

**ORIGINAL**

OPEN MEETING AGENDA ITEM



0000135272

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

2012 MAR 19 P 4: 35

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 19 2012

DOCKETED BY

IN THE MATTER OF THE FORMAL  
COMPLAINT OF SWING FIRST GOLF,  
LLC, AGAINST JOHNSON UTILITIES,  
LLC.

DOCKET NO. WS-02987A-08-0049

NOTICE OF FILING  
PLEADINGS, RULINGS, MINUTE  
ENTRIES AND ORDERS FILED IN  
SUPERIOR COURT CASE SINCE  
JANUARY 27, 2012

In her Amended Procedural Order dated February 17, 2012, the administrative law judge ordered the parties to docket all pleadings, rulings, minute entries, and orders, filed in *Johnson Utilities, LLC, et al. v. Swing First Golf, LLC, et al.* (Cause No. CV2008-000141). In compliance with this order, Johnson Utilities LLC hereby files copies of the following documents:

DOCUMENT	DATE FILED
Minute Entry re telephonic conference for discussion of trial procedures	March 7, 2012
Minute Entry re hearing on Plaintiffs' Motion to Stay Pending Special Action Review	March 8, 2012
Trial Minute Entry Day 1	March 12, 2012
Trial Minute Entry Day 2	March 13, 2012

RESPECTFULLY submitted this 19<sup>th</sup> day of March, 2012.

BROWNSTEIN HYATT FARBER SCHRECK  
LLP

Jeffrey W. Crockett, Esq.  
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1 ORIGINAL and thirteen (13) copies of the  
2 foregoing filed this 19<sup>th</sup> day of March, 2012, with:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered  
8 this 19<sup>th</sup> day of March, 2012, to:

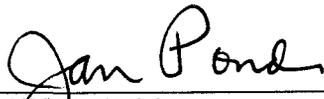
9 Yvette B. Kinsey, Administrative Law Judge  
10 Hearing Division  
11 ARIZONA CORPORATION COMMISSION  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007

14 Robin Mitchell, Chief Counsel  
15 Legal Division  
16 ARIZONA CORPORATION COMMISSION  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

19 Steve Olea, Director  
20 Utilities Division  
21 ARIZONA CORPORATION COMMISSION  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

24 COPY of the foregoing sent via e-mail  
25 this 19<sup>th</sup> day of March, 2012, to:

26 Craig A. Marks, Esq.  
27 Craig A. Marks, PLC  
28 10645 North Tatum Boulevard, Suite 200-676  
Phoenix, Arizona 85028

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31 14676121650779.6

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/07/2012

HON. JOHN REA

CLERK OF THE COURT  
L. Gilbert  
Deputy

JOHNSON UTILITIES L L C, et al.

MICHAEL L KITCHEN

v.

SWING FIRST GOLF L L C, et al.

CRAIG A MARKS

SHAWN E NELSON  
ANUPAM BHATHEJA

MINUTE ENTRY

East Court Building – Courtroom 414

11:03 a.m. In chambers: This is the time set for Telephonic Conference. All parties appear telephonically. Plaintiffs/Counterdefendants are represented by counsel, Michael L. Kitchen and Anupam Bhatheja. Defendants/Counterclaimants are represented by counsel, Craig A. Marks and Shawn E. Nelson.

A record of the proceedings is made by audio/videotape in lieu of a court reporter.

Discussion is held regarding the length of the trial, voir dire, exhibits, and the order of presentation of evidence.

The jury will consist of 9 persons; 1 alternate will be designated and excused prior to deliberations and 8 jurors will deliberate, with 6 of 8 required to return a verdict. If a juror cannot complete jury service, 5 of 7 jurors will be required to return a verdict.

The parties request the presence of a court reporter for the duration of the trial.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/07/2012

IT IS ORDERED affirming the trial date of March 12, 2012 at 9:30 a.m. before:

**HONORABLE JOHN C. REA  
MARICOPA COUNTY SUPERIOR COURT  
EAST COURT BUILDING  
101 W. JEFFERSON  
4<sup>TH</sup> FLOOR, COURTROOM 414  
PHOENIX, AZ 85003  
602-372-0382**

11:41 a.m. Matter concludes.

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.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/08/2012

HON. JOHN REA

CLERK OF THE COURT  
L. Gilbert  
Deputy

JOHNSON UTILITIES L L C, et al.

MICHAEL L KITCHEN

v.

SWING FIRST GOLF L L C, et al.

CRAIG A MARKS

ANUPAM BHATHEJA  
SHAWN E NELSON

MINUTE ENTRY

East Court Building – Courtroom 414

9:32 a.m. In chambers: This is the time set for Hearing re: Plaintiffs' March 7, 2012 Motion for Stay Pending Special Action Review. All parties appear telephonically. Plaintiffs/Counterdefendants are represented by counsel, Michael L. Kitchen and Anupam Bhatheja. Defendants/Counterclaimants are represented by counsel, Craig A. Marks and Shawn E. Nelson.

A record of the proceedings is made by audio/videotape in lieu of a court reporter.

Argument is presented.

For the reasons stated on the record,

IT IS ORDERED denying Plaintiffs' Motion.

IT IS FURTHER ORDERED affirming the trial date of March 12, 2012 at 9:30 a.m.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/08/2012

9:47 a.m. Matter concludes.

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.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/12/2012

HON. JOHN REA

CLERK OF THE COURT  
L. Stogsdill/L. Gilbert  
Deputy

JOHNSON UTILITIES L L C, et al.

MICHAEL L KITCHEN

v.

SWING FIRST GOLF L L C, et al.

CRAIG A MARKS

SHAWN E NELSON  
ANUPAM BHATHEJA

TRIAL MINUTE ENTRY  
DAY 1

Courtroom 414-ECB

Prior to the commencement of trial, Plaintiffs' Exhibits 1 through 33, and Defendants' Exhibits 34-77, are marked for identification.

9:34 a.m. Trial to a jury. Plaintiffs are represented counsel by Michael L. Kitchen and Anupam Bhatheja. Defendants are represented by counsel, Craig A. Marks and Shawn E. Nelson. Defendant David Ashton is present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding remaining claims, the statement to be read to the jury, and the trial schedule.

Court Reporter, Linda Lopez, is present.

A record of the proceeding is also made by audio and/or videotape.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/12/2012

Voir dire examination of jurors 1-40 is conducted.

Jurors 3, 4, 7, 9, 10, 13, 17, 18, 23 34 and 38 are excused as jurors in this case.

The remaining jurors of panel 1-40 exit the courtroom and jurors 41-60 enter the courtroom.

Voir dire examination of jurors 41-60 is conducted.

Jurors 41, 42, 43, 44, 46, 47, 51, 55, 57, 58, 59 and 60 are excused as jurors in this case.

The remaining jurors of panel 41-60 exit the courtroom.

The panels are combined and all jurors not having been excused enter the courtroom and voir dire examination continues.

The panel is excused.

Juror 6 enters the courtroom an individual voir dire conducted.

Juror 6 is excused from the courtroom.

Juror 12 enters the courtroom an individual voir dire conducted.

Juror 12 is excused from the courtroom.

Jurors 6 and 16 are excused as jurors in this case.

11:43 a.m. Court stands at recess.

1: 35 p.m. Court reconvenes with the parties and respective counsel present.

Court Reporter, Linda Lopez, is present.

A record of the proceeding is also made by audio and/or videotape.

The prospective jurors are present.

Trial jurors selected in this case are seated.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/12/2012

Nine (9) trial jurors in this cause are sworn.

**FILED:** Jury List.

The Court reads the Preliminary Jury Instructions to the jury.

**FILED:** Preliminary Jury Instructions.

Opening statements.

The jury leaves the Courtroom and Court remains in session.

Discussion is held regarding Plaintiffs' objections to portions of Defendants' opening statement related to unjust enrichment.

3:14 p.m. Court stands at recess.

3:30 p.m. Court reconvenes with the parties and respective counsel present.

Court reporter, Linda Lopez, is present.

A record of the proceeding is also made by audio and/or videotape.

The jury is not present.

Plaintiffs request curative instructions regarding documentation related to the unjust enrichment claim and the issue of Mr. Johnson's desire to purchase the golf course.

The jury enters the courtroom and trial continues.

Brian Tompsett is sworn and testifies.

4:24 p.m. The jury is excused for evening recess and instructed to return at 9:30 a.m. on March 13, 2012.

Further discussion is held regarding Plaintiffs' requests for curative instructions.

Discussion is held regarding spreadsheets which are summaries of bills/charges that Plaintiffs request to provide to the jury.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/12/2012

The Court will review the spreadsheets and advise the parties prior to further testimony as to its decision regarding their use.

4:47 p.m. Court stands at recess until March 13, 2012 at 9:15 a.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.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/13/2012

HON. JOHN REA

CLERK OF THE COURT  
L. Stogsdill/L. Gilbert  
Deputy

JOHNSON UTILITIES L L C, et al.

MICHAEL L KITCHEN

v.

SWING FIRST GOLF L L C, et al.

CRAIG A MARKS

ANUPAM BHATHEJA  
SHAWN E NELSON

TRIAL MINUTE ENTRY  
DAY 2

Courtroom 414-ECB

FILED: Deposition transcript of Daniel Hodges, dated October 25, 2011  
Deposition of Scott Romeyn Demmon, dated October 25, 2011  
Deposition of George Johnson, dated October 25, 2011  
Deposition of Brian Tompsett, dated October 26, 2011

9:47 a.m. Trial to a jury continues from March 12, 2012. Plaintiffs are represented counsel by Michael L. Kitchen and Anupam Bhatheja. Daniel Hodges, Representative of Johnson Utilities, LLC, is present. Defendants are represented by counsel, Craig A. Marks and Shawn E. Nelson. Defendant David Ashton is present.

Court Reporter, Linda Lopez, is present.

A record of the proceeding is also made by audio and/or videotape.

The jury is not present.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/13/2012

Discussion is held regarding the spreadsheets that Plaintiffs propose to use as demonstrative exhibits and Defendants' objections thereto.

For the reasons stated on the record,

IT IS ORDERED overruling Defendants' objections.

Discussion is held regarding Plaintiffs' request for limiting instructions.

IT IS ORDERED denying Plaintiffs' request.

The jury enters the courtroom and trial continues.

Brian Tompsett resumes the stand and testifies further.

Defendants' Exhibits 35 and 59 are received in evidence.

Upon motion of Defendants, Plaintiffs' Exhibit 21 is received in evidence.

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

11:06 a.m. Court reconvenes with the parties and respective counsel present.

Court Reporter, Linda Lopez, is present.

A record of the proceeding is also made by audio and/or videotape.

The jury is not present.

Discussion is held regarding potential testimony related to unjust enrichment.

The jury enters the courtroom and trial continues.

Brian Tompsett resumes the stand and testifies further.

Defendants' Exhibits 61, 44, 45 and 46 are received in evidence.

The jury leaves the courtroom and court remains in session.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/13/2012

Discussion is held regarding the management contract and its admissibility under *quantum meruit*.

11:54 a.m. Court stands at recess.

1:33 p.m. Court reconvenes with the parties and respective counsel present.

Court Reporter, Linda Lopez, is present.

A record of the proceeding is also made by audio and/or videotape.

The jury is not present.

Discussion is held regarding the parties' allotted trial time.

Discussion is held regarding Plaintiffs' objection to evidence of a management contract.

For the reasons stated on the record,

IT IS ORDERED overruling Plaintiffs' objection.

The jury enters the courtroom and trial continues.

Brian Tompsett resumes the stand and testifies further.

Defendants' Exhibit 51 is received in evidence.

The jury leaves the courtroom and court remains in session.

Discussion is held regarding the order of presentation of evidence.

2:47 p.m. Court stands at recess.

3:05 p.m. Court reconvenes with the parties and respective counsel present.

Court Reporter, Linda Lopez, is present.

A record of the proceeding is also made by audio and/or videotape.

The jury is present.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-000141

03/13/2012

Brian Tompsett resumes the stand and testifies further.

Defendants' Exhibit 54 is received in evidence.

Upon motion of Defendants, Plaintiffs' Exhibit 28 is received in evidence.

The witness is excused.

Daniel Hodges is sworn and testifies.

Plaintiffs' Exhibit 78 is marked for identification and received in evidence.

The jury leaves the courtroom and court remains in session.

Discussion is held regarding the parties' remaining trial time.

4:33 p.m. Court stands at recess until March 14, 2012 at 9:30 a.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.