

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-016623

05/17/2006

(Consol.)

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
B. Navarro
Deputy

FILED: 05/19/2006

KAY MCLEAN, et al.

GREGORY A LARSON

v.

TOM MERCER, et al.

G DAVID DELOZIER JR.

COURT ADMIN-CIVIL-CCC

TRIAL MINUTE ENTRY
DAY NINE

9:36 a.m. Trial to a jury continues from May 16, 2006. Plaintiffs Kay McLean, Uri Marcus and Nehemiah Covenant Corporation are represented by counsel, Gregory A. Larson. Kay McLean and Uri Marcus are present. Defendants Tom Mercer, Janice Mercer, Sherri Wyner, Steve Wyner, Lin Pyles and John Pyles are represented by counsel, G. David DeLozier, Jr. Tom Mercer, Janice Mercer, Sherri Wyner, Steve Wyner and Lin Pyles are present.

The jury is not present.

Court Reporter, Rochelle Dobbins, is present.

Defense counsel orally moves for judgment as a matter of law on the remaining claims.

Oral argument is presented.

For the reasons set forth on the record,

IT IS ORDERED granting Defendants' Motion for Judgment as a Matter of Law on all counts in Plaintiffs' Second Amended Complaint and incorporating the Court's analysis set forth on May 11, 2006 as to all the derivative action claims. The following counts have been dismissed:

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- 1) Count I: Breach of Fiduciary Duty – Derivative Action
- 2) Count II: Declaratory Judgment – Derivative Action
- 3) Count III: Conversion, Diversion & Accounting – Derivative Action
- 4) Count IV: Unjust Enrichment – Derivative Action
- 5) Count V: Fraud & Misrepresentation – Derivative Action
- 6) Count VI: Defamation/Injurious Falsehood – Individual Action
- 7) Count VII: False Light Invasion of Privacy – Individual Action

IT IS ORDERED setting a **Status Conference as to the counterclaims** for **August 14, 2006 at 9:15 a.m.**, in this division.

IT IS FURTHER ORDERED continuing the remaining portion of the trial on the Inactive Calendar through **August 14, 2006**.

Discussion is held re: Defendants' Application for Attorneys' Fees.

IT IS ORDERED that no later than **June 30, 2006**, Defendants shall make their request for Rule 54(b) language.

10:23 a.m. The court stands at recess.

10:25 a.m. Court reconvenes with respective counsel and the parties present. The jury is present.

Court Reporter, Rochelle Dobbins, is present.

The Court advises the jury that he has entered directed verdicts in favor of the Defendants.

The jury is excused from all further consideration of this case.

10:27 a.m. Trial concludes.

FILED: Exhibit Worksheet; Trial Worksheet

LATER:

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IT IS ORDERED that jury fees be assessed against Plaintiffs Kay McLean and Uri Marcus, in the sum of \$1,754.46, all in accordance with the formal written Judgment for Jury Fees signed by the Court this date and filed herein.