

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-008362

09/25/2007

HON. EDWARD O. BURKE

CLERK OF THE COURT
E. Parrish
Deputy

CAL X-TRA, et al.

DANIEL G DOWD

v.

PHOENIX HOLDINGS I I, L L C, et al.

PHILIP A ROBBINS

MAXWELL M BLECHER
515 S FIGUEROA ST 17TH FL
LOS ANGELES CA 90071-3334
HAROLD R COLLINS
515 S FIGUEROA ST 17TH FL
LOS ANGELES CA 90071-3334
BRUCE FEDER
IVAN K MATHEW
LAWRENCE C WRIGHT
THOMAS A ZLAKET

RULING

The Court has had various motions under advisement and having heard oral argument and reviewed the cases cited makes the following rulings.

10K, L.L.C.'s and Breycliffe, Inc.'s Joint Motion for Approval of Settlement and Dismissal of Derivative Action is GRANTED. The Court has signed and filed the "two paragraph" form of Order Approving Settlement and Dismissing Derivative Action.

IT IS ORDERED approving and settling the formal written Order Approving Settlement and Dismissing Derivative Action signed by the Court on September 25, 2007, and filed (entered) by the Clerk on September 26, 2007.

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WVSV's Motion in Limine No. 1 (Criminal Conviction) is DENIED.

WVSV's Motion in Limine No. 2 (RTC and Bondholders' Judgments) is DENIED.

WVSV's Motion in Limine No. 3 (Late disclosed Witnesses) is GRANTED to the extent a ruling is necessary.

WVSV's Motion in Limine No. 4 (Dwight Duncan) is DENIED.

WVSV's Motion in Limine No. 5 (Jonathon Winer) is GRANTED, unless 10K can prove that its claim against Conley Wolfswinkel includes his involvement in the Cal-X-Tra and Breycliffe contract.

WVSV's Motion in Limine No. 6 (Jared Huish) is DENIED.

WVSV's Motion in Limine No. 7 (John Perkinson) is DENIED.

10K, L.L.C.'s Motion in Limine No. 1 (Preclude Objection to Wolfswinkel Conviction) is GRANTED.

10K, L.L.C.'s Motion in Limine No. 2 (Ratification) is DENIED.

10K, L.L.C.'s Motion in Limine No. 3 (Memo Decision) is GRANTED.

10K, L.L.C.'s Motion in Limine No. 4 (Settlement Agreements) is GRANTED.

10K, L.L.C.'s Motion in Limine No. 5 (Statute of Frauds) is DENIED.

10K, L.L.C.'s Motion in Limine No. 6 (Claim A & Claim B) is DENIED.

10K, L.L.C.'s Motion in Limine No. 7 (Jan Sell) is DENIED.

10K, L.L.C.'s Motion in Limine No. 8 (Harris Appraisal) is GRANTED in part. The Harris Report may be used if it becomes an issue on the cross-examination of Jan Sell.

10K, L.L.C.'s Motion in Limine No. 9 (Wolfswinkel Testimony re: Value) is GRANTED.

10K, L.L.C.'s Motion in Limine No. 10 (Perkinson Audiotape) is DENIED.

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The Court's attention has been called to the fact that 10K, L.L.C.'s Motion for Partial Summary Judgment No. 1 and 10K, L.L.C.'s Motion for Partial Summary Judgment No. 2 were filed on February 28, 2007, in another division of this Court and have not been ruled on allegedly due, according to Defendants, to a "Standstill Agreement" or the grant of an open extension of time to respond. The Court, having been requested to rule on the motions, rules as follows.

10K, L.L.C.'s Motion for Partial Summary Judgment No. 1 is GRANTED to the extent that it has not been rendered moot by the settlement agreement.

10K, L.L.C.'s Motion for Partial Summary Judgment No. 2 is GRANTED as to Defendants, Phoenix Holdings II, L.L.C., Robert Burns, and Brent Hickey to the extent it has not been rendered moot by the settlement agreement.

The Court assumes that 10K, L.L.C.'s Motion for Partial Summary Judgment No. 5 is now MOOT. The Court assumes that counsel will correct the Court if it is mistaken.

WVSV's Motion to Designate Non-Parties at Fault is MOOT.

WVSV's Motion for Specification of Trial Issues is DENIED. Rule 56(d) is not mandatory. Kelman v. Bohi, 27 Ariz. App. 24, 30-31, 550 P.2d 671 (1076). It appears to this Court that the Rule anticipates a request for such a specification at the time of the oral argument on the motion when the facts are fresh before the Court. Defendants' request made after the ruling makes the specification not practicable given the amount of work the Court has to accomplish on this case before trial and on other cases on its calendar.

The Court assumes that the Motion to Quash the Sarah Taylor Hickey Subpoena is now MOOT. The Court assumes that counsel will correct the Court if it is mistaken.

WVSV's Motion to Substitute Parties Amend Caption is PENDING the receipt of 10K, L.L.C.'s Response which is due on September 28, 2007.

Counsel and any self-represented parties are advised that the Clerk of the Maricopa County Superior Court has converted its case files to an electronic format and case files are no longer made available to the divisions. Therefore it is imperative that counsel follow Maricopa County Local Rule 3.2 which requires counsel to deliver copies of motions and responses to the division.