

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2006-011927

11/20/2007

HONORABLE JOHN A. BUTTRICK

CLERK OF THE COURT  
C. Castro  
Deputy

DAVID B VANYO

JEFFREY D GROSS

v.

CAREFREE FOOTHILLS HOMEOWNERS  
ASSOCIATION, et al.

KEVIN T MINCHEY

MICHAEL R SCHEURICH

**TRIAL MINUTE ENTRY  
DAY 3**

Courtroom 704 – Central Court Building

9:42 a.m. Trial to a Jury continues from November 15, 2007. Plaintiff is present with counsel, Jeffrey D. Gross. Defendants' are present with counsel, Kevin T. Minchey and Michael R. Scheurich.

The jury is not present.

Court Reporter, Rochelle Dobbins, is present and a record of the proceedings is made by CD/videotape.

Trial scheduling is discussed.

9:48 a.m. The jury is present.

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Defendants' case continues:

John Dwyer is sworn and testifies.

Bench conference is held.

Defendants' rest.

10:23 a.m. The jury is excused and instructed to return to the courtroom at 1:00 p.m.

Court stands at recess.

10:53 a.m. Court resumes with respective counsel and parties present.

The jury is not present.

Court Reporter, Rochelle Dobbins, is present and a record of the proceedings is made by CD/videotape.

Counsel for the Defendants makes a second motion for judgment as a matter of law.

Oral argument is presented.

For the reasons stated on the record,

**IT IS ORDERED** denying Defendants' second motion for judgment as a matter of law.

Counsel for the Plaintiff makes a motion for judgment as a matter of law.

Oral argument is presented.

For the reasons stated on the record,

**IT IS ORDERED** denying Plaintiff's motion for judgment as a matter of law.

Instructions are settled and the verdict is prepared.

12:07 p.m. Court stands at recess.

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1:08 p.m. Court resumes with respective counsel and parties present.

The jury is not present.

Court reporter, Leo Mankiewicz is present and a record of the proceedings is made by CD/videotape.

Discussion is held regarding final instructions and the verdict.

Final corrections are made to the verdict.

Counsel stipulate that there will be no alternate and the entire jury panel will deliberate.

1:25 p.m. The jury returns to the courtroom.

The jury is instructed by the Court as to the law applicable to this cause.

**FILED:** Final Instructions of Law

Closing arguments.

2:57 p.m. The jury is excused from the courtroom and court stands at recess.

3:18 p.m. Court resumes with counsel and respective parties present.

The jury is present.

Court reporter, Leo Mankiewicz is present and a record of the proceedings is made by CD/videotape.

Closing arguments continue.

The jury is instructed by the Court as to the verdict.

3:57 p.m. The jury retires in charge of sworn bailiffs to consider their verdicts.

Court remains in session.

Discussion is held.

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4:00 p.m. Court stands at recess.

4:58 p.m. Court reconvenes. Plaintiff is present with counsel, Jeffrey D. Gross. Defendants' are present with counsel, Kevin T. Minchey and Michael R. Scheurich.

The jury is all present in the jury box and by their foreperson return into court their verdict, which is read and recorded by the clerk and is as follows:

“We, the Jury, duly empanelled and sworn in the above entitled action, upon our oaths, do find the following special verdict submitted to us in the above-captioned case.

**(1) Did the Association waive the right to enforce the single family use restriction in the CC&Rs?**

**Answer: YES”**

The jury replies that this is their true verdict.

**FILED:** Verdict.

The jury is excused from further consideration of this cause.

5:03 p.m. Trial concludes.

**IT IS ORDERED** that the jury fees be assessed against **Carefree Foothills Homeowners' Association and John and Janet Dwyer, in the sum of \$584.82**, all in accordance with the formal written Judgment for Jury Fees signed by the court and filed (entered) by the clerk on November 20, 2007.

There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the 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 to their written designee.

**ISSUED:** Exhibit/Record Release Form (2).

**FILED:** Exhibit Worksheet.