

ORIGINAL

OPEN MEETING AGENDA ITEM



0000135622

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

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

2012 APR -3 A 11:40

AZ CORP COMMISSION
DOCKET CONTROL

SWING FIRST GOLF, LLC,

Complainant,

V.

JOHNSON UTILITIES, LLC,

Respondent.

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 the Amended Procedural Order dated February 17, 2012, Administrative Law Judge Yvette Kinsey 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.* (Case No. CV2008-000141). In compliance with this order, the Utilities Division ("Staff") of the Arizona Corporation Commission hereby files a copy of the trial minute entry of day 6, which contains the jury verdict.

RESPECTFULLY SUBMITTED this 3rd day of April, 2012.

Robin R. Mitchell
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Original and thirteen (13) copies of the foregoing were filed this 3rd day of April, 2012 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

APR - 3 2012

DOCKETED BY

1 Copies of the foregoing were mailed
this 3rd day of April, 2012 to:

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-000141

03/19/2012

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

MINUTE ENTRY

Courtroom 414-ECB

Plaintiffs' Exhibits 81 and 82 and Defendants' Exhibit 83 are marked for identification.

LET THE RECORD REFLECT that discussion was held between Court and counsel off the record. For the reasons stated, juror #2 is designated as the alternate and excused from this cause.

9:37 a.m. Trial to a jury continues from March 16, 2012. Plaintiffs are represented by counsel 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, Cindy Benner, is present.

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

The jury is not present.

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Discussion held regarding jury instructions and the trial schedule.

Plaintiffs' Exhibits 81 and 82 are received into evidence.

The jury enters the courtroom and trial continues.

Daniel Hodges resumes the stand.

David Ashton resumes the stand and testifies further.

Defendants' Exhibit 83 is received into evidence.

The jury leaves the courtroom and court remains in session.

Plaintiffs move for directed verdicts.

Argument is presented.

For the reasons stated on the record,

IT IS ORDERED denying Plaintiffs' motions.

Discussion is held regarding jury instructions.

10:36 a.m. Court stands at recess.

10:47 a.m. Court reconvenes with the parties and respective counsel present.

Court Reporter, Cindy Benner, is present.

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

The jury is not present.

Discussion is held regarding jury instructions, forms of verdict, and the trial schedule.

The jury enters the courtroom and trial continues.

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

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FILED: Final Jury Instructions

Closing arguments are presented.

12:32 p.m. Court stands at recess.

12:43 p.m. Court reconvenes with the parties and respective counsel present.

Court Reporter, Cindy Benner, is present.

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

The jury enters the courtroom and closing arguments continue.

1:33 p.m. The jury retires in charge of the sworn bailiff to consider their verdicts.

LET THE RECORD REFLECT the jury has requested replacement forms for Verdicts 2(a), 2(b), 3(a) and 3(b). New forms are provided to the jury by the bailiff and the original forms are obtained from the jury and shredded by the bailiff.

4:19 p.m. Court reconvenes with the parties and respective counsel present.

Court Reporter, Cindy Benner, is present.

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

The jury is all present in the jury box and by their presiding juror return into court their verdicts, which are read and recorded by the clerk and are as follows:

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, as to Plaintiffs’ claim for Breach of Contract, find in favor of Plaintiffs and award damages in the amount of \$151,156.22.

The verdict is unanimous and signed by the Foreperson.

The jurors reply that this is their true verdict.

We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, as to Defendants/Counterclaimants’ claim for Breach of Contract, find in favor of Defendants/Counterclaimants and award damages in the amount of \$1,000,000.00.

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The verdict is unanimous and signed by the Foreperson.

The jurors reply that this is their true verdict.

We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, as to Defendants/Counterclaimants' claim for Trespass, find in favor of Defendants/Counterclaimants and award damages in the amount of \$-0-.

We find that Plaintiffs/Counterdefendants are not liable for punitive damages in the amount of \$-0-.

The verdict is unanimous and signed by the Foreperson.

The jurors reply that this is their true verdict.

We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, as to Defendants/Counterclaimants claim for Negligence, find in favor of Defendants/Counterclaimants and award damages in the amount of \$-0-.

We find that Plaintiffs/Counterdefendants are liable for punitive damages in the amount of \$-0-.

The verdict is unanimous and signed by the Foreperson.

The jurors reply that this is their true verdict.

We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, as to Defendants/Counterclaimants claim for Quantum Meruit, find in favor of Defendants/Counterclaimants and award damages in the amount of \$54,600.00.

The verdict is unanimous and signed by the Foreperson.

The jurors reply that this is their true verdict.

We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, as to Defendants/Counterclaimant David Ashton's claim for Defamation, find in favor of Defendants/Counterclaimant David Ashton and award damages in the amount of \$10,000.00

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We find that Plaintiffs/Counterdefendants are liable for punitive damages in the amount of \$10,000.00.

The verdict is signed by the following jurors: 1, 3, 4, 6, 8 and 9.

The jurors reply that this is their true verdict.”

The jury is polled at the request of counsel as to Defendants/Counterclaimants’ claim for Breach of Contract. Each juror replies that this is his/her true verdict.

The jury is thanked by the Court and excused from further consideration in this cause.

4:26 p.m. Trial concludes.

FILED: Verdicts; Exhibit Worksheet, Trial Worksheet.

IT IS ORDERED that jury fees be assessed against the Plaintiffs in the sum of \$749.16, all in accordance with the formal written Judgment for Jury Fees signed by the Court on March 19, 2012, and filed (entered) by the Clerk on March 20, 2012.

IT IS ORDERED that jury fees be assessed against the Defendants in the sum of \$749.15, all in accordance with the formal written Judgment for Jury Fees signed by the Court on March 19, 2012, and filed (entered) by the Clerk on March 20, 2012.

Pursuant to the verdict entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

IT IS ORDERED that the Clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked or their written designee. Counsel/party or written designee shall have the right to refile relevant exhibits as needed in support of any appeal. Refiled exhibits must be accompanied by a Notice of Refiling Exhibits and presented to the Exhibit Department of the Clerk’s Office. The Court’s exhibit tag must remain intact on all refiled exhibits.

ISSUED: Exhibit Release Forms (2).

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.