

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-053132

03/04/2010

HONORABLE BRIAN R. HAUSER

CLERK OF THE COURT  
W. Tenoever  
Deputy

DOMINICK ABATEMARCO

BRIAN M BERGIN

v.

CANTERRA AT SQUAW PEAK  
CONDOMINIUM ASSOCIATION INC

MARK A HOLMGREN

**TRIAL MINUTE ENTRY**  
**DAY 4**

10:40 a.m. Trial to a Jury continues from March 3, 2010. Plaintiff Dominick Abatemarco is present and represented by counsel, Brian M. Bergin and Ken Frakes. Defendant is represented by counsel, Mark A. Holmgren, Josh Bolen and Kellie Callahan.

The jury is not present.

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

Court and counsel discuss the final jury instructions.

10:42 a.m. Court stands at recess.

10:54 a.m. Court reconvenes with respective parties and counsel present.

The jury is present.

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

The Final Jury Instructions, except for the closing instruction, are read.

Closing arguments.

The closing Jury Instruction is read.

12:04 p.m. The jury retires in charge of sworn bailiff to consider their verdicts.

3:49 p.m. Court reconvenes with respective parties and counsel present.

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

The jury is all present in the jury box and by their foreperson return into court their verdicts, which are read and recorded by the clerk and are as follows:

"We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find in favor of Plaintiff Dominick Abatemarco on his claim for breach of the implied duty of good faith and fair dealing and find the full damages to be \$50,000. Signed Juror #1, #7, #4, #8, #6 and #5."

"We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find in favor of Plaintiff Dominick Abatemarco on his claim for breach of the CC&R's and find the full damages to be \$40,000. Signed Juror #1, #7, #4, #8, #6 and #5."

"We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find in favor of Defendant Canterra at Squaw Peak Condominium Association, Inc. on Plaintiff's claim for breach of the statutory duty to repair. Signed Juror #5, Foreperson."

The jurors reply that these are their true verdicts.

The jury is thanked by the court and excused from further consideration of this cause.

3:53 p.m. Trial concludes.

IT IS ORDERED that the jury fees be assessed against Defendant Canterra at Squaw Peak Condominium Association, Inc. in the sum of \$615.60 all in accordance with the formal written Judgment for Jury Fees signed by the court on March 4, 2010 and filed (entered) by the clerk on March 4, 2010.

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There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

IT IS ORDERED that the clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked, or to their written designee. Counsel/party shall have the right to refile relevant exhibits as needed in support of any appeal. Refiled exhibits must be accompanied by a Notice of Refiling Exhibits and presented to the Exhibits Room of the Clerk's Office. The court's exhibit tag must remain intact on all refiled exhibits.

IT IS FURTHER ORDERED that counsel/party or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit Release Forms (2).

FILED: Exhibit Worksheet, Final Jury Instructions, and Verdicts (3).

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