

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-053132

12/01/2009

HONORABLE BRIAN R. HAUSER

CLERK OF THE COURT  
W. Tenover  
Deputy

DOMINICK ABATEMARCO

BRIAN M BERGIN

v.

CANTERRA AT SQUAW PEAK  
CONDOMINIUM ASSOCIATION INC

MARK A HOLMGREN

RULING

9:59 a.m. This is the time set for Oral Argument on Defendant's Motion to Dismiss Second Amended Complaint, Defendant's Motion for Summary Judgment Re: Damages and Defendant's Motion to Exclude Undisclosed Evidence. Plaintiff is represented by counsel, Brian M. Bergin. Defendant is represented by counsel, Mark A. Holmgren.

A record of the proceedings is being made by CD (FTR) in lieu of a court reporter.

Arguments are heard.

IT IS ORDERED taking Defendant's Motion to Dismiss Second Amended Complaint, Defendant's Motion for Summary Judgment Re: Damages and Defendant's Motion to Exclude Undisclosed Evidence.

Plaintiff makes an oral request to perform additional inspections of other balconies.

IT IS ORDERED taking Plaintiff's request to perform additional inspections under advisement.

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10:51 a.m. Hearing concludes.

LATER:

IT IS ORDERED denying Defendant's motion to exclude undisclosed evidence.

IT IS FURTHER ORDERED granting Defendant's motion to dismiss counts three through six, nine and ten of the second amended complaint. The court finds the economic loss rule applicable in this case since Plaintiff has full relief available on his contract theories and he has suffered no personal injury or property damage separate from the subject of the alleged breach of contract.

IT IS FURTHER ORDERED denying Defendant's motion for summary judgment except as to count seven, punitive damages, which is dismissed. The facts in favor of punitive damages clearly fall below the threshold necessary to sustain those damages especially in light of the enhanced level of proof required.

IT IS FURTHER ORDERED denying Plaintiff's request for additional visual or destructive testing on property not owned by Plaintiff.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>