

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-090103

07/17/2015

HONORABLE DAVID M. TALAMANTE

CLERK OF THE COURT
M. Kay
Deputy

TAPESTRY ON CENTRAL L L C, et al.

AARON M FINTER

v.

TAPESTRY ON CENTRAL CONDOMINIUM
ASSOCIATION, et al.

KEVIN P NELSON

PAUL D CARDON

MINUTE ENTRY

The Court was recently assigned this matter and has had an opportunity to review the pending Motions.

First, considering Defendant Tapestry on Central Condominium Association's Motion to Compel and Request for Sanctions, the Court has considered the Motion along with Defendant's Notice filed June 4, 2015 and what appears to be an untimely Response by Plaintiff filed June 15, 2015 and Defendant's Reply. Defendant has requested oral argument. It also appears that the requested financial information/tax records, if disclosed, would be subject to the Stipulated Protective Order approved by the Court on May 19, 2015.

THE COURT FINDS that the information requested in the non-uniform interrogatories and request for production are appropriate for discovery.

IT IS ORDERED granting the Motion to Compel and to the extent that the discovery has not been provided by Plaintiff, the requested documents and responses to the interrogatories shall be provided on or before **August 3, 2015**.

Good cause appearing and Defendant having complied with Rule 37(a) ARCP,

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IT IS ORDERED granting Defendant reasonable attorneys' fees and directing Defendant to file an appropriate affidavit in support of the fees no later than **August 10, 2015**.

IT IS FURTHER ORDERED denying the request for oral argument.

Next, regarding Defendant Tapestry on Central Condominium Association's Motion for Leave to Depose Uzrad Lew, the Court having considered the Motion along with Plaintiff's Response and Motion for Protective Order and Defendant's Reply,

IT IS ORDERED approving the form of Order attached to Defendant's Motion for Leave that permits the deposition of Uzrad Lew with language added by the Court that requires that the order granting the deposition is subject to the Court's ruling on Plaintiff's Motion for Protective Order.

IT IS FURTHER ORDERED denying the request for oral argument on the Motion for Leave to Depose.

Next, the Court has considered Plaintiff's Motion for Protective Order along with Defendant's Response (Oral Argument Requested) and Plaintiff's Reply.

IT IS ORDERED setting this matter for Oral Argument on **August 10, 2015 at 10:00 a.m.** (allotted time: 45 minutes) before:

HONORABLE DAVID TALAMANTE
SOUTHEAST COURTHOUSE
222 EAST JAVELINA
COURTROOM 207
MESA AZ 85210

IT IS FURTHER ORDERED:

If extended oral argument is necessary, counsel must so advise the Court no later than four (4) court days prior to the date set for hearing so that oral argument can be rescheduled.

Any motion or stipulation for continuance must be filed with the Court no later than four (4) court days prior to the date set for hearing. After that date, no continuances will be granted except for extraordinary circumstances.

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Counsel are advised that if the answering memorandum is not timely filed in accordance with the Arizona Rules of Civil Procedure, oral argument may be vacated and the motion will be ruled upon in accordance with Rule 7.1(b), A.R.C.P.

NOTE: All Court proceedings are recorded by audio method and not by a court reporter. Any party may request the presence of a court reporter by contacting the division three (3) court business days before the schedule hearing.

The Court is inclined to believe that the attorney/client privilege continues to apply to any meetings attended by Mr. Lew with Plaintiff and Plaintiff's counsel. It also appears that Plaintiff has no objection to the deposition going forward regarding matters relating to the "facts and circumstances surrounding his attempted purchase of the properties at issue in this litigation". At the oral argument, the Court will consider Defendant's waiver argument and, if necessary, establish parameters for the planned deposition. Further, if the parties believe they can resolve this issue through use of the stipulated order relating to confidential and privileged information, they should do so and advise the Court so that the oral argument may be vacated.

Next, the Court has considered Defendants Dennis Kolodin, Steve Denning, Jim Ehinger and Emery Jensen's Motion to Dismiss Counts 10, 11 and 12 of Plaintiff Tapestry on Central LLC's Second Amended Complaint (Oral Argument Requested) along with Plaintiff's Response and the Defendant's Reply (which notes that Defendant Kolodin is no longer active in the proceedings due to a Chapter 11 bankruptcy).

With regard to Count 10,

THE COURT FINDS that the allegations in the Second Amended Complaint are adequate for purposes of surviving a Motion to Dismiss and that the deficiencies noted may be addressed through disclosure and/or discovery.

IT IS ORDERED denying Defendant's Motion to Dismiss Count 10 without prejudice to a subsequent filing of a Motion for Summary Judgment on the same issue.

Regarding Count 11,

THE COURT FINDS that Defendant has failed to address the arguments raised in Defendant's Motion to Dismiss and that as a matter of law Plaintiffs cannot sustain a cause of action against the individual board members for a violation of A.R.S. §33-420.

IT IS ORDERED dismissing Count 11 as it relates to the individual board members.

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Regarding Count 12,

THE COURT FINDS that as a matter of law and relying on the authority cited by Defendant, that the board members and the HOA do not owe a “fiduciary duty” to Plaintiffs.

IT IS ORDERED dismissing the breach of fiduciary allegation raised in Plaintiff’s 12th claim for relief.

IT IS FURTHER ORDERED denying the request for oral argument.

Finally, regarding this matter and based on the Court’s review of the Motions pending at the time of the reassignment and the entire docket of proceedings including the prior stipulations and orders dismissing parties and various claims,

IT IS ORDERED that the remaining parties submit a Joint Status Memorandum to the Court no later than three (3) court days prior to the above scheduled Oral Argument that contains a brief summary of the claims, counterclaims and/or cross-claims that remain pending against the remaining parties. With this information, the Court intends to amend the caption of the litigation and, if necessary, the endorsement list. Further, at the argument noted above, the parties should be prepared to discuss the setting of a further telephonic Trial setting conference. Alternatively, if the parties contemplate a completion of expert depositions and the completion of discovery on the dates currently set forth in the order filed May 19, 2015, a trial date can be set at the Oral Argument.