

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-090103

04/12/2018

HONORABLE DAVID M. TALAMANTE

CLERK OF THE COURT
M. Kay
Deputy

TAPESTRY ON CENTRAL L L C

RYAN J LORENZ

v.

TAPESTRY ON CENTRAL CONDOMINIUM
ASSOCIATION, et al.

ALEXANDER POULOS

WESTERN ALLIANCE BANK
ATTN: LEGAL PROCESSING
P O BOX 98814
LAS VEGAS NV 89193
JASMINA RICHTER
CHRISTOPHER A LAVOY
CHRISTOPHER T CURRAN

MINUTE ENTRY

Courtroom 207 – SEF

Prior to the commencement of today's proceeding, Plaintiff's exhibits 1-46 and Defendants' exhibits 47-74 are marked for identification.

2:23 p.m. This is the time set for Evidentiary Hearing to consider the amount of the bond and any undue hardship on the part of the Association. Counsel, Ryan J. Lorenz, is present on behalf of Plaintiff. Counsel, Alexander Poulos, is present on behalf of Defendants.

A record of the proceedings is made digitally in lieu of a court reporter.

LET THE RECORD REFLECT the Court met with counsel only in judicial chambers. Discussion was held concerning the Court's inclinations relating to the amount of the bond.

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The Court has reviewed the case file and the memoranda filed by the parties including Plaintiff's Notice of Supplemental Authority and Defendants' Response thereto. The Court declines to consider the supplemental authority in these proceedings.

Plaintiff's Response to Defendants' Motion to Suppress the Transcript of Gail Huff. Plaintiff's Response was untimely. However,

THE COURT FINDS that the actual notice of the deposition was insufficient.

Alan Goodman, Margaret Boyle, Candess Hunter, William David Chambless, Howard Kunkle, Dan Perrine, and Aksel Firate are sworn.

The rule of exclusion of witnesses is invoked. The Court instructs the witnesses not to discuss the case or their testimony with anyone but counsel and directs them to remain outside the courtroom until they are called to testify.

Plaintiff's exhibits 1-28, 30-44, 46 and Defendants' exhibits 47-58, 60-63, 65-71, and 73 are received in evidence.

Defendants' case:

Aksel Firate, previously sworn, now testifies.

The witness is excused.

Howard Kunkle, previously sworn, now testifies.

The witness is excused.

Defendants rest.

Plaintiff's case:

Margaret Boyle, previously sworn, now testifies.

The witness is excused.

William David Chambless, previously sworn, now testifies.

The witness is excused.

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Candess Hunter, previously sworn, now testifies.

The witness is excused.

Alan Goodman, previously sworn, now testifies.

The witness is excused.

Plaintiff rests.

For reasons expressed on the record,

IT IS ORDERED that Defendants' Motion to Quash Evidentiary Hearing Subpoenas to Candess Hunter and David Chambless and for Entry of Protective Order, filed April 11, 2018, is deemed moot.

Based on the testimony and evidence presented, the Court states its impressions and inclinations on the record.

The Court is inclined to find that the net worth of the Association was \$1,028,795.00. The principle documentation and testimony submitted today relating to exhibit 47 seems to affirm that amount. Exhibit 48 indicates that the net worth of the Association dropped, but that seems to be reflective of occurrences in January 2018. For purposes of the Court's ruling, exhibit 47 is closer in time to the date of the Judgment. Therefore, the Court is inclined to use exhibit 47 as the factual basis for its ruling. The Court notes the Notice of Appeal was filed on December 5, 2017, which predates exhibit 48.

For reasons already expressed, the Court is inclined to find that the net worth of the Association is \$1,028,795.00. Fifty percent of that amount would be \$514,397.50, which presumptively should be the amount of the bond. The Court is inclined to find that there has been a preponderance of evidence to support that finding.

If the Court finds that the Appellate is intentionally dissipating assets outside the ordinary course of business to avoid payment of a judgment, then the Court can impose a bond up to the full amount of the Judgment excluding attorneys' fees. There has been some testimony regarding the Board choosing to spend money for purposes of improving the common areas. Plaintiff complains that the money is being partially spent on an unlicensed contractor. Whether or not the Board is making wise business decisions is not before the Court. Therefore,

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THE COURT FINDS that Plaintiff has not met its burden with regard to the Association intentionally dissipating assets to avoid payment of the Judgment.

Defendant also has the burden of proof to establish by clear and convincing evidence that the Appellate is likely to suffer substantial economic harm if required to post the bond. There was testimony by Mr. Kunkle that there would be some hardships and perhaps delay of repairs to common area elements or repairs that occur because of the monsoon season. Mr. Kunkle also testified that the Board has the ability to assess up to 10% against the unit owners to help pay for the repairs. For these reasons,

THE COURT FINDS that Defendant has not established by clear and convincing evidence that it is likely to suffer substantial economic harm if it is required to post the bond of \$514,397.50.

LET THE RECORD REFLECT counsel waive presentation of written closing arguments.

Pursuant to the ruling entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of 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 their written designee. Counsel/party or written designee 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 Exhibit Department 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 Form(s)

4:49 p.m. Hearing concludes.

LATER:

The Court has considered the testimony and evidence presented.

IT IS ORDERED affirming the above findings and inclinations as the orders of the Court.

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IT IS ORDERED setting the bond at \$514,397.50.

IT IS ORDERED that the Association shall post the bond through an agreed upon third party on or before **May 14, 2018**.