

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-008177

08/24/2017

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

WINNERS DEVELOPMENT COMPANY L L C, RUSSELL PICCOLI
et al.

v.

GUST ROSENFELD P L C, et al.

RANDALL S PAPETTI

WILLIAM G KLAIN
NICOLE FRANCE STANTON

MATTER TAKEN UNDER ADVISEMENT

Courtroom: ECB-912

9:32 a.m. This is the time set for a trial management conference. Plaintiffs Winners Development Company, LLC, et al. are represented by Counsel Russell Piccoli and William G. Klain. Defendant City of Avondale is represented by Counsel John Maston O'Neal, Lauren Elliott Stine, Nicole France Stanton, and Kyle T. Orne. No other party is present or represented.

Court Reporter Tara Kramer is present. A record of the proceedings is also made digitally.

The parties, claims and defenses in the case are briefly discussed. Plaintiffs' counsel confirms that the only parties remaining for the trial, based on the court's summary judgment ruling regarding the Gust Rosenfeld Defendants, will be Plaintiff Winners Development Company, LLC and Defendant City of Avondale.

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Discussion is held regarding the length of the trial. This trial is scheduled for 12 days beginning on September 11, 2017. Counsel believe the trial may not last the full 12 days, but would like to reserve that time for now.

The court encourages the parties to confer after its rulings on the motions in limine to determine if the trial can be shortened.

The court advises counsel of certain scheduling conflicts during the trial. The court will be unavailable the entire day of September 21st. The court advises counsel that it will make Friday, September 22nd available for trial, if necessary. The court will also be unavailable the morning of September 26th and the afternoon of September 27th. The trial schedule will be revisited as the dates approach.

Trial hours and days are normally 9:30 a.m. to 4:30 p.m. (with a lunch recess from noon to 1:30 p.m. and two 15-minute recesses, daily), Monday through Thursday.

The court will allocate trial time in this matter. This time includes the counsel's individual voir dire, opening statements, closing arguments, and any time spent examining witnesses. The court will advise counsel of their allotted trial time on the first day of trial. Of that allotted time, the court will reserve one hour from each side for closing arguments.

The parties are advised to have witnesses prepared and ready to testify at all times during the trial so that the jury's time is used efficiently. Failure to adhere to this instruction will result in the lost trial time being charged against the party failing to present a witness.

The electronic equipment available in the courtroom is briefly addressed. Counsel are encouraged to schedule an appointment with the court's bailiff to become familiar with the equipment.

Defendant City of Avondale requests the presence of a court reporter for the trial.

NOTE: All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

The Rule of Exclusion of Witnesses is invoked by both sides.

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The voir dire process is briefly reviewed. The court will order an initial panel of 55 potential jurors.

The jury will consist of 8 jurors and 2 alternate for a total of 10 jurors. Whether the alternates will be permitted to deliberate will be addressed at a later time.

Counsel are advised that objections to exhibits will be resolved during the course of trial. Additionally, admission of exhibits, whether through stipulation or for lack of preserving an objection in the Joint Pretrial Statement, will also be addressed during the trial.

With regard to the use of exhibits in opening statements, the parties are directed to provide those exhibits to the opposing side 24 hours in advance, including any exhibits or illustrations to be used in any presentation. If there are objections, the court will rule on them prior to opening statements.

The use of juror notebooks is addressed.

With regard to deposition designation objections, the court will resolve them at trial as follows. By 4:30 p.m. the day before a party plans to read deposition testimony, that party shall provide the court with a hard copy of the deposition transcript with the designated portions highlighted in one color, cross-designations highlighted in another color, and the objections written in the margins. The court will rule on any objections by the next day.

If the parties intend to present a deposition via video, the parties shall present the designation objections, as outlined above, two days in advance to allow time for editing.

Draft preliminary jury instructions have been provided to counsel. Counsel shall review them and any objections can be resolved the first morning of trial. The final jury instructions will be resolved during the course of trial.

The verdict forms are briefly addressed. The court intends to give two general verdict forms. The court will defer the issue of interrogatories until trial.

Counsel may file any trial memoranda they deem appropriate in support of Rule 50 motions, complex jury issues or other legal issues.

The court briefly addresses counsel regarding the case summary and the presentation of mini-opening statements.

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With regard to rulings on motions in limine, counsel are advised that all denials are without prejudice to raising the issues at trial.

Plaintiffs' July 26, 2017 Motion in Limine 1 (Re: Lee Ploszaj Termination and Subsequent Employments) is discussed.

IT IS ORDERED denying the Motion for the reasons stated on the record.

Plaintiffs' July 26, 2017 Motion in Limine 2 (Re: Justin Kolb Allegations) is discussed.

IT IS ORDERED granting the Motion in part. The court is excluding evidence of Mr. Kolb's demands on Winners but otherwise is not excluding the testimony. The court will deal with specific objections during trial.

Plaintiffs' July 26, 2017 Motion in Limine 3 (Unrelated Emails Re: Other Winners' Projects) is discussed.

IT IS ORDERED granting the Motion in part. With regard to the exhibits attached to the Motion, the court will allow the first two emails referenced in Exhibit A and the email attached as Exhibit B. The court will exclude the emails referenced in Exhibit C.

Plaintiffs' July 26, 2017 Motion in Limine 4 (Re: Old Lawsuit Against John Ruggieri) is discussed.

IT IS ORDERED granting the Motion.

IT IS ORDERED denying Plaintiffs' July 26, 2017 Motion in Limine 5 (Re: Winners' Other Later Transactions).

Oral argument is presented on Plaintiffs' July 26, 2017 Motion in Limine 7 (Re: Late Report of Edward McDonough).

IT IS ORDERED granting the Motion and excluding the opinions from the late-disclosed report based on disclosure grounds.

10:26 a.m. Court stands at recess.

10:40 a.m. Court reconvenes with respective counsel present.

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Court Reporter Tara Kramer is present. A record of the proceedings is also made digitally.

Oral argument is presented on Plaintiffs' July 26, 2017 Motion in Limine 6 (City New Statutory Defense).

IT IS ORDERED taking Motion in Limine 6 under advisement.

IT IS ORDERED granting in part Defendant's July 21, 2017 Motion in Limine Re: Testimony of John Ruggieri Related to Property Values. The court will allow Mr. Ruggieri to testify whether he thought Mr. Lopez's appraisal was low and what he said to others at the City about that; but the court will not allow Mr. Ruggieri to testify as to property values himself because he is not an appraiser.

IT IS ORDERED denying Defendant's July 21, 2017 Motion in Limine Re: Documents, Testimony, and Argument Regarding the Building and Permitting Process for the Tanger Outlet Mall.

IT IS ORDERED denying Defendant's July 21, 2017 Motion in Limine Re: Conduct after December 7, 2011.

Defendant's July 21, 2017 Motion in Limine Re: Questions to Witnesses Regarding Implied Covenant of Good Faith is discussed.

IT IS ORDERED granting the Motion in part to the following extent. Lay witnesses will not be allowed to testify about the legal requirements of the implied covenant.

IT IS ORDERED denying Defendant's July 21, 2017 Motion in Limine Re: Funding for a Capital Lease Transaction.

Oral argument is presented on Defendant's July 24, 2017 Motion in Limine Re: Testimony of William Dominick.

IT IS ORDERED granting the Motion in part. The court is precluding Mr. Dominick from testifying about value. In all other respects, the Motion is denied.

IT IS ORDERED denying Defendant's July 26, 2017 Motion in Limine Re: Alleged Improper Motive of Bond Revenue.

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Oral argument is presented on Defendant's July 26, 2017 Motion in Limine Re: Potential Joint Venture Between Craig Realty and Tanger, and Plaintiffs' July 28, 2017 Motion in Limine 8 (Re: Entire Craig Realty Story).

IT IS ORDERED denying both Motions. The court is not excluding at this point any evidence regarding Craig Realty, including evidence regarding a potential joint venture between Craig Realty and Tanger. Any offset to damages based on lost losses will be dealt with at trial.

IT IS ORDERED denying Defendant's July 26, 2017 Motion in Limine Re: Thomas Zlaket. The court is not precluding Mr. Zlaket from testifying, but there may be portions of his testimony that are not permitted based on matters that are not in his field of expertise.

Defendant's July 26, 2017 Motion in Limine Re: Evidence or Argument Referring to Appraiser Dennis Lopez in Inflammatory or Prejudicial Terms is briefly discussed.

IT IS ORDERED denying the Motion.

IT IS ORDERED denying Defendant's July 26, 2017 Motion in Limine Re: Executive Session Privilege for the reasons set forth on the record.

Discussion is held regarding Defendant's July 21, 2017 Motion in Limine Re: Testimony of Kurt Rosene and Request for *Daubert* Hearing.

Oral argument is presented on Defendant's July 24, 2017 Motion in Limine Re: Winners' Damages for Real Estate Services.

IT IS ORDERED denying the Motion Re: Winners' Damages for Real Estate Services.

The setting of a *Daubert* hearing or alternatives thereto are discussed.

IT IS ORDERED granting Defendant's Motion Re: Testimony of Kurt Rosene and Request for *Daubert* Hearing in part as follows. The parties shall conduct a deposition, no longer than 30 minutes, of Mr. Rosene at a time and place mutually agreed to by the parties. Thereafter, the parties will submit the written transcript to the court in advance of trial, and the court will make a preliminary admissibility ruling under Rule 702.

IT IS ORDERED denying Defendant's July 21, 2017 Motion in Limine Re: Testimony of Municipal Solutions.

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Oral argument is presented on Defendant's July 21, 2017 Motion in Limine Pursuant to Rules 9 and 26.1 to Exclude all Evidence and Argument Re: Reliance and Restitution Damages.

Prior to oral argument, the court advises counsel that it has reviewed Plaintiff's Motion for Reconsideration of July 28, 2017 Order. The court will not rule on that motion today. If the court is inclined to grant the Motion for Reconsideration, the court will allow Defendant time to file a response.

IT IS ORDERED denying the Motion Re: Reliance and Restitution Damages.

With regard to the parties' briefs relating to Mr. Rosene's deposition, the parties shall submit those to the court no later than **September 7, 2017**.

The court inquires as to the status of settlement negotiations.

11:38 a.m. Matter concludes.