

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-017609

08/13/2013

JUDGE DOUGLAS L. RAYES

CLERK OF THE COURT  
T. Springston  
Deputy

PENELOPE JOHNSON

CHRISTOPHER A LAVOY

v.

POINTE SOUTH MOUNTAIN RESIDENTIAL  
ASSOCIATION, THE

BRIAN W MORGAN

PAUL R NEIL  
CHAD M GALLACHER

**BENCH TRIAL  
DAY 2**

Central Court Building – Courtroom 704

9:46 a.m. Trial continues from August 12, 2013. Plaintiff is present with counsel, Christopher LaVoy. Defendant is represented by counsel, Paul R. Neil and Chad M. Gallacher.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Brief discussion is held regarding witness scheduling.

Penelope Johnson resumes the stand and continues to testify.

Penelope Johnson is excused.

Plaintiff rests.

Defendant's case:

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Kenneth Hensman is sworn and testifies.

Kenneth Hensman is excused.

Barry Smith is sworn and testifies.

Plaintiff's Exhibit 95 is received in evidence.

Barry Smith is excused.

Mike P. Harris is recalled to the stand and testifies further.

11:59 a.m. Court stands at recess.

1:32 p.m. Court reconvenes with respective counsel and parties present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Mike P. Harris continues to testify.

Mike P. Harris is excused.

Counsel for Plaintiff having been permitted to call a witness out of order, Stuart "Steve" Berres is sworn and testifies.

Stuart "Steve" Berres is excused.

3:03 p.m. Court stands at recess.

3:21 p.m. Court reconvenes with respective counsel and parties present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Guilford Nergard is sworn and testifies.

Guilford Nergard is excused.

Defendant rests.

Closing arguments are presented.

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For reasons stated on the record,

**IT IS ORDERED** finding in favor of Defendant as to the cable issue.

Counsel for Defendant shall submit proposed findings of fact and conclusions of law pertaining to the ruling by no later than **5:00 p.m. August 23, 2013**.

**IT IS FURTHER ORDERED** finding in favor of Plaintiff as to the court home exterior maintenance issue.

Counsel for Plaintiff shall submit proposed findings of fact and conclusions of law pertaining to the ruling by no later than **5:00 p.m. August 23, 2013**.

Rulings are perspective.

3:49 p.m. Matter concludes.

Pursuant to the Verdict/ruling entered, and there being no further need to retain the exhibit 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)

**FILED:** Exhibit Worksheet; Trial/Hearing Worksheet

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**BEFORE FILING ANY DISCOVERY MOTION**, parties are instructed to contact this division for an informal teleconference. Division contact information: Judicial Assistant, Mary Farmer, phone: (602)506-0816.

**For copies of hearings or trial proceedings recorded, please call Electronic Records Services at (602)506-7100.** Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. To request a transcript, call (602)506-7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address, and telephone number.

Pursuant to Part 1, Chapter 6, Section 1-602 D (4)(a), of the Arizona Code of Judicial Administration, **if a court reporter is present**, the court reporter's record is the official record and requests for transcripts shall be made by contacting the court reporter at (602)506-6100 or email request to [lineburgc@superiorcourt.maricopa.gov](mailto:lineburgc@superiorcourt.maricopa.gov).

**ALERT:** The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.