

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-055080

07/10/2019

HONORABLE LISA DANIEL FLORES

CLERK OF THE COURT  
G. Chavez  
Deputy

R L WHITMER

R L WHITMER  
6333 N SCOTTSDALE RD CASITA 21  
SCOTTSDALE AZ 85250

v.

HILTON CASITAS HOMEOWNERS  
ASSOCIATION, et al.

AUGUSTUS H SHAW IV

RICHARD K WALKER  
NO ADDRESS ON RECORD  
JUDGE FLORES

MINUTE ENTRY

Prior to the commencement of these proceedings, Plaintiff's Exhibits 1 through 37 and Defendant's Exhibits 38 through 73 were marked for identification.

2:00 p.m. This is the time set for Trial regarding Plaintiff's First Amended Verified Complaint for the Enforcement of an Administrative Law Order No. 14F-H1415004-BFS (filed November 5, 2018). Plaintiff, R L Whitmer, is present on his own behalf. Counsel Augustus Shaw and co-counsel Patrick Whelan are present and representing Defendant Hilton Casitas Homeowners Association.

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

Discussion is held.

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**IT IS ORDERED** denying Plaintiff's Request for an Order to Compel the Production of Documents and Scheduling of Depositions filed on January 17, 2019, as moot because the parties have resolved the issues pertained in the request.

R L Whitmer, Michael Bengson, Bernie Proest, and Evon Potocki are sworn.

Plaintiff's case:

Bernie Proest testifies.

Bernie Proest is excused.

Evon Potocki testifies.

The Court takes judicial notice of A.R.S. 33-1255(A).

Plaintiff's Exhibit 1 is received into evidence.

Defendant's Exhibit 45 is received into evidence.

Michael Bengson testifies.

Plaintiff's Exhibits 11, 2, 5, 14, 16, 8, 4, and 3 are received into evidence.

3:28 p.m. Court stands at recess.

3:46 p.m. Court reconvenes with respective parties and counsel present.

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

Discussion is held.

Michael Bengson testifies further.

Plaintiff's Exhibit 18 is received into evidence.

Defendant's Exhibits 51 and 60 are received into evidence.

R L Whitmer testifies.

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Plaintiff rests.

Counsel for Defendant makes an oral motion for directed verdict.

Based on the testimony and evidence presented, and for the reasons stated on the record,

**IT IS ORDERED** denying Defendant's oral motion for directed verdict.

Defendant's case:

Michael Bengson testifies further.

Defendant's Exhibit 43 is received into evidence.

Plaintiff's Exhibit 20 is received into evidence.

Defendant rest.

Closing arguments.

Based on the testimony and evidence presented,

THE COURT FINDS that Plaintiff failed to prove by clear and convincing evidence that Defendant, Hilton Casitas Homeowners Association, violated the Administrative Law Judge Decision dated January 7, 2015.

**IT IS ORDERED** denying Plaintiff's complaint and request for finding of contempt.

**IT IS FURTHER ORDERED** that within thirty (30) days from today's date, Defendant's counsel shall submit a proposed form of judgment to the Court and an application for fees and costs as appropriate. Plaintiff will have fifteen (15) days to respond or object.

There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

**IT IS FURTHER ORDERED** that the Clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked or written designee. Counsel/party or written designee shall have the right to refile relevant exhibits as needed in support of any appeal or post-conviction relief. Refiled exhibits must be accompanied by a Notice of Refiling Exhibits

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and presented to the Exhibits Room of the Clerk's Office. The Court's exhibit tag must remain intact on all refiled exhibits.

**IT IS FURTHER ORDERED** that counsel/party take immediate possession of all exhibits referenced above.

ISSUED: Exhibit Release Form (2)

4:50 p.m. Matter concludes.

In accordance with Rule 2.21 of the Local Rules of Practice for Maricopa County Superior Court, a self-represented party shall inform the Court of his or her current address, telephone number, and email address (if any). The self-represented party has a continuing duty to advise the Court of any change in address, telephone number, or e-mail address (if any) and shall notify the Court within ten (10) days of such changes. A change of address form may be downloaded at: <http://www.clerkofcourt.maricopa.gov/eformsondemand/108-303-409-500AddressChng.pdf>