

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-003783

11/08/2019

HON. PAMELA GATES

CLERK OF THE COURT  
A. Durda  
Deputy

BRADLEY WEECH, et al.

BRADLEY D WEECH

v.

JACKSON WHITE P C, et al.

BRIAN M MUELLER

EDMUNDO P ROBAINA  
MICHAEL S RUBIN  
JUDGE GATES

MINUTE ENTRY

Courtroom ECB-912

11:15 a.m. This is the time set for Oral Argument regarding Intervenor's Motion to Enforce Settlement and Release Agreement, filed July 17, 2019. Plaintiff, Bradley Weech is present on his own behalf. Intervenor, Pepper Plaza LLC and Pepper Plaza LLC Money Purchase Plan, are represented by counsel, Michael S. Rubin. Defendant, Roger Foote, is also present.

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

Non-party Pepper Plaza, LLC ("Pepper Plaza") and the Pepper Plaza LLC Money Purchase Plan ("the Plan") filed a Motion to Enforce Settlement Agreement and Release Agreement. In connection with resolution of this highly contentious litigation, Bradley Weech and Dena Weech

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("Plaintiffs") and Jackson White, PC., Richard and Jannilyn White, Roger and Debra Foote, Michael and Roxanne Pruitt, Eric and Saurell Jackson, Pepper Plaza, the Plan, and JW Thunderbird, LLC (collectively referred to as "the JW Parties") entered a Settlement and Release Agreements. The Settlement and Release Agreement Pepper Plaza and the Plan is the agreement currently in dispute.

The settlement agreement is binding. The terms of the settlement agreement are unambiguously memorialized in writing and signed by Mr. Weech, Pepper Plaza, and the Plan on May 14, 2019.

The agreement states that based on a May 2, 2019 appraisal by Mike Turner, the January 24, 2019 value of the Plan's real property located at 40 North Center Street, Mesa, Arizona was \$6,205,000.00. The agreement further provides that the Plan and any related individuals or entities have fully disclosed to the appraiser all information and documents requested by the appraiser. The agreement includes a requirement that copies of the documents provided to the appraiser are available to Mr. Weech.

The parties further agree that the report prepared by the appraiser is binding between Mr. Weech, the Plan, and Pepper Plaza.

The agreement also states that the Plan's third-party administrator, Timothy Raymond, will calculate the percentage interest and the amount due to Mr. Weech under the Plan as of January 24, 2019. The parties agree that Mr. Raymond calculated Mr. Weech's interest as 9.774% and the amount due to Mr. Weech as \$630,471.54.

If Mr. Weech had a dispute with the Plan or Pepper Plaza, the Agreement, including but not limited to the percentage interest or amount, the agreement allowed Mr. Weech to petition the court in CV2017-003783 for a resolution of the dispute. In connection with the agreement, Pepper Plaza and the Plan submitted to the jurisdiction of the court. Mr. Weech has not submitted any dispute, including any dispute related to the percentage interest or the amount due, to the court for resolution.

The agreement further provided that the Plan must make payment to Mr. Weech as soon as reasonably possible, which Mr. Raymond estimates as no later than July 14, 2019. The agreement states if payment is not made by that date, interest on any amount due but unpaid will accrue at an annual interest rate of 10% per annum.

In addition, the agreement states that the distribution is in exchange for the mutual releases stated herein, Mr. Weech's agreement to withdraw from the Plan and take the distribution, and that

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upon the complete distribution of Mr. Weech's interest in the Plan, Mr. Weech must assign and transfer to Pepper Plaza all of his right, title, and interest in Pepper Plaza.

Pepper Plaza and the Plan have moved to enforce the settlement agreement. In short, Pepper Plaza and the Plan are requesting that the court confirm that Mr. Weech is entitled to the sum of \$630,471.54 from the Plan and distribution of the sum is in full and final settlement of Mr. Weech's interest in the Plan.

Pepper Plaza and the Plan are effectively requesting that the court "grant[ ] summary judgment regarding the existence, terms, and enforceability of the parties' settlement agreement." *See Robertson v. Alling*, 237 Ariz. 345, 347 ¶8 (2015). No genuine dispute of material fact exists regarding the existence, terms, and enforceability of the settlement agreement. The court finds:

- The January 24, 2019 value of the Plan's real property located at 40 North Center Street, Mesa, Arizona is \$6,205,000.00.
- The Plan's third-party administrator, Timothy Raymond, calculated Mr. Weech's percentage interest to be 9.774% and the amount due to Mr. Weech to be \$630,471.54.
- The Plan was obligated to pay Mr. Weech as soon as reasonably possible, which Mr. Raymond estimated as no later than July 14, 2019. Mr. Weech did not submit a dispute regarding valuation to the Court prior to July 14, 2019.
- Failure to pay by July 14, 2019 resulted in the accrual of interest on any amount due at an annual interest rate of 10% per annum.
- Payment of the \$630,471.54 is in exchange for Mr. Weech's withdrawal from the Plan and assignment and transfer to Pepper Plaza all of his right, title, and interest in Pepper Plaza.

Pepper Plaza and the Plan confirmed their intent to dispute payment of the interest from July 14, 2019; therefore, the court is setting an evidentiary to determine whether: 1) Pepper Plaza and the Plan tendered payment on July 14, 2019 or prior to that date; and 2) whether Mr. Weech committed a material breach of the settlement agreement.

For the reasons as stated on the record,

**IT IS ORDERED** setting this matter for Evidentiary Hearing on **November 19, 2019 at 10:00 a.m. (time allotted: 5 hours)** in this division before:

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HONORABLE PAMELA GATES  
JUDICIAL OFFICER OF THE SUPERIOR COURT  
EAST COURT BUILDING  
COURTROOM 912  
101 W JEFFERSON  
PHOENIX, AZ 85003  
(602) 506-6391

**IT IS ORDERED** counsel shall present **all** exhibits (as well as a list of brief descriptions of said exhibits) to be used at the hearing to the courtroom clerk **(602-506-3448)** for marking no later than **noon on November 14, 2019**. Counsel shall meet and confer prior to that time to exchange exhibits and **remove any duplicates** prior to delivering the exhibits to the clerk for marking. The exhibits will be marked **numerically** and serially with plaintiff's exhibits being marked first and then defendant's. The exhibits should not contain lettered subparts. Should an exhibit consist of multiple pages, it shall be securely fastened with a staple or two-prong ACCO-type fastener.

The exhibits presented to the clerk should not be placed in a three-ring notebook. However, counsel are asked to provide the court, on the day of the hearing, a **joint** notebook (numbered and tabbed) containing a complete copy of all exhibits or a bookmarked flash drive containing the exhibits for the court's use throughout the hearing. If you have any questions regarding the marking of exhibits, please contact the courtroom clerk directly at 602-506-3448.

**IT IS FURTHER ORDERED** counsel shall exchange their list of witnesses for the evidentiary hearing no later than **November 14, 2019**. Upon disclosure of witnesses if the parties determine that the evidentiary hearing needs to be rescheduled they are directed to jointly call this division at (602) 506-6391 to reset this hearing.

11:36 a.m. Matter concludes.