

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-053132

02/05/2009

HONORABLE BRIAN R. HAUSER

CLERK OF THE COURT
W. Tenover
Deputy

DOMINICK ABATEMARCO

BRIAN M BERGIN

v.

CANTERRA AT SQUAW PEAK
CONDOMINIUM ASSOCIATION INC

MARK A HOLMGREN

MATTER UNDER ADVISEMENT

9:26 a.m. This is the time set for Oral Argument on Plaintiff's Motion for Partial Summary Judgment on the Issue of Liability and Defendant's Cross Motion for Summary Judgment. Plaintiff is represented by counsel, Brian M. Bergin. Defendant Canterra at Squaw Peak Condominium Association is represented by counsel, Mark A. Holmgren.

Court Reporter, Melody O'Donnell, is present as well as a record of the proceedings being made by audio and/or videotape.

Arguments are heard.

IT IS ORDERED taking this matter under advisement.

10:09 a.m. Hearing concludes.

LATER:

SUPERIOR COURT OF ARIZONA
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IT IS ORDERED denying plaintiff's motion for partial summary judgment on liability. There are numerous questions of fact regarding whether the Association defendant timely performed its duties under the CC&R's.

IT IS FURTHER ORDERED granting defendant's motion for summary judgment on plaintiff's non-contract claims as they are barred by the applicable statutes of limitations. No reasonable jury could find other than that plaintiff's loss or injury occurred on October 17, 2005 when the defendant Association declared that there would be no repairs to the defective balconies until the litigation between the Association and the developer was concluded. If the defendant Association breached its obligation under the CC&R's or otherwise failed to satisfy its duty to plaintiff with respect to the defective balcony, such breach or failure first occurred then.