

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-090103

08/30/2017

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

CHRISTOPHER T CURRAN
MICHAEL A WRAPP

TRIAL
DAY SEVEN

Courtroom 207 – SEF

9:07 a.m. Trial to jury continues from August 29, 2017. Counsel, Ryan J. Lorenz and Christopher T. Curran, appear on behalf of Plaintiff. Counsel, Kevin P. Nelson and Michael A. Wrapp, appear on behalf of Defendants (Emery Jensen is also present). The jury is not present.

Court Reporter, Scott Coniam, is present. The proceedings are audio recorded via FTR for the Court's use only.

Counsel for Plaintiff makes an offer of proof regarding witnesses, Cynthia Futter, Robert Frisbie and Jeffrey Hall.

Plaintiff's exhibits 1, 2 and 8 are received in evidence.

With regard to Plaintiff's offer of exhibit 11, the Court's prior ruling is affirmed. Defendants' objection is sustained.

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With regard to the offer of proof concerning Cynthia Futter and Robert Frisbie, to the extent it is consistent with matters filed or attached to prior memoranda, the Court accepts the offer of proof.

With regard to the offer of proof concerning Jeffrey Hall, counsel for Plaintiff previously indicated that he did not know what Mr. Hall would say in his deposition or during trial. The Court finds that the offer is not appropriate under Rule 103. Therefore, the Court rejects the offer of proof.

IT IS ORDERED directing this Court's Clerk to seal the exhibits offered as proof by Plaintiff. Accordingly, Plaintiff's exhibits 100, 101, 102, 105-114, 119, 120, 124-127, 131, 133-138, 142 and 143 are sealed, not to be opened without further order of the Court.

With regard to the Court's authorization to allow Mr. Ben Moshe to use an outside interpreter, to preserve Title VI issues,

THE COURT FINDS that Plaintiff's request for a court interpreter was untimely. Mr. Ben Moshe appears to be a licensed real estate agent in California. Mr. Ben Moshe does read, write and understand English. The Court approved Mr. Ben Moshe's request for an interpreter to facilitate his testimony during trial.

Counsel for Defendants makes a motion for directed verdict regarding tortious interference, breach of contract, construction defects, the towing issue, and breach of fair dealing.

Counsel present argument to the Court.

For the reasons expressed on the record,

IT IS ORDERED granting Defendants' motion for directed verdict as it relates to tortious interference.

IT IS FURTHER ORDERED denying the motion for directed verdict as it relates to the parking spaces (breach of contract) without prejudice to the filing of a motion to re-urge after reading of the jury's verdict regarding whether or not the claim is precluded as a matter of law.

IT IS FURTHER ORDERED denying the motion for directed verdict as it relates to the construction defects.

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IT IS FURTHER ORDERED denying the motion for directed verdict as it relates to the towing issue. The Court finds that there is an insufficient factual basis to support a claim for breach of the CC&R's or any claim for damages for a failure to tow. Additionally,

IT IS ORDERED denying the motion for directed verdict as it relates to breach of fair dealing.

10:07 a.m. Court stands at recess.

10:15 a.m. Court reconvenes with the parties and respective counsel present. Managing member of Plaintiff, Yair Ben Moshe, is now present. The jury is present.

Court Reporter, Scott Coniam, is present. The proceedings are audio recorded via FTR for the Court's use only.

Plaintiff rests.

Defendants' case:

Landon Grote is sworn and testifies.

Defendants' exhibits 392, 400 and 457 are received in evidence.

Discussion is held regarding questions posed by the jury. Two of the three questions are asked and answered on the record by the witness.

FILED: jury questions

The witness is excused.

Tom Johnston is sworn and testifies.

11:48 a.m. The jury is reminded of previous admonitions and excused from the courtroom. Court stands at recess.

12:05 p.m. Court reconvenes with the parties and respective counsel present. The jury is present.

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Tom Johnston resumes testimony for purposes of cross-examination.

Discussion is held regarding questions posed by the jury. The questions are asked and answered on the record by the witness.

FILED: jury questions

The witness is excused.

12:38 p.m. The jury is reminded of previous admonitions and excused from the courtroom. The jury will reconvene at 2:00 p.m. Court remains in session.

Discussion is held concerning procedural matters and remaining witnesses.

12:40 p.m. Court stands at recess.

2:04 p.m. Court reconvenes with the parties and respective counsel present. The jury is present.

Court Reporter, Scott Coniam, is present. The proceedings are audio recorded via FTR for the Court's use only.

Ron Starling is sworn and testifies.

The witness is excused.

LET THE RECORD REFLECT Defendants' witness, David Maimon, is not available to testify. The Deposition of David Maimon, dated June 23, 2015, is read on the record.

David Schwickerath is sworn and testifies.

3:32 p.m. The jury is reminded of previous admonitions and excused from the courtroom. Court remains in session.

Discussion is held regarding order of the remaining witnesses.

3:33 p.m. Court stands at recess.

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3:49 p.m. Court reconvenes with the parties and respective counsel present. The jury is present.

Court Reporter, Scott Coniam, is present. The proceedings are audio recorded via FTR for the Court's use only.

David Schwickerath resumes testimony for purposes of cross-examination.

Discussion is held regarding a question posed by the jury. The question is asked and answered on the record by the witness.

FILED: jury questions

The witness is excused.

4:06 p.m. The jury is reminded of previous admonitions and excused from the courtroom. The jury will reconvene at 10:00 a.m. on August 31, 2017. Court remains in session.

Discussion is held regarding Defendants' remaining witness.

4:11 p.m. Court stands at recess until 10:00 a.m. on August 31, 2017.