

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-016099

03/15/2019

HONORABLE DANIEL G. MARTIN

CLERK OF THE COURT
K. Cabral/S. Brown
Deputy

PARK PLAZA L L C, et al.

ROBERT A SHULL

v.

SMITH PARTNERS @ 51 L L C, et al.

ROBERT A ROYAL

BRADLEY A BURNS
JUDGE DANIEL MARTIN

FINAL TRIAL MANAGEMENT CONFERENCE

Courtroom 412 – East Court Building

9:00 a.m. This is the time set for a Final Trial Management Conference. Plaintiffs are represented by counsel, Robert A. Shull, Bradley A. Burns, and Amanda E. Newman. Defendants are represented by counsel, Robert A. Royal, Todd T. Lenczycki, and Amy D. Sells.

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

The 5-day Jury Trial scheduled to commence on April 22 through 29 is affirmed.

Discussion is held regarding trial scheduling matters. Based thereon,

IT IS ORDERED extending the trial an additional two (2) days: **April 30 and May 1, 2019.**

The Court advises counsel as to time limits in view of the revised trial schedule. Each side shall have 12 ½ hours, which are inclusive of jury selection, opening, closing, examination and argument.

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Discussion is held regarding exhibits.

LET THE RECORD REFLECT that upon stipulation, the parties may use an exhibit binder for ease of witness examination.

The Court notes the Rule of Exclusion of Witnesses has been invoked.

A Court reporter is not requested.

The Court's jury selection process, available technology, and trial procedures are discussed. Counsel will be expected to have all Disclosure Statements and references available so the Court can resolve any disclosure objections during trial.

The parties agree the jury shall consist of 8 jurors, plus 2 alternates. Unless the parties agree that all ten jurors can deliberate, the alternates will be selected by lot at the appropriate time.

The Court will conduct initial voir dire. At the conclusion of the Court's questioning, each side will have an opportunity to ask follow up questions of the panel.

Plaintiffs' counsel objects to Defendants' proposed voir dire questions numbered as 14, 15, and 16. The objections are overruled.

Exhibit procedures are discussed.

Pursuant to the stipulation of counsel, all demonstrative exhibits will be exchanged at least one (1) week in advance.

Deposition designation procedures are outlined.

IT IS ORDERED that the parties will work together in advance of trial to prepare video clips of the testimony to be presented and to advise the Court of any conflicts as to the completion of this task.

Discussion is held regarding jury instructions.

Regarding witness Marilyn K. Weitzman,

If Ms. Weitzman does not present testimony, but her appraisal is admitted into evidence, Plaintiffs may present their appraiser, Mr. Sell, on rebuttal.

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Further discussion is held on witness rebuttal testimony and disclosure issues.

Regarding defense witness Mr. Forrester,

THE COURT NOTES that if during his examination, counsel for Plaintiffs believe that defense counsel is soliciting improper expert testimony, counsel shall request a bench conference and the Court will address the issue further during trial.

The Court informs counsel they may contact the Division by telephone should any matters or disputes arise that require the Court's prompt attention.

Regarding Defendants Smith Partners @51, LLC's Motion for Partial Reconsideration or Alternatively, Clarification of the Order Denying Motion for Summary Judgment (filed Jan. 18, 2019), and for the reasons stated on the record,

IT IS ORDERED denying Defendants' Motion.

Motions *in Limine* are discussed and ruled on as follows:

For the reasons stated on the record,

IT IS ORDERED denying Defendants' Motions *in Limine* #1, #2 and #3, subject to appropriate trial objections.

Defendants' Motion *in Limine* #4 - If any defense witnesses testify that they are unaware of Mr. Smith entering into side deals, such as the oral promise, Plaintiffs may offer Exhibits 148 and 154 (as marked for deposition) in rebuttal.

Discussion is held regarding Plaintiffs' Motion in Limine RE: Robert M. Levin and Stanley Nitzberg.

IT IS ORDERED Plaintiff's Motion *in Limine* RE: Robert M. Levin and Stanley Nitzberg is denied subject to the Court's instruction to counsel for defense that they are not to elicit testimony from Mr. Levin or Mr. Nitzberg as to the intent of the parties when drafting the Operating Agreement.

10:01 a.m. Matter concludes.