

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-005362

11/01/2012

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
L. Nelson
Deputy

GUARANTY BANK AND TRUST COMPANY THOMAS GEORGE STACK

v.

RANCHO TUSCANA L L C, et al.

FRANK L MURRAY

**TRIAL MINUTE ENTRY
DAY ELEVEN**

9:08 a.m. Trial to Jury continues from October 31, 2012. Plaintiff/Counterdefendant, Guaranty Bank and Trust Company, is represented by counsel, Fredric D. Bellamy, Thomas G. Stack and Josh Kahn. Jennifer Ostenson, a representative of Guaranty Bank and Trust Company, is present. Defendants/Counterclaimants, Rancho Tuscano, LLC, David L. Ewell Diane R. Ewell, Stewart Graf and Susan M. Graf, are represented by counsel, Frank L. Murray and Stephanie Monroe Wilson. Defendants, David L. Ewell, Diane R. Ewell, Stewart Graf and Susan M. Graf are present.

The jury is not present.

Court Reporter, Mike Benitez, is present and a record of the proceedings is made by audio and/or videotape.

Counsel stipulate and agree the jury will consist of 9 persons, including 1 alternate; all 9 jurors will deliberate, with 7 of 9 required to return a verdict.

The Court has had under advisement Plaintiff's Motion for Judgment as a Matter of Law on the claims for fraud, breach of contract, breach of implied covenant of good faith and fair

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dealing and punitive damages. Having read and considered the briefing and having heard oral argument, the Court issues the following ruling.

IT IS ORDERED granting Plaintiff's Motion for Judgment as a Matter of Law Re: Fraud Claim. The Court finds that no evidence has been presented to substantiate the claim for fraud. The Court will not instruct the jury to strike past testimony; however, no further mention of fraud will be permitted.

IT IS FURTHER ORDERED granting Plaintiff's Motion for Judgment as a Matter of Law Re: Punitive Damages Claim. No evidence of an evil mind, required for a punitive damages claim, has been shown.

IT IS FURTHER ORDERED denying Plaintiff's Motion for Judgment as a Matter of Law Re: Breach of Contract Claim.

IT IS FURTHER ORDERED denying Plaintiff's Motion for Judgment as a Matter of Law Re: Breach of Implied Covenant of Good Faith and Fair Dealing in a limited capacity as stated on the record.

IT IS FURTHER ORDERED allowing Defendants to amend their Breach of Implied Covenant of Good Faith and Fair Dealing claim as stated on the record.

Counsel place their objections on the record.

Discussion is held on Plaintiff's Motion to Strike Specific Portions of Catherine Cameron's Testimony regarding her citing Mr. Duncan's appraisal and the issue of contingent loss.

IT IS FURTHER ORDERED Plaintiff's Motion to Strike Catherine Cameron's Testimony Re: Mr. Duncan's Appraisal is granted in part. The Court finds the appropriate remedy is to restrict any further reference of this subject in the rebuttal case or closing arguments.

IT IS FURTHER ORDERED Plaintiff's Motion to Strike Catherine Cameron's Testimony Re: Contingent Loss is granted in part. If contingent loss is referenced in Ms. Cameron's PowerPoint used during her testimony, it will be allowed. If it does not appear, it will not be allowed and the appraisal report may be redacted appropriately to reflect that.

Argument is heard on Plaintiff's Motion to Strike Mr. Duncan's Opinions Re: Fraud.

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IT IS FURTHER ORDERED Plaintiff's Motion to Strike Mr. Duncan's Opinions Re: Fraud is granted in part. The Court will not instruct the jury to strike past testimony; however, no further mention of fraud will be permitted.

Argument is heard on Plaintiff's Motion to Strike Mrs. Graf and Mrs. Ewell's Testimony Re: Emotional Damages.

IT IS FURTHER ORDERED Plaintiff's Motion to Strike Mrs. Graf and Mrs. Ewell's Testimony Re: Emotional Damages is granted in part. The Court will not instruct the jury to strike past testimony; however, no further mention of emotional damages will be permitted.

9:42 a.m. Jury is present.

Defendants' Rebuttal Case:

Jennifer Ostenson resumes the stand and testifies further.

Plaintiff's Exhibit 321 is marked for identification and received in evidence.

Ms. Ostenson is excused.

Excerpts from the deposition of Jim Simons are read to the jury.

Stewart Graf, having been previously sworn, testifies further.

The Court has received Juror Question 74, same is discussed with counsel, and the Court asks the question of the witness.

FILED: Juror Question 74.

Mr. Graf's testimony continues.

10:47 a.m. Court stands at recess.

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

The jury is present.

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Plaintiff's Exhibit 322 and Defendants' Exhibit 323 are marked for identification.

Stewart Graf testifies further.

Defendants' Exhibits 155 and 164 are received in evidence.

Mr. Graf continues to testify.

The Court has received Juror Question 75, same is discussed with counsel, and the Court asks the question of the witness.

FILED: Juror Question 75.

Stewart Graf testifies further.

Mr. Graf is excused.

Defendants rest.

Both sides rest.

11:11 a.m. Court stands at recess.

12:56 p.m. Court reconvenes with respective parties and counsel present.

The jury is present.

Court Reporter, Marylynn LeMoine, is present and a record of the proceedings is made by audio and/or videotape.

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

Closing arguments are presented.

The Court reads the closing instruction.

FILED: Final Jury Instructions

3:01 p.m. The jury retires in charge of the sworn bailiff to consider their verdict.

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4:52 p.m. Deliberations stand at recess and shall resume on November 2, 2012, at 12:00 p.m.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.