

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-090103

08/11/2017

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.

KEVIN P NELSON

MICHAEL A WRAPP  
CHRISTOPHER T CURRAN  
CITS - OTHER

MINUTE ENTRY

Courtroom 207 – SEF

9:04 a.m. This is the time set for Trial Management Conference. Counsel, Ryan J. Lorenz and Christopher T. Curran, are present on behalf of Plaintiff. Counsel, Kevin P. Nelson and Michael A. Wrapp, are present on behalf of Defendant.

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

The Court has reviewed the case file and the pleadings filed by the parties.

The Court has reviewed the Joint Pretrial Statement filed on August 10, 2017. The Rule of Exclusion of Witnesses has been invoked. There will be a panel of 10 jurors with 2 alternates and 6 of 8 jurors required for the verdict. Each side will presumptively be allowed 5 peremptory strikes. A court reporter will be present at trial. The cost of the court reporter will be split by the parties. The Court will draft a statement of the case from both parties' proposals and include the language in this Minute Entry.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-090103

08/11/2017

The Court has considered the parties' proposed jury instructions and proposed voir dire questions. Plaintiff's proposed questions 14 and 21 are precluded. Defendant's proposed question 19 is allowed with the exception of the word "frivolous", which is stricken.

The Court has received and reviewed the following Motions in Limine along with the Responses and/or Objections thereto:

- Plaintiff's Second Motion in Limine Re Cynthia Futter Testimony;
- Plaintiff's Third Motion in Limine Regarding Closed Session of the Association's Board Meetings;
- Defendant's Second Motion in Limine to Preclude Cynthia Futter's Testimony at Trial;
- Defendant's Third Motion in Limine to Preclude Evidence and Testimony Concerning Alleged Oral Agreement and Parking at Trial;
- Defendant's Fourth Motion in Limine to Preclude Evidence and Testimony Related to the Duty to Make Necessary Improvements;
- Defendant's Fifth Motion in Limine to Introduce Examination Under Oath of Joanne Carras at Trial;
- Defendant's Sixth Motion in Limine Regarding Executive Session and Committee Minutes;
- Defendant's Seventh Motion in Limine to Preclude Evidence Concerning Prior Settlement Communications;
- Defendant's Eighth Motion in Limine to Introduce Testimony by Andrew Karic; and
- Defendant's Ninth Motion in Limine to Preclude Robert Frisbee's Testimony at Trial.

For reasons expressed on the record,

**IT IS ORDERED** affirming that Plaintiff's First Motion in Limine Re Breach of Contract Evidence is **denied**.

**IT IS ORDERED** that Plaintiff's Second Motion in Limine Re Cynthia Futter Testimony is **denied**.

With regard to Plaintiff's Third Motion in Limine Regarding Closed Session of the Association's Board Meetings, counsel shall confer and notify the Court the morning of Trial if the issue still exists.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-090103

08/11/2017

**IT IS ORDERED** that Defendant's Second Motion in Limine to Preclude Cynthia Futter's Testimony at Trial is **moot** based on the Court's ruling on Plaintiff's Second Motion in Limine.

**IT IS ORDERED** that Defendant's Third Motion in Limine to Preclude Evidence and Testimony Concerning Alleged Oral Agreement and Parking at Trial is **granted**.

**IT IS ORDERED** that Defendant's Fourth Motion in Limine to Preclude Evidence and Testimony Related to the Duty to Make Necessary Improvements is **denied**. To the extent the evidence is submitted, a proper instruction can be given to the jury at the end of trial.

**IT IS ORDERED** that Defendant's Fifth Motion in Limine to Introduce Examination Under Oath of Joanne Carras at Trial is **denied**.

With regard to Defendant's Sixth Motion in Limine Regarding Executive Session and Committee Minutes, counsel shall confer and notify the Court the morning of Trial if the issue still exists.

**IT IS ORDERED** that Defendant's Seventh Motion in Limine to Preclude Evidence Concerning Prior Settlement Communications is **taken under advisement**.

**IT IS ORDERED** that Defendant's Eighth Motion in Limine to Introduce Testimony by Andrew Karic is **granted** such that Mr. Karic can testify as a factual witness and his deposition can be used for impeachment, if necessary.

**IT IS ORDERED** that Defendant's Ninth Motion in Limine to Preclude Robert Frisbee's Testimony at Trial is **granted**.

**IT IS ORDERED** affirming the Jury Trial set for **August 21, 2017 at 9:30 a.m. (8 days allotted)**.

**IT IS FURTHER ORDERED** affirming that a Hebrew interpreter is required during the trial assist Plaintiff's managing member (Yair Ben Moshe).

10:04 a.m. Conference concludes.

**LATER:**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-090103

08/11/2017

Unless a stipulation is otherwise accepted by the Court, the following statement of the case will be read to the jury:

This is a civil action arising out of alleged breaches of recorded Covenants, Conditions & Restrictions, breach of contract, breaches of the implied covenant of good faith and fair dealing, brought by Plaintiff, a commercial condominium owner, Tapestry on Central, LLC against the condominium association, Defendant, Tapestry on Central Condominium Association. The Condominium Association has asserted a counterclaim against the Plaintiff alleging that Plaintiff breached the same Covenants, Conditions & Restrictions. Both sides deny liability to one another on these claims.

The Plaintiff alleges that the Defendant breached the CC&R's by failing to repair, maintain and make necessary improvements to common elements serving the retail units.

The Defendant alleges that the Plaintiff has failed to pay assessments since 2007 on 4 of the 11 retail units. Plaintiff claims that payment of the assessments is excused.

After a further review of Defendant's Seventh Motion in Limine and Plaintiff's Response,

**IT IS ORDERED** granting Defendant's Seventh Motion in Limine.

After a further review of the Joint Pretrial Statement, the docket, the Minute Entry of November 18, 2016 and the rulings on the Motions in Limine;

**THE COURT FINDS** that Plaintiff's fifth claim for relief is not at issue for trial.

**IT IS FURTHER ORDERED** affirming the granting of summary judgment in Defendant's favor on Plaintiff's fifth claim for relief (Breach of Oral Contract).