

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-021556

03/15/2004

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT
J. Pinter
Deputy

FILED: 03/17/2004

SUNSTATE EQUIPMENT CO LLC

v.

PHASE II CONCEPTS INC, et al.

JOHN A O'NEILL

STEVEN FEOLA
CHARLES E BURI
COURT ADMIN-CIVIL-ARB DESK

MINUTE ENTRY

8:20 a.m. IN CHAMBERS: This is the time set for oral argument re: Cross-claimant Phase II's Motion to Dismiss and Phase I's Alternative Motion to Amend it's Cross-Claim, if the court believes the indemnity claim against Phase II is not properly pleaded. Counsel John A. O'Neill is present telephonically on behalf of defendant Phase II Concepts, Inc., and counsel, Steven Feola is present on behalf of defendant Phase I Properties, Inc.

Court Reporter Lorraine Chalkey is present.

Discussion is held among court and counsel.

IT IS ORDERED as follows:

1. Denying Phase II's Motion to Dismiss for reasons stated by the court as stated on the record.
2. Granting Phase I's Motion to Amend Cross-Claim in part, in that the court broadens the term "judgment" to refer to any payment made by Phase I to Sunstate. The court is of the view that Phase II had sufficient notice of an implied indemnity, and the court feels that at this phase there is implied indemnity in this case. This is without prejudice to motions for summary judgment and further briefing on the issue.

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3. Referring this matter back to the Arbitration Desk for appointment of a new arbitrator. Mr. Buri has done yeoman work as arbitrator in this case, and feels he can no longer operate impartially (according to the lawyers present this date). Mr. Buri is now relieved as arbitrator in this matter with appreciation for his service.

8:25 a.m. Matter concludes.