that he obtained section corner tie measurements  
20 from the central files which Mr. Austin then used to survey the  
21 Staten property. There is no allegation that Mr. Austin, using  
22 the measurements obtained from the County Highway Department,  
23 ever physically located the corner monument or any stakes or  
24 markers placed on the ground in the vicinity of the property he  
25 had contracted to survey.

26 Based upon the survey, the Statens then apparently moved a  
27 house onto their land. Thereafter, a request was made of  
28 Mr. Austin that he verify the results of his survey. To do this,  
29 he purchased a copy of a road map for a portion of the Carefree  
30 Highway from the County Highway Department. The map had been  
31 prepared by Williams and Ellis, Consulting Engineers, and was  
32 dated March, 1968. Mr. Austin, on the basis of information he

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MARICOPA COUNTY ATTORNEY  
400 SUPERIOR COURT BUILDING  
PHOENIX, ARIZONA 85003

1 obtained off of this 1968 map informed the Statens that his  
2 earlier survey had been accurate. Again, there is no claim that  
3 Mr. Austin used the information appearing on the partial road  
4 map to actually physically locate any of the corner ties, monu-  
5 ments or stakes upon which he based his survey of the Statens  
6 property.

7 Austin was later sued for having done an incorrect survey  
8 which in turn caused the Statens to locate their house across  
9 the property line. Mr. Austin, using a different map which he  
10 had apparently obtained from a source other than the County High-  
11 way Department, then allegedly physically located a pipe stake  
12 from which he identified the intersection corner on the Carefree  
13 Highway. He claims that the actual corner is not properly located  
14 in either the County Highway Department central file cards or on  
15 the Williams and Ellis map he had purchased from the County.

16 Upon these facts, the Austins, Third Party Plaintiffs, draw  
17 three legal conclusions. First, that the central file infor-  
18 mation and maps obtained from the County Highway Department are  
19 public records. Second, the Austins claim that they had a right  
20 to rely on the accuracy of the substantive content of the County  
21 Highway Department materials that they had examined. Third,  
22 based upon the charge that these files and maps negligently and  
23 recklessly contained erroneous information, the Austins should  
24 be able to recover from the County for any damages they must pay  
25 the Statens for the improper survey conducted by Mr. Austin.

26 With regard to the Austins' first point of law, A.R.S.  
27 §11-562(A) provides that "the county engineer shall be custodian  
28 of records and property of the county relating to surveying,  
29 engineering and road construction." Third Party Defendant,  
30 Maricopa County, has no argument with the conclusion that the  
31 County Highway Department maintains records of maps, surveys,  
32 plans and any other information that is relevant to the

1 construction of roads in Maricopa County. These records are  
2 available for public inspection in accordance with A.R.S.  
3 §11-562 and §39-121. However, legal action generated from the  
4 maintenance of public records should be directed against their  
5 custodian. 66 Am. Jur. 2d, Records and Recording Laws, §195.  
6 In this case, failure to name the county engineer, the person  
7 statutorily bound to maintain the records which are the subject  
8 of the Austins' Complaint, renders the Complaint subject to dis-  
9 missal for failure to join an indispensable party. Rule 12(b)(7),  
10 Rules of Civil Procedure, 16 A.R.S. There is no public record  
11 without one who is bound to keep it, 5 McQuillin, The Law of  
12 Municipal Corporations, Municipal Records, §14.02 (3d Ed., 1969  
13 Revised) and only that public officer charged with their main-  
14 tenance may be held liable with regard to those records. 66 Am.  
15 Jur. 2d, Records and Recording Laws, §194, et seq.

16 The second legal conclusion which the Austins draw is that  
17 they not only did, but had the right to rely upon the accuracy  
18 of the substantive content of maps and card files maintained as  
19 public records in the conduct of their private business. Nowhere  
20 does the law provide for liability with regard to the correctness  
21 of the substantive content of public documents such as the maps  
22 and card files sued over herein. See A.R.S. §39-101 (permanent  
23 public records); A.R.S. §39-121 (inspection of public records);  
24 A.R.S. §39-121.01 (copying public records); A.R.S. §39-121.02  
25 (action upon denial of access); A.R.S. §39-121.03 (request for  
26 copies, statement of purpose); 66 Am. Jur. 2d, Records and  
27 Recording Laws, §1 through §202; 76 C.J.S., Records, §1 through  
28 §76; 5 McQuillin, The Law of Municipal Corporations, Municipal  
29 Records, §14.01 through §14.15 (3d Ed., 1969 Revised). While  
30 the law does assure that such records be kept (A.R.S. §11-562)  
31 that they be adequately catalogued (76 C.J.S., Records §16) and  
32 that they be open for public inspection (A.R.S. §39-121) and

Cynthia?

CHARLES F. HYDER  
MARICOPA COUNTY ATTORNEY  
400 SUPERIOR COURT BUILDING  
PHOENIX, ARIZONA 85003

CHARLES F. HYDER  
MARICOPA COUNTY ATTORNEY  
400 SUPERIOR COURT BUILDING  
PHOENIX, ARIZONA 85003

1000-028

1 photocopying (A.R.S. §39-121.03), the law does not insure the  
2 accuracy of the substantive content of public documents for  
3 private business use. In fact, in Arizona any party who seeks  
4 copies of public records, as Mr. Austin did here, is obligated  
5 by law to provide a verified statement of whether or not he  
6 intends to use the document for a commercial purpose. A.R.S.  
7 §39-121.03(A) and (B). The Austins do not allege that they  
8 complied with this provision of state law. Therefore, the use of  
9 the Williams and Ellis map as a basis for verifying an earlier  
10 survey for which Mr. Austin presumably was paid may violate that  
11 law. A.R.S. §39-121.03(D) and (E). Had the Austins' commercial  
12 purpose been properly set forth as required, it is conceivable  
13 that the Williams and Ellis map would not have been released.  
14 A.R.S. §39-121.03(C).

15 In any event, while the law clearly provides remedies for  
16 a custodian's failure to keep, failure to provide for public  
17 access, failure to maintain in a safe and useable state, failure  
18 to be able to retrieve and intentional falsification or fraudulent  
19 misrepresentation of a public record, it does not make him liable  
20 for the accuracy of the substantive content of every public docu-  
21 ment he maintains, whether he produced the document or not.

22 With regard to the Austins' third legal conclusion, that the  
23 County should be liable for errors appearing on maps or in card  
24 files maintained by the county engineer, they have neither a  
25 viable legal theory nor the correct party to sue.

26 WHEREFORE, Third Party Defendant, Maricopa County, respect-  
27 fully requests that this Motion to Dismiss be granted pursuant  
28 to Rule 12(b)(1), for lack of subject matter jurisdiction,  
29 Rule 12(b)(6), for failure to state a claim for which relief can  
30 be granted, and Rule 12(b)(7), for failure to join an indispen-  
31 sible party. Maricopa County would also ask that it be granted  
32 . . . . .

him = the custodian or MCAD is this case

1 reasonable attorney's fees and such other relief as to the Court  
2 seem just and proper.

3 RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of November, 1980.

4 CHARLES F. HYDER  
5 MARICOPA COUNTY ATTORNEY

6  
7 By Cleon M. Duke  
8 Cleon M. Duke  
9 Deputy County Attorney  
10 Attorney for Maricopa County

11 COPY of the foregoing  
12 mailed/delivered this  
13 4<sup>th</sup> day of November,  
14 1980, to:

15 The Honorable Marilyn Riddel  
16 Division 11, 9th Floor, E.C.B.  
17 101 West Jefferson  
18 Phoenix, Arizona 85003

19 Jay M. Martinez  
20 MARTINEZ, CURTIS, GOODWIN & KARASEK  
21 3003 North Central  
22 Suite 1600  
23 Phoenix, Arizona 85012  
24 Attorneys for Plaintiff

25 Steve Bass  
26 BASS & BOOKSPAN  
27 1224 East Missouri  
28 Phoenix, Arizona 85014  
29 Attorneys for Defendant Austin

30  
31 By Sylvia Lopez  
32 Sylvia Lopez

CHARLES F. HYDER  
MARICOPA COUNTY ATTORNEY  
400 SUPERIOR COURT BUILDING  
PHOENIX, ARIZONA 85003

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

3

OFFICE DISTRIBUTION

APPEALS	
BONDS: RETURN	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

11

DIV.

Nov. 17, 1980

DATE

HON. MARILYN A. RIDDEL

JUDGE OR COMMISSIONER

WILSON D. PALMER,

c. faust

Clerk  
Deputy

C 420852

D. JEAN STATEN

Jay M. Martinez

vs.

WILSON AUSTIN, et al.

Stovo Bass

Cleon M. Duko

On oral stipulation of counsel,

IT IS ORDERED vacating oral argument set November 26, 1980 and re-setting the same for December 2, 1980 at 8:15 a.m. in this Division. (Motion to Dismiss).

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: NOV 18 1980

Processed: NOV 18 1980

# IN THE SUPERIOR COURT

OF  
MARICOPA COUNTY, STATE OF ARIZONA

## OFFICE DISTRIBUTION

APPEALS	
BONDS REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

K 11  
DIV

Nov. 5, 1980  
DATE

HON. MARILYN A. RIDDEL  
JUDGE OF COMMISSIONER

WILSON D. PALMER,  
C. Faust

Clerk  
Deputy

420852

D. JEAN STATEN

Jay M. Martinez

vs.

WILSON AUSTIN, et ux.

Steve Bass

Cleon M. Duek

IT IS ORDERED setting oral argument on Third Party  
Defendant's Motion to Dismiss

on November 26, 1980, at 8:30 a.m. in this division.

FURTHER ORDERED that unless a responding memorandum is  
filed no later than 5:00 p.m. of November 19, 1980, it  
will not be considered, and the Motion will be summarily disposed  
of in accordance with Rule IV of the Uniform Rules of Practice.

CLERK OF THE COURT  
DISTRIBUTION CENTER

Received: NOV 6 1980

Processed: NOV 6 1980

Page 5

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF MARICOPA

3 D. JEAN STATEN, )  
4 Plaintiff, )

5 v. )

6 WILSON AUSTIN, d/b/a/  
7 WILSON AUSTIN, SURVEYS  
AND MAPS, )

8 Defendant. )

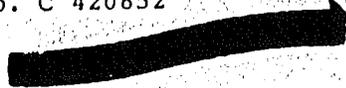
9 WILSON AUSTIN and NELLA  
10 AUSTIN, his wife, )  
11 Third Party Plaintiffs, )

12 v. )

13 MARICOPA COUNTY, ARIZONA. )

14 Third Party Defendant. )

No. C 420852



RESPONSE TO MOTION  
TO DISMISS

(Assigned to the Honorable  
Marilyn Riddell, Div. 11)

FILED  
1990 NOV 24 PM 4:15  
Clerk

LAW OFFICES OF  
BASS AND BOOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

15 Third Party Defendant Maricopa County claims that the  
16 County Engineer should be made a party to this proceeding and  
17 for his failure to serve the County Engineer, Third Party Plain-  
18 tiff's claim should be dismissed against Maricopa County. Third  
19 Party Defendant Maricopa County does not state any reasons under  
20 Rule 19 as to why the County Engineer should be made a party in  
21 addition to Maricopa County, his employer. Third Party Plaintiff  
22 suggests none of the reasons set forth in Rule 19(a) is applicable.  
23 Certainly since the County Engineer is a county employee, the  
24 county is responsible for his acts or omissions and is ultimately  
25 liable to all persons whose injuries are proximately caused by  
26 the actions of the county employee. Furthermore, pursuant to  
27 Rules of Civil Procedure, Rule 4(d)(7), process was served  
28 correctly upon Maricopa County, and there is absolutely no pro-  
29 vision in Rule 4(d) for personal service upon a specifically  
30 titled individual in governmental employ, as counsel for Maricopa  
31 County suggests. This Court should dismiss Third Party Defendant's  
32

LAW OFFICES OF  
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1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

1 Rule 12(b)(7) claim.

2 Third Party Defendant claims that a recording officer  
3 similar to the County Engineer is not responsible for the accuracy  
4 of the substantive content of public documents for private busi-  
5 ness use or of any public documents he maintains citing 66 Am.Jur.  
6 2d Records and Recording Laws § 194 et. seq. The cited section  
7 however states:

8 Recorders are ministerial officers on the faith-  
9 ful performance of whose duties the validity of  
10 transfers of land especially depends, and they and the  
11 sureties on their official bonds, are generally  
12 held to strict accountability for their acts  
13 and omissions in the performance of their  
14 official duties . . . there is common law  
15 liability even in the absence of a statute.  
16 66 Am.Jur.2d Records and Recording Laws § 195

17 Third Party Defendant has admitted that both the section  
18 corner tie information kept for public use in central files on a  
19 3 by 5 index card and the Williams and Ellis Map are public  
20 records. A public record is:

21 A record made by a public officer in pursuance  
22 of a duty with the immediate purpose to serve as  
23 a memorial of official transactions for public  
24 reference. Op. Atty. Gen. No. 70-1

25 What official transaction is under review here in this  
26 case? Enclosed is a copy of the section corner tie card kept for  
27 public inspection by the County Engineer. It was prepared by a  
28 person named Graver in January, 1967, and defines distances to  
29 the hidden re-bar from known visible points (i.e., re-bar under  
30 an 8" misquite tree). This information is certainly not a random  
31 map which for some obscure reason was publicly filed by the  
32 County Engineer. This documents looks like it was actually pre-  
pared and filed by the County Engineer. If the information is  
erroneous, Wilson Austin, the injured party, may request the  
damages against Maricopa County if he can prove that the erroneous  
public information was the proximate cause for his loss. Cer-  
tainly Maricopa County cannot adopt a cavalier attitude by claim-

1 ing its County Engineer can generate information for public dis-  
2 semination as a result of official transactions (road building)  
3 and bear absolutely no financial responsibility if that informa-  
4 tion is wrong.

5 For all of the above reasons we respectfully urge that  
6 Third Party Defendant's Motion to Dismiss be denied in all re-  
7 spects.

8 Respectfully submitted this 24th day of November, 1980.

9 BASS AND BOOKSPAN

10  
11 By Stephen E. Bass  
12 Stephen E. Bass  
13 1224 East Missouri  
14 Phoenix, Arizona 85014  
15 Attorneys for Defendant and  
16 Third Party Plaintiff

LAW OFFICES OF  
BASS AND BOOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

15 Copy of the foregoing  
16 mailed this 24th day  
of November, 1980, to:

17 Cleon M. Duke, Esq.  
18 Deputy County Attorney  
19 400 Superior Court Building  
101 West Jefferson Street  
Phoenix, Arizona 85003

20 The Honorable Marilyn Riddel  
21 Judge of the Superior Court  
22 East Court Building  
101 West Jefferson  
Phoenix, Arizona 85003

23 Jay M. Martinez, Esq.  
24 MARTINEZ, CURTIS, GOODWIN & KARASEK  
3003 North Central  
Suite 1600  
25 Phoenix, Arizona 85012  
26 Attorneys for Plaintiff

27  
28 Stephen E. Bass  
29  
30  
31  
32

IN THE SUPERIOR COURT  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

3

OFFICE DISTRIBUTION	
APPEALS	
BONDS	
CRIMINAL	
REMANDS	
SENTENCING	

11 12-2-80  
DIV. DATE

Judge Riddell  
JUDGE OR COMMISSIONER

WILSON D. PALMER, Clerk  
Deputy

C Faust

CH20852 D. Jean Staten

Jay M. Martinez

Wilson Austin, et al.

Steven Bass

Cleon M. Duke

8:18 a.m. This is the time set for hearing Third Party Defendant Maricopa County's Motion to Dismiss. Plaintiff is neither present nor represented by counsel. Third Party Plaintiff is represented by counsel, Steven Bass. Third Party Defendant is represented by counsel, Cleon M. Duke.

Court Reporter is not present.

Motion is argued to the Court.

It is Ordered taking this matter under advisement.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: DEC 3 1980

Processed: DEC 3 1980

Page 1

WILSON D. PALMER, CLERK  
FILED  
1980 DEC -5 PM 3:09

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,  
Plaintiff,

v.

WILSON AUSTIN, d/b/a/ WILSON  
AUSTIN, SURVEYS AND MAPS,  
Defendant.

No. C 420852

WILSON AUSTIN and NELLA  
AUSTIN, his wife,

Third Party Plaintiffs,

v.

MARICOPA COUNTY, ARIZONA,  
Third Party Defendant.

SUPPLEMENTAL RESPONSE  
TO MOTION TO DISMISS

(Assigned to the Honorable  
Marilyn Riddel, Div. 11)

LAW OFFICES OF  
BASS AND BOOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

At oral argument on the Motion to Dismiss, Third Party Plaintiff, Wilson Austin, conceded that the County Engineer, acting as a recorder of public documents, cannot warrant the accuracy of documents prepared by others for filing by the County Engineer. This concession disposes of the issues presented by the patent errors in the Williams and Ellis Map (a copy of relevant portion enclosed as Exhibit 1).

The section corner tie card maintained by the County Engineer for public and office use, especially for the Highway Department, presents a separate and distinct issue. (A copy of the section corner tie card is enclosed as Exhibit 2). Although no discovery has been held in this case, Third Party Plaintiffs have substantial reasons to believe that a number of the staff of the County Engineer generated the information and prepared the card for filing in January, 1967. Since the card may have been prepared under the supervision and control of the County Engineer, he assumes certain responsibility from his status as a

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county official and as a registered civil engineer to the public.

A surveyor and civil engineer owes a duty to one who employs him in the course of his profession. This duty is essentially the same as that owed by any other person who holds himself out to another as possessing skill and ability in some special employment and offers his services to the public on account of his fitness to act in that line of employment.

"He must exercise that degree of care which a surveyor or civil engineer of ordinary skill and prudence would exercise under similar circumstances, and he may be held responsible for such damages as are sustained due to his negligence and lack of skill." 58 Am.Jur.2d Occupations, Trades and Professions §78.

In the practice of his profession, a surveyor and civil engineer may be found liable in damages resulting from his mistake or misrepresentation in the survey of realty, where he does not perform his duties with a reasonable degree of care and skill. Robert v. Karr, 178 Cal. App. 2d 535.

The County Engineer is a civil engineer who obviously offers his services to the public. Third Party Plaintiff Wilson Austin claims that as a member of the public he has or may suffer damages to Plaintiff Jean Staten which are or may be proximately caused by the erroneous information contained in the section corner tile card prepared and maintained by the Maricopa County Engineer. We believe that the County Engineer may be held liable to Third Party Plaintiff Wilson Austin and Maricopa County should remain a party.

The test to be applied by the Court in resolving the question of whether the Complaint sets forth facts showing that Third Party Plaintiff is entitled to relief under any theory of law is whether the Complaint taken in a light most favorable to the Third Party Plaintiff, is sufficient to constitute a valid claim. See, e.g., Veach v. City of Phoenix, 102 Ariz. 195, 427 P.2d 335 (1967); Savard v. Selby, 19 Ariz. App. 514, 508 P.2d

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TELEPHONE (602) 266-8484

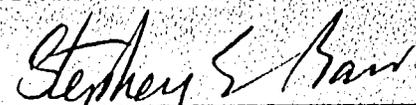
1 773 (1973). In considering the motion to dismiss the Complaint  
2 for failure to state a claim, the allegations must be taken as  
3 true. Lakin Cattle Company v. Engelthaler, 101 Ariz. 282, 419  
4 P.2d 66 (1965); Davis v. Landewiel, 16 Ariz. App. 262, 492 P.2d  
5 758 (1972). Viewed in this context, it is evident that the Com-  
6 plaint states a valid claim for relief on the basis of negligence.

7 The elements of actionable negligence are a duty owed  
8 to Plaintiff by Defendant, a breach thereof and an injury proximi-  
9 mately caused by the breach. Wisner v. Stato, 123 Ariz. 148,  
10 598 P.2d 511 (1979); Boyle v. City of Phoenix, 115 Ariz. 106,  
11 563 P.2d 905 (1977); Masengill v. Yuma County, 104 Ariz. 518, 456  
12 P.2d 376 (1969). An examination of the Complaint indicates that  
13 it properly alleges each element of actionable negligence and,  
14 as such, constitutes a valid claim for relief. We have also  
15 indicated that there is common law responsibility on the part of  
16 a surveyor and civil engineer to members of the public. We have  
17 alleged that the office of the County Engineer, who is a civil  
18 engineer, prepared and maintained a certain file card with quite  
19 relevant information for the general public to use, and that this  
20 information was indeed used by Third Party Plaintiff Wilson  
21 Austin. We believe that the Motion to Dismiss should be denied.

22 Respectfully submitted this 4th day of December, 1980.

23 BASS AND BOOKSPAN

24  
25 BY



Stephen E. Bass  
1224 East Missouri  
Phoenix, Arizona 85014  
Attorneys for Defendant and  
Third Party Plaintiffs

26  
27  
28  
29 Copy of the foregoing <sup>17th</sup>  
30 hand delivered this day of December, 1980, to:

31 Cleon M. Duke, Esq.  
32 Deputy County Attorney  
400 Superior Court Building  
Phoenix, Arizona 85003  
Attorney for Third Party Defendant

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Copy of the foregoing  
mailed this 5th day of  
December, 1980, to:

The Honorable Marilyn Riddel  
Judge of the Superior Court  
East Court Building  
101 West Jefferson  
Phoenix, Arizona 85003

Jay M. Martinez, Esq.  
Martinez, Curtis, Goodwin & Karasok  
3003 North Central, Suite 1600  
Phoenix, Arizona 85012  
Attorneys for Plaintiff

*Stephen L. Bass*

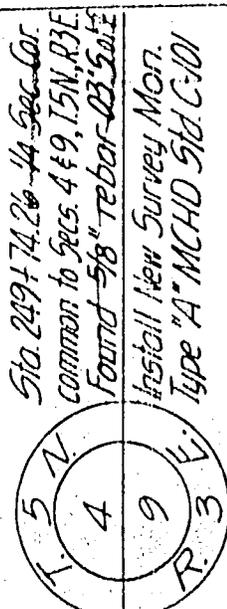
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LAW OFFICES OF  
BASS AND BLOKSPAN  
1224 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8884

B.P.R. REGION	STATE	PROJECT NO.	SHEET NO.	TOTAL SHEETS	AS BUILT
7	ARIZ.	W.D.-07200	12	19	8-23-74

WILLIAMS & ELLIS  
FOR THE CONSULTING ENGINEER

DESIGNED BY: C.C. CHECKED BY: DATE: Mar. 1968



Sta. 249+74.26 - 44 Sec. Cor.  
common to Secs. 4 & 9, 15N, R3E.  
Found 5/8" rebar - 03' 50" E  
Install New Survey Mon.  
Type "A" MCHD STD C-101

James & B.L. Rappe

50' x 200' Drain Easement

County & Consultant Corner

A.K. & L. 079 (37)

Correct Corner  
50' x 150' Drainage Easement

17+80  
5K RT.  
280 SF

7E Sta. 255+00 See Sheet



EXHIBIT 1

5 N R 3E

Black Mt Rd.  
sec 9

N 1/4 Cor

Graver 1-67

Road grader Excavated 25' E of 9' N 45  
2.5' in depth of cor that tie is out 1.25.67

90' from sec line to Re-bar 100' 150' 200'  
to Rebar under 8" Mesquite tree 75.4  
to Iron Pipe 65.12

over

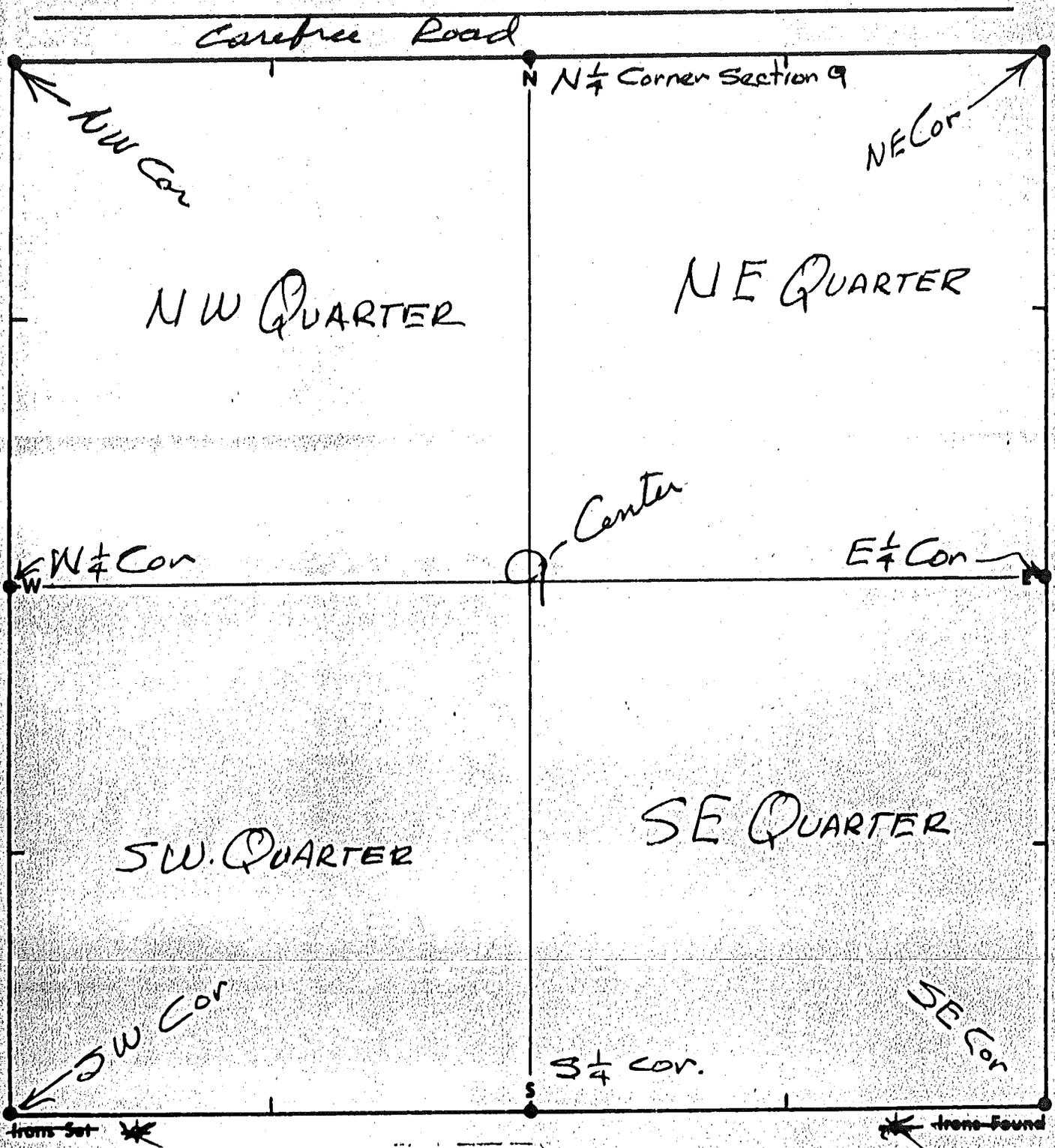


EXHIBIT 3

**IN THE SUPERIOR COURT**  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION	
APPEALS	
BONDS RETURN	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

5/14/81  
DATE

Hon. William P. French  
JUDGE OF COURTS CENTER

WILSON D. PALMER, Clerk  
Ct. Admin. Deputy

D. Jean Staten

Jay M. Martinez

Plaintiff

vs.

Wilson Austin & Jane Doe Austin, dba  
Wilson Austin, Surveys & Maps  
Defendant(s)

Stephen E. Bass

**CIVIL DELAY REDUCTION PROJECT  
EXPLANATION AND ORDER OF ASSIGNMENT**

The Superior Court in Maricopa County has participated with seven other courts in a nationwide project aimed at reducing trial court delay. Assisted by the National Center for State Courts, the Civil Delay Reduction Project implemented a civil case management system in four civil divisions of the court, later added two additional divisions to the system and has recently added two more civil divisions to the system. The objectives of the case management system are:

- (1) To reduce the total case processing time of civil cases in the Superior Court;
- (2) To bring civil cases under the scrutiny of the court from the filing of the complaint to the disposition of the case;
- (3) To set time parameters on the stages of civil case processing in order to expedite the processing of civil cases; and
- (4) To provide a firm trial date after the filing of the Certificate of Readiness.

To achieve these objectives the following policies and procedures will be followed in the eight participating divisions:

**IN THE SUPERIOR COURT**  
**OF**  
**MARICOPA COUNTY, STATE OF ARIZONA**

OFFICE DISTRIBUTION	
APPEALS	
BONDS REFUNDS	
COMMITTEE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

27

5/14/81

Hon. William P. French  
JUDGE OF COURSE

WILSON D PALMER, Clerk  
 Ct. Admin. Deputy

DATE

40852

(1) A Certificate of Readiness must be filed within 270 days (nine months) of the filing of the complaint or the case will be dismissed.

(2) The Certificate of Readiness will be treated as a true statement of readiness and may not be filed until all discovery is complete.

(3) A firm trial date will be set within 90 days from the filing of the Certificate of Readiness.

(4) A firm continuance policy will be strictly enforced. Any emergency requests must be made by motion and heard by the court.

(5) Continued cases will be reset for trial within 14 to 30 days of the original trial date.

(6) Sanctions will be used when necessary.

The judge whose name is shown above is a participant in this project and all cases assigned to this judge will be subject to the project court's policies.

IT IS ORDERED THAT THIS CASE SHALL BE GOVERNED BY RULE V, UNIFORM RULES OF PRACTICE AS MODIFIED, THE POLICIES OF THE CIVIL DELAY REDUCTION PROJECT HEREIN SET FORTH, AND THE FURTHER ORDERS OF THE COURT.

IT IS FURTHER ORDERED DIRECTING COUNSEL FOR THE PLAINTIFF TO INFORM THE OFFICE OF THE COURT ADMINISTRATOR (262-3226) IMMEDIATELY UPON THE APPEARANCE BY EACH AND EVERY DEFENDANT IN THIS CASE.

Rule V(a) (3) and (d), Uniform Rules of Practice, has been modified by the Supreme Court for all cases assigned to the project courts in order to provide for a TRUE CERTIFICATE OF READINESS IN THE FORM ATTACHED HERETO which must be filed within 270 days of the filing of the complaint. The modifications of Rule V follow:

**Rule V. Setting of Civil Cases for Trial**

(a) Motion to Set and Certificate of Readiness.

**IN THE SUPERIOR COURT**  
**OF**  
**MARICOPA COUNTY, STATE OF ARIZONA**

APPEALS	
BONDS	RETURN
FURNITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

5/ 14/81  
DATE

Hon. William P. French  
JUDGE OR COMMISSIONER

WILSON D. PALMER, Clerk  
Ct. Admin. Deputy

20852

----- (no change)

(1) ---- (no change)

(2) ---- (no change)

(3) He or she has completed, and that all other parties have completed or have had reasonable opportunity to complete, all procedures intended to be undertaken prior to trial under Rules 26 to 37 of the Rules of Civil Procedure;

(4) ---- (no change)

(5) ---- (no change)

(6) ---- (no change)

(7) ---- (no change)

(b) ----- (no change)

(c) ----- (no change)

(d) Inactive Calendar. The clerk of court or court administrator shall place on the Inactive Calendar every case in which a Motion to Set and Certificate of Readiness has not been served and filed within 270 days after the commencement thereof. All cases remaining on the Inactive Calendar for two months shall be dismissed without prejudice for lack of prosecution, and the court shall make an appropriate order as to any bond or other security filed therein, unless prior to the expiration of such two-month period:

(1) A proper Motion to Set and Certificate of Readiness is served and filed; or

(2) The Court, on motion for good cause shown, orders the case to be continued on the Inactive Calendar for a specified period of time without dismissal.

IN THE SUPERIOR COURT  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION

APPEALS	
RECEIVED	
FORWARDED	
CHARGE OF VIOLATION	
JURY FEES	
REMANDS	
SENTENCING	

11  
DAY

Dec. 9, 1980  
DATE

HON. MARILYN A. RIDDEL  
JUDGE OF COMMISSIONERS

WILSON D. PALMER,  
c. faust

Clerk  
Deputy

C 420852

D. JEAN STATEN

Jay M. Martinez

vs.

WILSON AUSTIN, et al.

Steven Bass

Cleon M. Duke

Third Party Defendant Maricopa County's Motion to Dismiss having been submitted for ruling, and the Court having reviewed the record to date, the written and oral argument of counsel and the authorities cited,

IT IS ORDERED denying said Motion as to the section corner tie card, said order being without prejudice to reurging should the evidence indicate that the information therein was not produced by the Engineer or his employees.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: DEC 11 1980

1 LAW OFFICES  
Martinez, Curtis, Goodwin, Karasek & Haddy  
2 SUITE 1600  
3003 NORTH CENTRAL AVENUE  
PHOENIX, ARIZONA 85012  
3 TELEPHONE (602) 274-1614

FILED  
1981 MAR 26 11:05  
CLERK OF SUPERIOR COURT  
MARICOPA COUNTY, ARIZONA

4  
5 Attorneys for Plaintiff

6  
7  
8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR THE COUNTY OF MARICOPA

10 D. JEAN STATEN, ) CAUSE NO. C420852  
11 Plaintiff, )  
12 vs. ) MOTION FOR PARTIAL SUMMARY  
13 WILSON AUSTIN, dba WILSON ) JUDGMENT  
AUSTIN, SURVEYS AND MAPS, ) (Assigned to the Honorable  
14 Defendants. ) Marilyn Riddel, Division 11)  
15 ) (Oral Argument Requested)  
16 )  
17 )  
18 )  
19 )  
20 )  
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29 )  
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31 )  
32 )

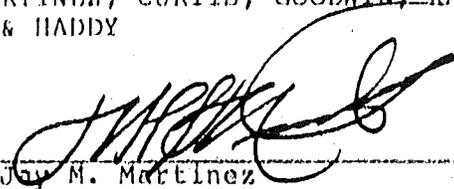
Plaintiff, D. Jean Staten, hereby moves this Court for an order pursuant to the provisions of Rule 56, Arizona Rules of Civil Procedure, granting her a partial summary judgment against the Defendants Wilson Austin and Nella Austin, dba Wilson Austin, Surveys and Maps, upon the issue of liability in this action.

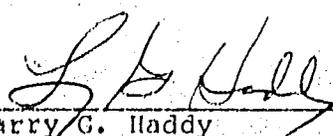
The movant alleges that there are no material questions of fact to be tried with respect to said issue of liability and that she is entitled Judgment on that issue as a matter of law.

This Motion is supported by the attached Memorandum of Points and Authorities.

1 DATED this 22 day of May, 1981.

2 MARTINEZ, CURTIS, GOODWIN, KARASEK  
3 & HADDY

4 By   
5 Jay M. Martinez  
6 3003 North Central Avenue  
7 Suite 1402  
8 Phoenix, Arizona 85012  
9 Attorneys for Plaintiff

10 By   
11 Larry G. Haddy  
12 3003 North Central Avenue  
13 Suite 1600  
14 Phoenix, Arizona 85012  
15 Attorneys for Plaintiff

16 MEMORANDUM OF POINTS AND AUTHORITIES

17 The following quotation from the verified Third Party  
18 Complaint filed by the Defendants presents a vivid picture of the  
19 Defendant's admitted liability vis-a-vis the Plaintiff:

20 "2. Third Party Plaintiff Wilson Austin is a licensed  
21 and registered surveyor in the State of Arizona.

22 3. On or about May 15, 1980, Third Party Plaintiff  
23 Wilson Austin contracted with Plaintiff D. Jean Staten to survey  
24 and place boundary markers and stakes on her real property south  
25 of Carefree Highway on the west side of 12th Street in Maricopa  
26 County, Arizona.

27 4. Third Party Plaintiff Wilson Austin initially  
28 checked for survey monuments along Carefree Highway. None was  
29 visible.

30 5. Third Party Plaintiff Wilson Austin obtained from  
31 the Maricopa County Highway Department, County Central Files, the  
32 section corner tie measurements for the North 1/4 Corner of  
Section 9, T5N, R5E which is kept available to the public as a  
record in the County Central Files.

1           6. Third Party Plaintiff Wilson Austin completed the  
2 survey and staking out Plaintiff's real property using the  
3 section corner tie documentation obtained from Maricopa Highway  
4 Department Central Files.

5           7. Thereafter Plaintiff moved a house to the surveyed  
6 site.

7           8. After moving the house Plaintiff requested that the  
8 survey be verified by Third Party Plaintiff Wilson Austin.

9           9. Third Party Plaintiff Wilson Austin purchased from  
10 the Maricopa County Highway Department a map of the area known as  
11 Carefree Road Sheet 12, prepared by Williams and Ellis,  
12 Consulting Engineers, signed and sealed by Robert A. Murphy and  
13 dated March, 1968.

14           10. The section corner ties for the North 1/4 Corner of  
15 Section 9, T5N, R3E, as shown on the above-mentioned map is the  
16 same as shown on the Central File cards.

17           11. Third Party Plaintiff Wilson Austin thereafter  
18 informed Plaintiff that the starting point has been verified by  
19 him.

20           12. Thereafter Plaintiff claimed that Third Party  
21 Plaintiff Wilson Austin had performed an inaccurate survey.

22           13. Third Party Plaintiff Wilson Austin then used an  
23 old map entitled Desert Lake Branch of Desert Hills, NW 1/4  
24 Section 9, T5N, R3E, signed by Gregg R. Irvine dated December 31,  
25 1957, and measured distances only northward from the center of  
26 Section 9, northward across Carefree Highway the total distance  
27 shown on the map and discovered a 1-inch pipe stake and located  
28 the original intersection corners. This 1-inch pipe stake is the  
29 North 1/4 corner of Section 9.

30           14. The survey monument set by Maricopa County on the  
31 Williams and Ellis map is 122.80' feet south of the North 1/4  
32 corner of Section 9, and 19.94' east of the North to South

1 midsection line.

2 15. Third Party Defendant Maricopa County negligently  
3 and recklessly placed a monument as shown on the central file  
4 card and on the Williams and Ellis map claiming it to be the  
5 North 1/4 corner of Section 9 when in fact it was not the North  
6 1/4 corner of Section 9."

7 This lengthy recitation of facts as found in the  
8 Verified Third Party Complaint filed by Wilson Austin and Nella  
9 Austin, dba Wilson Austin, Survey and Maps, along with the  
10 additional facts that will be recited herein clearly demonstrate  
11 that the Plaintiff is entitled to Partial Summary Judgment on the  
12 question of liability.

13 Additional facts which are relevant are set forth in  
14 the Affidavit of D. Jean Staten attached hereto and incorporated  
15 herein.

16 Mrs. Staten's Affidavit reveals that on or about the  
17 11th day of February, 1979, she entered into an agreement to  
18 purchase a parcel of land approximately 4.70 acres in size south  
19 of the Carefree Highway on the west side of 12th Street.

20 Mrs. Staten then engaged the services of Wilson Austin,  
21 a registered land surveyor in Maricopa County, to conduct a  
22 survey of the property in question. She explained to Mr. Austin  
23 that the purpose in conducting the survey was for the reason that  
24 the Plaintiff would be literally lifting and moving a home which  
25 she had in Glendale to a new site south of the Carefree Highway.  
26 Attached hereto and incorporated herein by reference as Exhibit A  
27 is a copy of the initial survey performed by Wilson Austin, which  
28 he claimed showed the correct boundary lines and area of the  
29 property purchased by the Plaintiff.

30 Not only is the survey incorrect, it has been shown to  
31 be incorrect by Mr. Austin! By his own admission Wilson Austin  
32

1 has judicially admitted that the survey he conducted was  
2 incorrect and that improper section lines were used by him in  
3 preparing a survey of the Staten property. This has been  
4 judicially admitted in the pleadings filed to date and there is  
5 no necessity to elaborate further upon the point. As stated in  
6 the landmark case of Sample v. Barnes, 14 (HOW) U.S. 70, 14 L.Ed  
7 330: "A party is not permitted to contradict statements or  
8 admissions contained in his pleadings or papers executed in  
9 judicial proceedings."

10 This case and several hundred that have followed since  
11 then have uniformly adopted the rule that a party is bound by  
12 the allegations or admissions contained in pleadings or papers  
13 executed in judicial proceedings. This rule has found universal  
14 support for two hundred years, and all jurisdictions have  
15 uniformly held that parties shall be bound by the allegations  
16 or admissions of fact in their own pleadings. See Hodges v.  
17 Atlantic Coastline Railway Company, 238 F.Supp. 425.

18 In this case, not only has Mr. Austin admitted his  
19 mistake he has gone into great detail explaining how said error  
20 was committed.

21 A case which is closely related to the one at hand is  
22 Taft v. Rutherford, 66 Wash, 256, 119 P. 740 (1911). There, the  
23 owner of a lot was awarded the reasonable removal cost of a  
24 building which he had constructed in reliance on an erroneous  
25 survey by a civil engineer. The engineer admitted that a wrong  
26 survey was made and there was an admission that the agent who  
27 actually did the work had overlooked certain matters.

28 The Court held that where a survey is made with  
29 reference to a particular building or use to which the lot is to  
30 be put a surveyor will be held liable for the damages naturally  
31 flowing from his error. The Court rejected the Defendants'  
32 arguments that the damages should have been limited to those

1 directly due to the mistake, namely the cost of a correct  
2 survey.

3           Of equal importance is the decision in Rozny v. Marnul,  
4 250 N.E.2d 656 (1969). In that case a survey had been performed  
5 for the seller of the property. The plaintiffs therein were the  
6 subsequent purchasers of the house and lot described in the plat.  
7 The Plaintiffs relied upon the accuracy of the survey in  
8 extending their driveway and in constructing a garage on the lot.

9           After discovering that because of errors in the survey  
10 the garage and portions of the driveway had encroached upon  
11 adjacent property, the Plaintiffs sued the surveyor for damages  
12 and were granted an award based upon the estimated cost of  
13 removing and rehabilitating the house and the garage.

14           Among the factors considered by the Court in upholding  
15 this award was the defendants' knowledge that the plat would be  
16 used and relied upon by others and that reliance thereon would  
17 cause actions such as construction of permanent improvements.  
18 The Court reasoned that it would be undesirable to require an  
19 innocent reliant party to carry the burden of a surveyor's  
20 professional mistakes and that recovery by a reliant user whose  
21 ultimate use is foreseeable would promote cautionary techniques  
22 among surveyors! Laudable reasoning.

23           As is stated in the Affidavit of D. Jean Staten  
24 attached hereto and incorporated herein along with its Exhibits,  
25 Mr. Austin admitted his mistakes to Mrs. Staten verbally and in  
26 writing. In fact, he tried to have Mrs. Staten acquire certain  
27 property from the adjoining lot owner so that the improvements  
28 that had been constructed by Mrs. Staten in reliance upon Mr.  
29 Austin's survey would then fall within her boundary lines.

30           Based on all of the foregoing and considering the fact  
31 that the Complaint sounds not only in negligence but in breach of  
32 contract it is respectfully submitted that the Plaintiff is

1 entitled to summary judgment on the issue of liability.

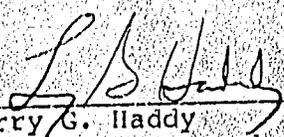
2 WHEREFORE the Plaintiff prays that this Court enter an  
3 judgment forthwith in favor of the Plaintiff and against the  
4 Defendants Wilson Austin and Nella Austin, his wife, dba Wilson  
5 Austin, Surveys and Maps, on the question of liability on both  
6 Counts of the Complaint.

7 DATED this 22<sup>nd</sup> day of May, 1981.

8 MARTINEZ, CURTIS, GOODWIN, KARASEK  
9 & HADDY

10 By 

11 Jay M. Martinez  
12 3003 North Central Avenue  
13 Suite 1402  
14 Phoenix, Arizona 85012  
15 Attorneys for Plaintiff

16 By 

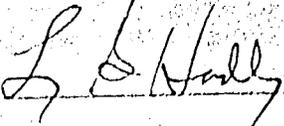
17 Larry G. Haddy  
18 3003 North Central Avenue  
19 Suite 1600  
20 Phoenix, Arizona 85012  
21 Attorneys for Plaintiff

22 Copy of the foregoing Motion  
23 mailed this 22<sup>nd</sup> day of  
24 May, 1981, to:

25 Honorable Marilyn Riddel  
26 Superior Court Judge  
27 Division 11, 9th Floor, E.C.B.  
28 101 West Jefferson  
29 Phoenix, Arizona 85003

30 Steve Bass  
31 Bass and Bookspan  
32 1224 East Missouri  
Phoenix, Arizona 85014  
Attorney for Defendant and  
Third Party Plaintiffs

Cleon M. Duke  
Deputy County Attorney  
101 West Jefferson  
Phoenix, Arizona 85003  
Attorney for Third Party Defendant

33 By 

AFFIDAVIT

1  
2           D. JEAN STATEN, being first duly sworn, deposes and  
3 says that:

4           1. I am the Plaintiff in the above-captioned and  
5 numbered action and am submitting this Affidavit in support of a  
6 Motion for Partial Summary Judgment.

7           2. On or about February 11, 1979 I did acquire a  
8 parcel of property approximately 4.70 acres in size south of the  
9 Carefree Highway on the west side of 12th Street. My intent in  
10 purchasing this property was to literally lift up my home in  
11 Glendale, Arizona and have it moved to an already established and  
12 laid foundation on this new piece of property. This information  
13 was readily known and made available to the surveyor that I  
14 selected to conduct a survey of my new property, to wit, Wilson  
15 Austin.

16           3. Sometime prior to April of 1979 I did contract with  
17 Wilson Austin, dba Wilson Austin, Surveys and Maps, for a survey  
18 of this new piece of property. He prepared and was paid for a  
19 survey of the property in question which survey has been attached  
20 as Exhibit A. I had provided Wilson Austin with the legal  
21 description of the property and relied upon the fact that he  
22 claimed to be a licensed and registered surveyor competent to  
23 perform surveys in the State of Arizona.

24           4. The survey which he did perform for me as contained  
25 in Exhibit A was and is, in fact, an inaccurate and incorrect  
26 survey by his own admission to me on numerous occasions. I  
27 contacted him several times during the spring and summer of 1980  
28 and in each instance he freely and readily admitted that he had  
29 made a mistake in the preparation of said survey.

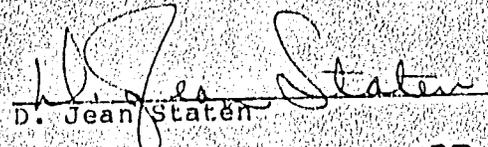
30           5. Mr. Wilson Austin then prepared a second survey  
31 sometime in May of 1980 providing me with a copy of same which  
32 copy is attached hereto and incorporated herein by reference as

1 Exhibit B, showing that I was encroaching approximately 33 feet  
2 onto the land of a lady named Rose Tucevich. This was a further  
3 admission, in writing, that an improper and incorrect survey had  
4 been performed by said Wilson Austin.

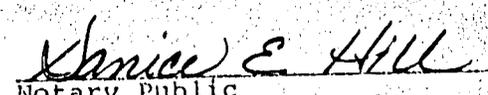
5 6. Thereafter I spoke with Mr. Wilson Austin on the  
6 telephone and he advised me to file suit against him because he  
7 would then proceed to file suit against Maricopa County.

8 7. Affiant alleges that in moving her home she relied  
9 upon the professional skill and competence of Wilson Austin in  
10 preparing an accurate and correct survey of her new property.  
11 She contracted with Wilson Austin for such services and Affiant  
12 affirms that she paid Mr. Austin for his services and did not  
13 receive an accurate or correct survey but rather received a  
14 survey that had been improperly and incorrectly prepared.

15 Further Affiant sayeth naught.

16  
17   
18 D. Jean Staten

19 SUBSCRIBED AND SWORN TO BEFORE ME this 22 day of  
20 May, 1981.

21  
22   
23 Notary Public

24 My Commission Expires:  
25 My Commission Expires Sept. 30, 1984

# IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION	
APPEALS	<input checked="" type="checkbox"/>
BONDS - RETURN	<input checked="" type="checkbox"/>
FORFEITURE	<input checked="" type="checkbox"/>
CHANGE OF VENUE	<input checked="" type="checkbox"/>
JURY FEES	<input checked="" type="checkbox"/>
DEMANDS	<input checked="" type="checkbox"/>
SENTENCING	<input checked="" type="checkbox"/>

27

May 29, 1981

HON. WILLIAM P. FRENCH

~~XUONXEMARILYNXXRIDDLE~~

WILSON D. PALMER, Clerk

Deputy

~~CYFAUST JR~~

420852

D. JEAN STATEN

Larry G. Haddy

VS.

WILSON AUSTIN

Jay M. Martinez

IT IS ORDERED setting oral argument on Plaintiff's  
Motion for Partial Summary Judgment

on June 25, 1981, at 8:45 a.m. in this division.

FURTHER ORDERED that unless a responding memorandum is filed no later than 5:00 p.m. of June 19, 1981, it will not be considered, and the Motion will be summarily disposed of in accordance with Rule IV of the Uniform Rules of Practice.

1607-278

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: JUN 1 1981

Processed: JUN 1 1981

Page

17

**IN THE SUPERIOR COURT**  
**OF**  
**MARICOPA COUNTY, STATE OF ARIZONA**

OFFICE DISTRIBUTION	
APPEALS	
BONDS - RETURN	
FOUNTAIN	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	



27 June 11, 1981 HON. WILLIAM P. FRENCH WILSON D. PALMER, Clerk  
DIV DATE JUDGE OF COMMISSIONER J. Whitney Deputy

420852

D. JEAN STATHEN

Jay M. Martinez

vs.

WILSON AUSTIN, et ux

Steve Bass

County Attorney  
 By: Cleon M. Duke

IT IS ORDERED *Hunc Pro Tunc* as of May 29, 1981,  
 correcting that minute entry to reflect the correct attorneys  
 for their respective sides as above.

CLERK OF THE COURT  
 MAIL DISTRIBUTION CENTER

Received: JUN 15 1981

Processed: JUN 15 1981

1 LAW OFFICES  
Martinez, Curtis, Goodwin, Karasek & Huddy  
2 SUITE 1402  
3003 NORTH CENTRAL AVENUE  
3 PHOENIX, ARIZONA 85012  
TELEPHONE (602) 248-0372

RECEIVED  
JUN 22 11:11 AM '81  
CLERK OF SUPERIOR COURT

4  
5 Attorneys for Plaintiff

6  
7  
8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
9 IN AND FOR THE COUNTY OF MARICOPA

10 D. JEAN STATEN, ) CAUSE NO. C420852  
11 Plaintiff, )  
12 vs. ) APPLICATION FOR ENTRY  
13 WILSON AUSTIN, dba WILSON ) OF PARTIAL SUMMARY  
14 AUSTIN, SURVEYS AND MAPS, ) JUDGMENT  
15 Defendants. ) (Assigned to the Honorable  
16 WILSON AUSTIN and NELLA ) William P. French, Div. 27)  
17 AUSTIN, his wife, )  
18 Third Party Plaintiffs, )  
19 vs. )  
20 MARICOPA COUNTY, ARIZONA, )  
21 Third Party Defendants. )

22 Plaintiff D. Jean Staten, by and through her attorneys  
23 undersigned, pursuant to the provisions of Rule 4(a) and (b)  
24 Uniform Rules of Practice of the Superior Court of Arizona,  
25 hereby applies to this Court for a Summary Order Entering Partial  
26 Summary Judgment on behalf of the Plaintiff and against the  
27 Defendants, and each of them, as prayed for in the Motion for  
28 Partial Summary Judgment.

29 This application is based upon the attached Memorandum  
30 of Points and Authorities.

31 Dated this 22nd day of June, 1981.  
32

MARTINEZ, CURTIS, GOODWIN, KARASEK  
& HADDY

By *William J. Gallivan*  
for Jay M. Martinez  
3003 North Central  
Suite 1402  
Phoenix, Arizona 85012

MEMORANDUM OF POINTS AND AUTHORITIES

On or about May 22, 1981 a Motion for Partial Summary Judgment was filed in this action by the Plaintiff against the Defendants Austin.

On May 29, 1981 this Court set the matter for hearing on June 25, 1981 at 8:45 a.m. and entered a further order as follows:

"FURTHER ORDERED that unless a responding memorandum is filed no later than 5:00 p.m. of June 19, 1981, it will not be considered, and the motion will be summarily disposed of in accordance with Rule 4 of the Uniform Rules of Practice.  
(Emphasis Added)

June 19, 1981 has come and gone and no responsive pleading or other memorandum has been filed by the Defendants Austin.

Rule 4(b) of the Uniform Rules of Practice of the Superior Court provides as follows:

"If a motion does not conform in all substantial respects to the requirements of this rule, or if the opposing party does not serve and file the required answering memorandum. . . . The Court may dispose of the motion summarily." (Emphasis Added)

In view of the cited rule and in view of this Court's Order of May 29, 1981, the Plaintiff Staten believes that she is entitled to an order from this Court entering Partial Summary Judgment as prayed for in her Motion.

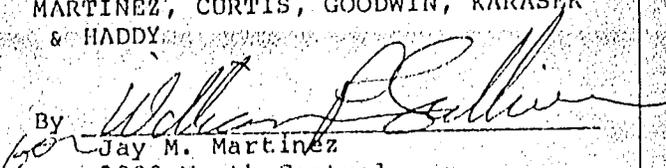
Finally, in the event that the Defendants decide to file any type of responsive pleading at this late date, pursuant to all of the above cited rules, and, in addition, Rule 12(g)

1 Arizona Rules of Civil Procedure, the Plaintiff would hereby move  
2 to strike any such response filed by the Defendants.

3 WHEREFORE based upon all of the foregoing authorities  
4 and the facts of this case as reflected herein, the Plaintiff  
5 States moves for a summary application from this Court granting  
6 her Motion for Partial Summary Judgment on the issue of liability  
7 against the Defendants, and each of them, and entering Partial  
8 Judgment for and on behalf of said Plaintiff.

9 RESPECTFULLY SUBMITTED this 22nd day of October, 1981.

10 MARTINEZ, CURTIS, GOODWIN, KARASEK  
11 & HADDY

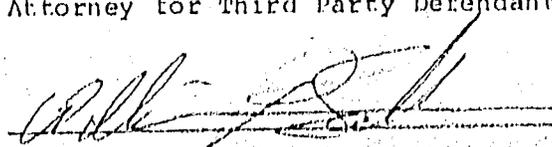
12 By   
13 Jay M. Martinez  
14 3003 North Central  
Suite 1402  
Phoenix, Arizona 85012

15 Copy of the foregoing  
16 mailed this 22nd day  
of June, 1981 to:

17 Honorable William P. French  
18 Criminal Presiding Judge  
Division 27, 5th Floor  
19 101 West Jefferson  
Phoenix, Arizona 85003

20 Steve Bass  
21 Bass & Bookspan  
1224 East Missouri  
22 Phoenix, Arizona 85014  
Attorney for Defendant and  
23 Third Party Plaintiffs

24 Cleon M. Dukes  
Deputy County Attorney  
25 101 West Jefferson  
Phoenix, Arizona 85003  
26 Attorney for Third Party Defendant

27   
28

**IN THE SUPERIOR COURT**

OF

MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION

APPEALS	
BOARDS - REVIEW	
CONFIDENTIAL	
CHANGE OF VENUE	
WRITS	
REMANDS	
SENTENCING	

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27

June 25, 1981

HON. WILLIAM P. FRENCH

WILSON D. PALMER, Clerk

Deputy

J. Whitney

DIV

DATE

JUDGE OR COMMISSIONER

C 420852

D. JEAN STATEN

Jay M. Martinez

vs.

WILSON AUSTIN, dba WILSON AUSTIN,  
SURVEYS AND MAPS

Steve Bass

County Attorney  
by: Cleon M. Dukes

Oral arguments having been heard,

IT IS ORDERED granting Plaintiff's Motion for  
Partial Summary Judgment.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: JUN 26 1981

Page

2

Processed: JUN 26 1981

**IN THE SUPERIOR COURT**  
**OF**  
**MARICOPA COUNTY, STATE OF ARIZONA**

3

OFFICE DISTRIBUTION	
APPEALS	
BONDS - REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

27  
DIV

July 20, 1981  
DATE

HON. WILLIAM P. FRENCH  
JUDGE OF COMMISSIONER

WILSON D. PALMER, Clerk  
J. Whitney Deputy

20852

D. JEAN STATEN

Jay M. Martinez

vs.

WILSON AUSTIN

Steve Bass

County Attorney  
by: Cleon M. Dukes

Formal written Judgment is signed by the Court  
this date.

Judgment previously filed.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: JUL 21 1981

Processed: JUL 21 1981

Page 8

1931 NOV -9. PM 4: 27

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 )  
 ) WILSON AUSTIN, d/b/a WILSON )  
 ) AUSTIN, SURVEYS AND MAPS, )  
 )  
 ) Defendant. )

NO. C420852  
ANSWER TO THIRD PARTY COM-  
PLAINT

\_\_\_\_\_  
WILSON AUSTIN and NELL )  
AUSTIN, his wife, )  
 )  
 ) Third Party Plaintiffs, )  
 )  
 ) vs. )  
 )  
 ) MARICOPA COUNTY, ARIZONA, )  
 )  
 ) Third Party Defendants. )  
\_\_\_\_\_

Third Party Defendant, Maricopa County, Arizona, by the  
Maricopa County Attorney, through his deputy undersigned,  
answers the Third Party Complaint as follows:

I

Denies having sufficient knowledge of information to  
form a belief as to the truthfulness or accuracy contained  
in the Third Party Complaint, paragraphs numbered IV, V, VI,  
IX, XI and thereby denies same.

II

Denies the allegations contained in the Third Party  
Complaint paragraphs numbered XIII, XIV, XV, XVI and XVIII.

III

Admits the allegations of Third Party Complaint, para-  
graphs numbered I, II, III, VII, VIII and X, XII, and XVII.

AFFIRMATIVE DEFENSES

IV

For its affirmative defenses, Third Party Defendant

THOMAS E. COLLINS  
MARICOPA COUNTY ATTORNEY  
403 SUPERIOR COURT BUILDING  
PHOENIX, ARIZONA 85003

1 alleges failure to state a claim upon which relief can be  
2 granted; failure to join a party under Rule 19; assumption  
3 of risk; contributory negligence; estoppel; license; statute  
4 of limitations; and laches.

5 WHEREFORE, Third Party Defendant, Maricopa County, re-  
6 quests that this Court dismiss the Complaint by the Third  
7 Party Plaintiff; that said Third Party Plaintiff take nothing;  
8 and that the Third Party Defendant have and recover its cost;  
9 and for such other and further relief as to this Court may  
10 be deemed just or equitable.

11 Dated this 9<sup>th</sup> day of November, 1981.

12 MARICOPA COUNTY ATTORNEY'S OFFICE

13 By Noel J. R. Levy  
14 NOEL J. R. LEVY  
15 DEPUTY COUNTY ATTORNEY

16 Copy of the foregoing  
17 mailed this 9 day of  
18 November, 1981, to:

19 Stephen E. Bass,  
20 1224 East Missouri  
21 Phoenix, Arizona 85014  
22 Attorney for Third Party  
23 Plaintiff Austin

24 Jay M. Martinez,  
25 3003 North Central  
26 Suite 1402  
27 Phoenix, Arizona 85012  
28 Attorney for Plaintiff  
29 Statton

30 Noel J. R. Levy  
31 Noel J. R. Levy  
32 Deputy County Attorney

**Judgment  
or  
Decree**

JAN 27 1982

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WILSON C. PALMER, CLERK  
BY *[Signature]*  
FILED  
1982 JAN 26 PM 4:38

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LAW OFFICES  
Martinez, Curtis, Goodwin, Karisek & Huddy  
SUITE 1402  
3003 NORTH CENTRAL AVENUE  
PHOENIX ARIZONA 85012  
TELEPHONE (602) 248-0372

Attorneys for Plaintiff



FEB 01 1982

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,	)	CAUSE NO. C420852
	)	
Plaintiff,	)	JUDGMENT 
	)	
vs.	)	
	)	
WILSON AUSTIN, dba WILSON	)	(Assigned to the Honorable
AUSTIN, SURVEYS AND MAPS,	)	William P. French, Div. 27)
	)	
Defendants.	)	
-----		
WILSON AUSTIN and NELLA	)	
AUSTIN, his wife,	)	
	)	
Third Party Plaintiffs,	)	
	)	
vs.	)	
	)	
MARICOPA COUNTY, ARIZONA,	)	
	)	
Third Party Defendants.	)	
-----		

The Plaintiff, D. Jean Staten, having moved for a partial summary judgment on the issue of liability both in negligence and in contract against the Defendants Wilson Austin and Nella Austin, husband and wife, dba Wilson Austin Surveys and Maps, and the matter having been set for oral argument on June 25, 1981, and the court having considered all memoranda filed by counsel and having heard oral arguments with respect to same;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that the Plaintiff, D. Jean Staten, shall have judgment against the Defendants, Wilson Austin and Nella Austin, husband and wife, dba Wilson Austin Surveys and Maps on the issue of liability, both

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an to negligence and breach of contract.

IT IS FURTHER ORDERED that there being no just reason for delay pursuant to the provisions of Arizona Rule of Civil Procedure Rule 54 (b), that this Judgment be entered forthwith pursuant to said rule.

DONE IN OPEN COURT this 20 day of July, 1981.

  
\_\_\_\_\_  
Judge of the Superior Court

IN THE SUPERIOR COURT  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION	
APPEALS	
BONDS	REFUND
FORFEITURE	
CHANGE OF	
SENTENCING	

#40

2-22-82

Hon. Noel A. Fidel  
JUDGE OF COMMISSIONER

WILSON D. PALMER, Ct. Admin. Deputy

420852

D. Jean Staten

Jay M. Martinez

vs.

Wilson Austin & Jane Doe Austin, DBA  
Wilson Austin, Survey, & Maps

Stephen E. Bass

Pursuant to Rule V(d), Uniform Rules of Practice, as modified to affect this case,

IT IS ORDERED placing this case on the Inactive Calendar for dismissal on 4-22-82 without further notice unless in the meantime the following identified action occurs:

1. The issues in the case are joined and a Motion to Set and Certificate of Readiness is filed; or a default is entered and a judgment is entered and filed.
2. Judgment is entered and filed.
3. Motion to Set and Certificate of Readiness is filed or judgment is entered.

Cases filed 9-22-80 to 10-9-80  
Dismissal of 4-22-82

**IN THE SUPERIOR COURT**  
**OF**  
**MARICOPA COUNTY, STATE OF ARIZONA**

OFFICE DISTRIBUTION	
APPEALS	
BONDS, REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

40  
DIV

3-16-82  
DATE

HON. NOEL A. FIDEL  
JUDGE OR COMMISSIONER

WILSON D. PALMER, Clerk  
M. Catt Deputy

C

D. Jean Staten  
VS,

Jay M. Martinez

20852

Wilson Austin, et ux,  
etal

County Atty  
By: Cleon Dukes

Stephen E. Bass

IT IS ORDERED that Bass and Bookspan  
 is permitted to withdraw as counsel of record for the  
Defendant, all in accordance with the formal written  
 Order approved and signed 3-15-82.

**IN THE SUPERIOR COURT**  
**OF**  
**MARICOPA COUNTY, STATE OF ARIZONA**

OFFICE DISTRIBUTION	
APPEALS	
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FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
PLEADINGS	
SENTENCING	

3-24-82  
DATE

HON. NOEL A. EIDEL  
JUDGE OF COURSE

WILSON D. PALMER, Clerk  
 M. Catt Deputy

4 0852

D. JEAN STATEN

Jay M. Martinez

VS

WILSON AUSTIN, d/b/a WILSON AUSTIN,  
 SURVEYS AND MAPS

Stephen E. Bass

Deputy County Attorney  
 By: Cleon M. Dukes

Wilson Austin  
 1803 West Heatherbrae Dr.  
 Phoenix, AZ 85015

Counsel for the Plaintiff having brought to the Court's attention defense counsel's failure to provide an address and telephone number where defendant Wilson Austin can be reached and pleadings sent, and defense counsel having subsequently supplied said information,

IT IS ORDERED affirming this Court's Order of March 15, 1982 allowing Bass & Bookspan to withdraw as counsel for defendant Wilson Austin.

CLERK OF THE COURT  
 MAIL DISTRIBUTION CENTER

Received: MAR 26 1982

WILSON B. PALMER, CLERK  
BY *[Signature]*  
FILED  
1982 APR -6 AM 10:45  
DEP.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,  
Plaintiff,

-vs-

WILSON AUSTIN, dba  
WILSON AUSTIN, SURVEYS & MAPS,  
Defendant.

No. C 420852

NOTICE OF APPEARANCE

NOTICE IS HEREBY GIVEN that the firm of O'CONNOR,  
CAVANAGH, ANDERSON, WESTOVER, KILLINGSWORTH & BESHEARS, by Ralph  
Hunsaker, enters its appearance on behalf of defendant Wilson  
Austin, dba Wilson Austin, Surveys and Maps.

DATED this 5th day of April, 1982.

O'CONNOR, CAVANAGH, ANDERSON,  
WESTOVER, KILLINGSWORTH & BESHEARS

BY *[Signature]*  
RALPH HUNSAKER  
Attorneys for Defendant

COPY of the foregoing mailed  
this 5th day of April, 1982, to:

Jay M. Martinez  
Martinez, Curtis, Goodwin & Karasek  
3003 N. Central, Suite 1600  
Phoenix, Arizona 85012  
Attorneys for Plaintiff

Cleon Dukes  
Deputy County Attorney  
101 W. Jefferson  
Phoenix, Arizona 85003  
Attorney for Third-Party Defendants

A PROFESSIONAL ASSOCIATION  
1800 N. CENTRAL AVENUE, SUITE 1600  
PHOENIX, ARIZONA 85012  
(602) 263-3811

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# IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION

APPEALS	
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RETURN	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

4-13-82

DATE

HON. NOEL A. FIDEL

JUDGE OF COMMISSIONER

WILSON D. PALMER,  
R. Lowry

Clerk  
Deputy

D. Jean Staten

• Jay M. Martinez

US.

Wilson Austin, et ux,  
dba Wilson Austin Survey  
& Maps

• Stephen E. Bass

• Wilson Austin  
1803 W. Heatherbrae Dr.  
Phoenix, Az 85015

having been filed,

A Motion to Set and Certificate of Readiness

IT IS ORDERED as follows:

1. Trial to ~~the~~ the Court is set in this  
Division at 9:30 A.M. on July 1, 1982.  
Estimated time: 1 Day.

2. Joint pretrial statement in accordance  
with Uniform Rule VI shall be filed three (3) judicial days prior  
to trial with the following modification:

Lists or schedules of all the exhibits which  
will be offered into evidence by the parties shall be provided,  
which shall: (A) describe the exhibits sufficiently for ready  
identification; (B) indicate those exhibits agreed by the parties  
to be admissible at trial; (C) with respect to each exhibit on the  
lists or schedules, counsel shall either agree as to admissibility  
or reach such stipulations regarding the exhibits as is possible.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Continued...

Received: APR 15 1982

Page ?

Processed: APR 15 1982

# IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

APPEALS
BONDS - RETURN
CONFEITURE
CHANGE OF VENUE
JURY FEES
REMANDS
SENTENCING

3

4-13-82  
DATE

HON. NOEL A. FIDEL  
JUDGE OF COURSE

WILSON D. PALMER, Clerk  
R. Lowry Deputy

20852

D. Jean Staten vs. Austin

(Continued)

and list the objections, and the grounds therefore, of the party against whom the exhibits will be offered on trial. It is not sufficient for the objecting party to simply state the perfunctory grounds for his objection (eg, "hearsay" or "lack of foundation"). The party must go on to explain the basis for his objection.

3. Requested jury instructions and any trial memoranda the parties wish to file shall be filed with the joint pretrial statement.

4. All motions shall be filed no later than 30 days prior to trial so they can be scheduled, briefed, argued and decided prior to trial, with the exception of Motions in Limine, which shall be filed no later than with the joint pretrial statement or deemed waived.

5. All counsel shall meet with the Clerk prior to 9:00 a.m. on the trial date to mark exhibits.

6. The parties are reminded that this Division is participating in the Civil Delay Reduction Project and the rules and policies thereof apply to this case. There will be no continuances except by Motion to the Court demonstrating extraordinary circumstances. Unavailability of a witness, lay or expert, will rarely be considered good cause if alternative methods of presenting the testimony are or were available.

7. If this Division is unable to begin trial on or about the date set herein, another division will be located for you which will hear the case.

8. The parties are directed to advise the Court immediately of any settlement. If such advice is after 2:00 p.m. the last judicial day preceding trial, fees for the jury panel will be assessed (equally on all parties, absent some other agreement between or among the parties).

9. Pretrial conference will be set if requested by any party.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: APR 15 1982

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Processed: APR 15 1982

# IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

APPEAL
REVISIONS
REPLIES
PREPARE
CHANGE OF VENUE
JURY FEES
REMANDS
SENTENCING

3

6-1-82

DATE

HON. NOEL A. FIDEL  
JUDGE OR COMMISSIONER

WILSON D. PALMER, Clerk  
M. Catt r1 Deputy

420852

D. JEAN STATEN

Jay M. Martinez

vs.

WILSON AUSTIN, et ux.,  
et al.

Ralph Hunsaker

Noel Levy-County Attorney

IT IS ORDERED setting oral argument on Joint Motion

For Continuance of Trial

on June 21, 1982 at -11:30 a.m. in this division, Central Court Building, 11th Floor.

IT IS FURTHER ORDERED as follows:

Oral argument shall not exceed five minutes for each side. If extended oral argument is necessary, Counsel must so advise the Court no later than four (4) court days prior to the date set for hearing so that oral argument can be rescheduled. Any motion or stipulation for continuance must be filed with the Court no later than two (2) court days prior to the date set for hearing.

All memoranda and affidavits regarding the motion must be filed and copies lodged with this division no later than two (2) court days prior to the date set for hearing, failing which the motion may be ruled upon in accordance with Rule IV(b) of the Uniform Rules of Practice.

Telephonic argument by any or all Counsel is invited on all motions not requiring the taking of live testimony except motions to continue trial dates. Counsel are responsible for connecting with the Court by phone prior to 8:45 a.m., failing which oral argument will be deemed waived. The costs of any such procedure shall be borne by the parties.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: JUN 1 1982

Processed: JUN 2 1982

Page 3.2

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W. J. WALKER, CLERK  
BY: [Signature]  
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LAW OFFICES  
**Martinez & Curtis**  
SUITE 1205  
3003 NORTH CENTRAL AVENUE  
PHOENIX, ARIZONA 85012  
TELEPHONE (602) 248-0372

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

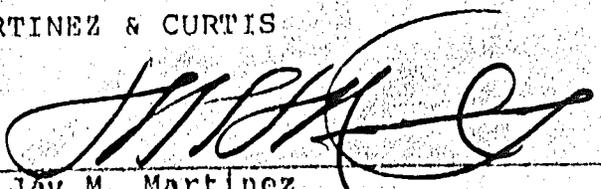
D. JEAN STATEM,	)	Cause No. C420852
	)	
Plaintiff,	)	MOTION TO ACCELERATE
	)	AND
vs.	)	ORDER
	)	
WILSON AUSTIN, dba WILSON AUSTIN,	)	(Assigned to the
SURVEY & MAPS,	)	Honorable Noel A. Fidel)
	)	
Defendants.	)	

Plaintiff, by and through her attorneys undersigned, hereby moves this Court for an order accelerating hearing on the Plaintiff's Motion for Order Compelling Discovery being filed concurrently herewith.

This Motion is based upon the attached Memorandum of Points and Authorities.

DATED this 2nd day of June, 1982.

MARTINEZ & CURTIS

By 

Jay M. Martinez  
3003 North Central Avenue  
Suite 1205  
Phoenix, Arizona 85012  
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

1  
2 On April 23, 1982 Plaintiff served a Request for  
3 Production of Documents or Things upon the Defendant's Wilson and  
4 their attorneys. On June 2, 1982 the attorney's for said  
5 Defendants responded alleging that no answers would be provided  
6 and that the Requests were irrelevant. A Motion to Compel  
7 Discovery is being filed concurrently with this Motion asking the  
8 Court to Order full discovery and to Order an award of attorney's  
9 fees in favor of the Plaintiff.

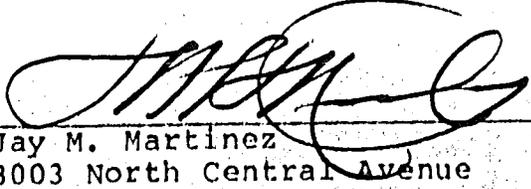
10 The trial in this matter has been set for July 1, 1982  
11 and even though a Stipulation to Continue the subject trial has  
12 presently been filed before this Court there is no assurance that  
13 the Court will order such a continuance.

14 In view of the shortness of time and the position taken  
15 by the Defendants Wilson and their counsel it is imperative that  
16 a hearing be held on this matter as quickly as possible.

17 Accordingly your movant prays that this Court sign the  
18 attached Order Accelerating hearing on the Plaintiff's Motion for  
19 Order Compelling Discovery to the first available date.

20 DATED this 2nd day of June, 1982.

21 MARTINEZ & CURTIS

22  
23 By 

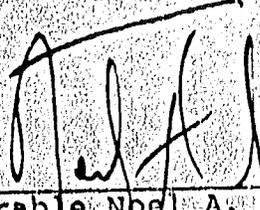
24 Jay M. Martinez  
25 3003 North Central Avenue  
Suite 1205  
Phoenix, Arizona 85012  
Attorneys for Plaintiff

ORDER

1  
2 Based upon the foregoing Motion to Accelerate and Good  
3 Cause appearing therefor,

4 IT IS HEREBY ORDERED, that the Plaintiff's Motion for  
5 Order Compelling Discovery shall be heard before this Court on  
6 the 7<sup>th</sup> day of JUNE, 1982 at the hour of  
7 10:15 o'clock A.m.

8 DONE IN OPEN COURT this 2ND day of JUNE,  
9 1982.

10  
11   
12 Honorable Noel A. Fidel  
13 Judge of the Superior Court  
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1 Copy of the foregoing Motion to  
2 Accelerate hand delivered this  
3 2nd day of June, 1982, to:

3 Honorable Noel A. Fidel  
4 Judge of the Superior Court  
5 201 West Jefferson, 11C  
6 Phoenix, Arizona 85003

7 Tyrell Taber, Esq.  
8 O'Connor, Cavanagh, Anderson,  
9 Westover, Killingsworth & Beshears  
10 Suite 1800  
11 3003 North Central Avenue  
12 Phoenix, Arizona 85012  
13 Attorneys for Defendants

14 Noel Levy, Esq.  
15 Deputy County Attorney  
16 101 West Jefferson, 400  
17 Phoenix, Arizona 85003  
18 Attorney for Third-Party Defendants

19  
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# IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

APPEALS	
REVISION	REPEAL
CONFITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

6-4-82  
DATE

HON. NOEL A. FIDEL  
JUDGE OF COMMISSIONER

WILSON D. PALMER, Clerk  
M. Catt fl Deputy

D. JEAN STATEN

Jay M. Martinez

vs.

WILSON AUSTIN  
dba WILSONAUSTIN SURVEY & MAPS

Tyrell Taber

County Attorney  
By: Noel Levy

Ralph Hunsacker

IT IS ORDERED granting Plaintiff's Motion to accelerate hearing; formal written order signed by the Court June 2, 1982.

IT IS ORDERED setting oral argument on Plaintiff's Motion

to Compel

on June 7, 1982 at 10:15 a.m. in this division, Central Court Building, 11th Floor. ORDERED joint motion to continue shall be heard on June 7, 1982 at 10:15 a.m.

IT IS FURTHER ORDERED as follows:

Oral argument shall not exceed five minutes for each side. If extended oral argument is necessary, Counsel must so advise the Court no later than four (4) court days prior to the date set for hearing so that oral argument can be rescheduled. Any motion or stipulation for continuance must be filed with the Court no later than two (2) court days prior to the date set for hearing.

All memoranda and affidavits regarding the motion must be filed and copies lodged with this division no later than two (2) court days prior to the date set for hearing, failing which the motion may be ruled upon in accordance with Rule IV(b) of the Uniform Rules of Practice.

Telephonic argument by any or all Counsel is invited on all motions not requiring the taking of live testimony except motions to continue trial dates. Counsel are responsible for connecting with the Court by phone prior to 8:45 a.m., failing which oral argument will be deemed waived. The costs of any such procedure shall be borne by the parties.

FURTHER ORDERED vacating hearing date of June 21, 1982.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received JUN 7 1982

Exceeded JUN 8 1982

Page

22

FILED  
1982 JUN -9 AM 11:06

LAW OFFICES

Martinez & Curila

SUITE 1208  
3003 NORTH CENTRAL AVENUE  
PHOENIX, ARIZONA 85012  
TELEPHONE (602) 248-0372

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,

Plaintiff,

vs.

WILSON AUSTIN, et ux., et al.,

Defendants.

) Cause No. C420852

) STIPULATION AND ORDER  
) FOR CONTINUANCE OF  
) TRIAL

) (Assigned to the Honorable  
) Noel A. Fidel)

The parties, by and through their attorneys undersigned, move the Court for an Order continuing the trial date of July 1, 1982. The reasons for the continuance are as follows:

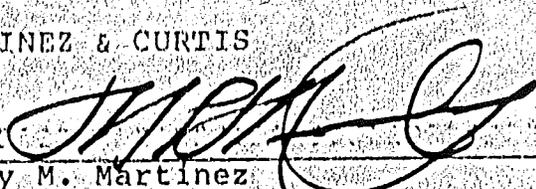
1. At the present time counsel for the Defendant Austin has a trial conflict with respect to the present setting. Also this case has now developed to the point where the Plaintiff has obtained a Summary Judgment against the Defendant Austin on the issue of liability. The only remaining issues for trial are the Plaintiff's damages and the potential liability of the third party Defendant, Maricopa County. Additionally Counsel for the Plaintiff has a conflicting schedule wherein a commitment has

1 been made to travel out of the State during the first days of  
2 July, 1982. Due to the complexity of this case, additional time  
3 is necessary to allow the case to be properly prepared for trial.  
4 The parties, through their attorneys, have discussed this matter  
5 and agree that a continuance is necessary.

6 WHEREFORE, the parties would request the Court enter an  
7 Order continuing the trial date in this matter to a date after  
8 September 1, 1982 which will be the first time that all parties  
9 will be available for trial without a trial conflict or personal  
10 calendar conflict.

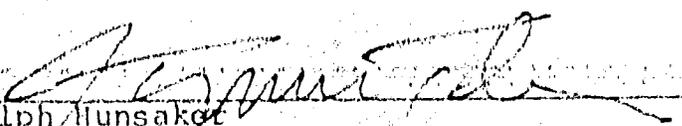
11 DATED this 18<sup>th</sup> day of May, 1982.

12 MARTINEZ & CURTIS

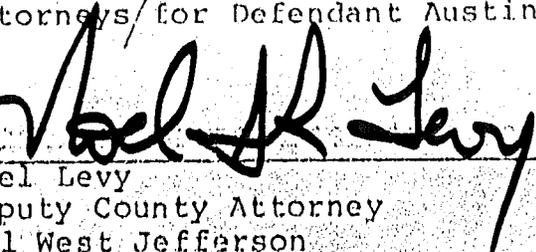
13 By 

14 Jay M. Martinez  
15 3003 North Central Avenue  
16 Suite 1205  
17 Phoenix, Arizona 85012  
18 Attorneys for Plaintiff

19 O'CONNOR, CAVANAGH, ANDERSON, WESTOVER,  
20 KILLINGSWORTH & BESHEARS

21 By 

22 Ralph Hunsaker  
23 3003 North Central Avenue  
24 Suite 1800  
25 Phoenix, Arizona 85012  
Attorneys for Defendant Austin

By 

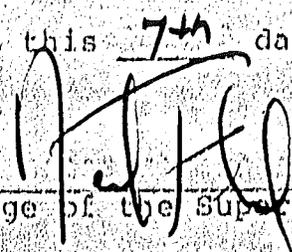
Noel Levy  
Deputy County Attorney  
101 West Jefferson  
Phoenix, Arizona 85003  
Attorney for Defendant Maricopa County

ORDER

Pursuant to the foregoing Stipulation, and Good Cause shown

IT IS HEREBY ORDERED continuing the trial date in the foregoing matter to a time convenient to the Court and counsel after September 1, 1982 to be set by Minute Entry.

DONE IN OPEN COURT this 7<sup>th</sup> day of June, 1982.

  
\_\_\_\_\_  
Judge of the Superior Court

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**IN THE SUPERIOR COURT**  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION	
APPEALS	
BONDS, REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

40

DIV

6-7-82

DATE

HON. NOEL A. FIDEL

JUDGE OF COMMISSIONER

WILSON D. PALMER,  
R. Lowry

Clerk  
Deputy

420852

D. JEAN STATEN

vs.

WILSON AUSTIN, et ux., et al.

Jay M. Martinez

Tyrell Taber

County Attorney  
By: Noel Levy

In chambers. This is the time set for hearing on Plaintiff's Motion to Compel and Trial Status Conference. Present are: counsel for Plaintiff, Jay Martinez, and counsel for Defendant Austin, Tyrell Taber.

No court reporter is present.

The parties agree to a limited production of financial documents demonstrative of the Defendants' income and net worth.

IT IS ORDERED for good cause vacating the trial date of July 1, 1982 and resetting trial date for September 23, 1982 at 9:30 a.m.; formal written Order signed by the Court this date.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

received: JUN 8 1982

Processed: JUN 9 1982

Page 9

**IN THE SUPERIOR COURT**  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

APPEALS	
RECORDS - RETURN	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

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8-3-82  
DATE

HON. NOEL A. FIDEL  
JUDGE OF COURSE

VIVIAN KRINGLE, Clerk  
R. Lowry Deputy

2  
420852

D. JEAN STATEN

vs.

WILSON AUSTIN, et al.

• Jay M. Martinez

Ralph Hunsaker

• Thomas O'Leary

J. Tyrell Taber

Noel Levy-C.A.

In chambers. This is the time set for hearing on Defendant's Motion for Protective Order. Present are: Jay M. Martinez, Thomas O'Leary, J. Tyrell Taber, and Lyle Hoffman appearing for Noel Levy.

No court reporter is present.

The motion is argued to the Court.

IT IS ORDERED denying Defendant's Motion for Protective Order.

The Plaintiff is permitted to conduct a further deposition of Defendant Austin limited to such inquiry as may be appropriate concerning the Defendant's financial standing in light of the Plaintiff's punitive damage claim.

CLERK OF THE COURT  
MAIL DISTRIBUTION UNIT

Received AUG 5 1982

Processed: AUG 5 1982

Page

13

**IN THE SUPERIOR COURT**  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION	
APPEALS	
BONDS - RETURN	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

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8-2-82

HON. NOEL A. FIDEL  
JUDGE OF THE COURT

VIVIAN KRINGLE, Clerk  
R. Lowry Deputy

420852

D. JEAN STATEN

vs.

WILSON AUSTIN, et al.

• Jay M. Martinez

J. Tyrell Taber

• Noel J. R. Levy

IT IS ORDERED setting oral argument on Defendant  
Austin's Motion for Protective Order for August 3, 1982 at  
9:00 a.m.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: AUG 3 1982

Processed: AUG 3 1982

OFFICE OF THE MARICOPA COUNTY ATTORNEY

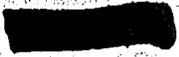
LEGAL SERVICES DIVISION  
101 W. JEFFERSON STREET, 2ND FLOOR  
PHOENIX, ARIZONA 85003  
(602) 262-8511



TOM COLLINS, COUNTY ATTORNEY

NORMAN C. KEYS, CHIEF DEPUTY

420852



C 420852

1982 AUG -6 AM 11:32  
RECEIVED  
MARICOPA COUNTY  
CLERK  
OFFICE

MEMORANDUM

TO: The Honorable Noel A. Fidel, Division 41  
11 C Central Court Building

FROM: Noel J.R. Levy, Deputy County Attorney

DATE: August 2, 1982

RE: D. Jean Staten v. Wilson Austin, et al  
Hearing set for August 3, 1982, 9:00 A.M.  
on Motion for Protective Order

Please be advised that I waive my appearance at the aforementioned hearing for the reason that I have already deposed the Defendant, Wilson Austin.

*Noel J.R. Levy*

RECEIVED  
NOEL A. FIDEL  
AUG 9 1982  
JUDGE OF THE  
SUPERIOR COURT

FILED SEP.

1982 AUG 23 PM 4: 22

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,  
Plaintiff,  
vs.  
WILSON AUSTIN, et al.,  
Defendants.

No. C 420852

NOTICE OF SETTLEMENT

(Assigned to Judge Fidel)

NOTICE IS HEREBY GIVEN that the above-entitled case has  
settled and will not proceed to trial on September 23, 1982.

DATED this 23rd day of August, 1982.

O'CONNOR, CAVANAGH, ANDERSON,  
WESTOVER, KILLINGSWORTH & BESHEARS

By J. Tyrrell Taber  
J. TYRRELL TABER  
Attorneys for Wilson Austin

COPY of the foregoing delivered  
this 23rd day of August, 1982, to:

Jay M. Martinez  
MARTINEZ & CURTIS  
3003 N. Central, Suite 1205  
Phoenix, Arizona 85012  
Attorneys for Plainiff

Noel J. R. Levy  
Maricopa County Attorney's Office  
101 W. Jefferson, 2nd Floor  
Phoenix, Arizona 85003  
Attorney for Maricopa County

Helli McCoy

LAW OFFICES  
1. AN N. WI R. KI WORT ESHE  
A PROFESSIONAL ASSOCIATION  
SUITE 1800 FIRST FEDERAL SAVINGS BUILDING  
PHOENIX, ARIZONA 85012  
(602) 263-3811  
OC 2. CA 3. AN 4. AN 5. AN 6. AN 7. AN 8. AN 9. AN 10. AN 11. AN 12. AN 13. AN 14. AN 15. AN 16. AN 17. AN 18. AN 19. AN 20. AN 21. AN 22. AN 23. AN 24. AN 25. AN 26. AN

**IN THE SUPERIOR COURT**  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION	
APPEALS	
REVISION - RETURN	
COMPLAINT	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

40  
DIV

9-7-82  
DATE

HON. NOEL A. FIDEL  
JUDGE OR COMMISSIONER

VIVIAN KRINGLE, Clerk  
R. Lowry Deputy

C 20852

D. JEAN STATEN

• Jay M. Martinez

vs.

J. Tyrrell Taber

WILSON AUSTIN, et al.

• Noel J. R. Levy

On stipulation/~~motion~~

IT IS ORDERED that the above entitled matter be dismissed with/~~without~~ prejudice as to the Complaint and Third Party Complaint, each party to bear his own costs and attorney's fees;

all in accordance with formal written Order signed by the Court on September 7, 1982.

FURTHER ORDERED vacating the trial date of -----.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received: SEP 8 1982

Processed: SEP 9 1982

IN THE SUPERIOR COURT  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

OFFICE DISTRIBUTION

APPEALS	
RETURN	RECEIVED
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

71 August 25, 1982 HON. I. SYLVAN BROWN WILSON D. PALMER, Clerk  
Div DATE JUDGE OR COMMISSIONER for: HON. NOEL A. FIDEL CPickard Deputy

C 420852

D. Jean Staten

• Jay M. Martinez

vs

Wilson Austin, et al

J. Tyrrell Taber

• County Attorney  
Noel Levy

Hon. Noel A. Fidel

Court Administrator -  
Inactive Calendar

The Court having been advised by counsel that this case is settled, and Judgment not having been presented to the Court,

IT IS ORDERED placing this cause on the Inactive Calendar for dismissal without further notice on Sept. 30 1982, unless prior thereto an Amended Motion to Set, Judgment or Order of Dismissal is filed herein.

FURTHER ORDERED vacating trial set for Sept. 23, 1982 in Div. 40, Judge Fidel.

CLERK OF THE COURT  
MAIL DISTRIBUTION CENTER

Received AUG 26 1982

IN SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN  
Plaintiff

vs

WILSON AUSTIN, et al  
Defendant

No. C-120862  
STIPULATION, OR ALTERNATIVELY, MOTION FOR  
TEMPORARY REMOVAL OF OFFICIAL COURT FILES  
TRANSCRIPTS OR EXHIBITS, AND ORDER

APR 15 1986  
FILED  
CLERK OF SUPERIOR COURT  
MARICOPA COUNTY  
PHOENIX, ARIZONA

STIPULATION

\_\_\_\_\_, Attorney for Plaintiff, and \_\_\_\_\_  
Attorney for Defendant, hereby stipulate that Attorney for \_\_\_\_\_ may  
temporarily remove the following documents until \_\_\_\_\_, 19 \_\_\_\_\_:

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendant

MOTION (if no stipulation is obtainable)

MARY KENNEDY moves this Court for an order authorizing the  
temporary removal of the following documents until APRIL 16, 19 86  
four depositions

\_\_\_\_\_  
Attorney for \_\_\_\_\_

PURPOSE OF USE (stipulation or motion)

FOR METTEE, MCGILL, MURPHY ENGINEERS TO DETERMINE BOUNDARY LINE ON PROP  
Dated this 15 day of APRIL, 19 86.

ORDER

Pursuant to the foregoing (~~stipulation~~) (motion) and good cause appearing,  
IT IS ORDERED authorizing and directing the Clerk of the Court to surrender into the  
temporary custody of the attorney seeking custody the items above specified, the same to  
be returned on or before 4:00 p.m. on the afternoon of the 16<sup>th</sup> day of April, 1986

April 15, 1986  
Date

Cheryl K. Gindrix  
Judge

RECEIPT

On this 15 day of April, 19 86, the undersigned acknowledges receipt of  
the items above specified under the conditions recited.

~~Attorney of Record~~  
MARY KENNEDY

Mettee McGill Murphy Engineers  
Address 1450 E. Indian School  
Telephone 279-0901

The foregoing returned this 16 day of April, 19 86.

By S. Boskovich  
Deputy Clerk

FILED  
SEP - 8 PM 4:14

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,  
Plaintiff,  
vs.  
WILSON AUSTIN, et al.,  
Defendants.

No. C 420852

STIPULATION FOR  
DISMISSAL WITH PREJUDICE  
AND ORDER

(Assigned to Judge Fidel)

The parties, through their attorneys, hereby agree and stipulate that plaintiff's Complaint and defendant's Third Party Complaint are hereby dismissed with prejudice, each party to bear their own costs and attorney's fees.

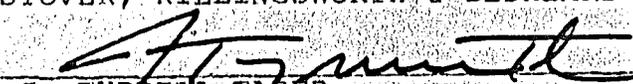
DATED this 2<sup>nd</sup> day of SEPTEMBER, 1982.

MARTINEZ & CURTIS

By 

JAY M. MARTINEZ  
3003 N. Central, Suite 1205  
Phoenix, Arizona 85012  
Attorneys for Plaintiff

O'CONNOR, CAVANAGH, ANDERSON,  
WESTOVER, KILLINGSWORTH & BESHEARS

By 

J. TYRELL TABER  
3003 N. Central, Suite 1800  
Phoenix, Arizona 85012  
Attorneys for Wilson Austin

MARICOPA COUNTY ATTORNEY'S OFFICE

By 

NOEL J. R. LEVY  
101 W. Jefferson, 2nd Floor  
Phoenix, Arizona 85003  
Attorney for Maricopa County

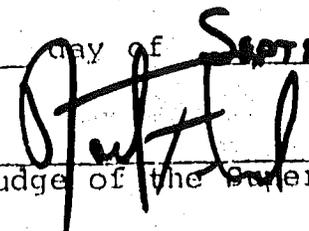
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O R D E R

Pursuant to the foregoing Stipulation,

IT IS HEREBY ORDERED that the Complaint and Third Party  
Complaint filed in the above-entitled matter are dismissed with  
prejudice, each party to bear <sup>his</sup> their own costs and attorney's fees.

DONE IN OPEN COURT this 7<sup>TH</sup> day of SEPTEMBER, 1982.

  
\_\_\_\_\_  
Judge of the Superior Court

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WILSON D. PALMER, CLERK  
BY *[Signature]*  
FILED DEP.

1982 MARCH 17 PM 2:11

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

D. JEAN STATEN,  
Plaintiff,  
vs.  
WILSON AUSTIN, dba  
WILSON AUSTIN, SURVEYS AND MAPS,  
Defendant.

NO. C 420852  
MOTION TO WITHDRAW

BASS AND BOOKSPAN, counsel for Defendant, WILSON AUSTIN,  
moves to withdraw as counsel of record. It is the wish of  
Defendant, WILSON AUSTIN, that counsel withdraw from further  
representation in the case. This matter has been discussed  
with counsel and WILSON AUSTIN.

DATED this \_\_\_\_ day of March, 1982.

BASS AND BOOKSPAN

By *[Signature]*  
Stephen E. Bass  
Attorney for Defendant

CONSENTED TO:  
*[Signature]*  
WILSON AUSTIN

A copy of the foregoing mailed  
this 17 day of March, 1982, to:  
Jay M. Martinez, Esq.  
Martinez, Curtis, Goodwin & Karasek  
3003 N. Central, Suite 1600  
Phoenix, Az 85012  
Attorney for Plaintiff  
Cleon Dukes  
Deputy County Attorney  
101 W. Jefferson  
Phoenix, Az 85003  
Attorney for Third Party Defendants  
Honorable Noel A. Fidel  
201 W. Jefferson  
Phoenix, Az 85003

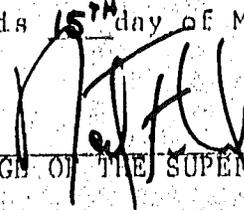
By *[Signature]*

LAW OFFICES OF  
BASS AND BOOKSPAN  
1224 EAST MISSOUPPI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-5464

O R D E R

Pursuant to the Stipulation above, IT IS HEREBY ORDERED allowing Bass and Bookspan to withdraw as counsel of record to Wilson Austin.

DONE IN OPEN COURT this 15<sup>TH</sup> day of March, 1982.

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

LAW OFFICES OF  
BASS AND BOOKSPAN  
1724 EAST MISSOURI  
PHOENIX, ARIZONA 85014  
TELEPHONE (602) 266-8484

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