

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-053132

02/22/2010

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

PRETRIAL CONFERENCE HELD

8:32 a.m. This is the time set for Final Pretrial Conference/Oral Argument on Motions in Limine. Plaintiff is present and represented by counsel, Brian M. Bergin, Ken Frakes and Brian Foster. Defendant is represented by counsel, Mark A. Holmgren, Josh Bolen and Kellie Callahan.

A record of the proceedings is being made by CD (FTR) in lieu of a court reporter.

Trial to a jury is confirmed for: **March 1, 2010 at 9:00 a.m.** The estimated length of trial is: 5 days.

Trial protocol is discussed.

Counsel agree that the jury in this case will consist of eight jurors plus one alternate juror. Seven of the nine jurors will be necessary to return a verdict in this case. Counsel further agree that the alternate juror can deliberate.

Each side will have five preemptory strikes.

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IT IS ORDERED directing counsel to file and exchange their proposed voir dire questions no later than February 26, 2010.

IT IS FURTHER ORDERED affirming the court's previous order that all trial exhibits shall be delivered to this division's clerk no later than 5:00 p.m. today.

Defendant is requesting a court reporter. The court will put in a request for a court reporter but counsel are informed that there is no guarantee that one will be available for trial.

Both sides invoke the Rule of Exclusion of Witnesses.

Motions in limine are argued.

IT IS ORDERED denying Plaintiff's First Motion in Limine to Exclude all Evidence and Testimony Regarding Advice Given by Dicks Coglianese Lipson & Shuquem, PC.

IT IS FURTHER ORDERED deeming Plaintiff's Motion in Limine to Exclude All Extrinsic Evidence and Testimony Regarding Greg Yurkiw's Knowledge of the Subject Balcony's Defects and the Association's Instruction to Stay off the Balconies as moot.

IT IS FURTHER ORDERED deeming Defendant's Motion to Strike Plaintiff's Motion in Limine Regarding Testimony of Greg Yurkiw as moot.

IT IS FURTHER ORDERED denying Defendant's Motion in Limine to Exclude Appraisal Opinion of Jan Sell Regarding "As Is" Value of Plaintiff's Unit.

IT IS FURTHER ORDERED denying Defendant's Motion in Limine Regarding Value "As If Unaffected."

IT IS FURTHER ORDERED granting Defendant's Motion in Limine Regarding "Non-Delegable Duty."

IT IS FURTHER ORDERED deeming Defendant's Motion in Limine Regarding Mortgage Principal Payments as moot.

IT IS FURTHER ORDERED taking Defendant's Motion in Limine Regarding Other Balconies under advisement.

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Discussion is held regarding jury selection, bench conferences, offers of proof, examination of witnesses, making objections, and questions from the jury.

9:07 a.m. Hearing concludes.

LATER:

IT IS ORDERED granting Defendant's Motion in Limine Regarding Other Balconies.

IT IS FURTHER ORDERED, pursuant to Rule 42(b), Arizona Rules of Civil Procedure, that the issue of whether the court's preliminary injunction ought to be made final with respect to other balconies shall be determined in a separate hearing, set upon request of any party.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>