

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-005246

09/05/2006

HONORABLE KENNETH L. FIELDS

CLERK OF THE COURT
D. Whitford
Deputy

BRUCE D BELL, et al.

MICHAEL N POLI

v.

DIETZ-CRANE BUILDERS LLC, et al.

WADE R CAUSEY

ADAM B CAMPBELL
THOMAS B DIXON
WILLIAM H DOYLE
ANDREW Q EVERROAD
KENNETH M FRANKS
STEPHEN J GREEN
KYLE A ISRAEL
JAMES K KLOSS
AMY A KUNZ SWANER
CHARLES D ONOFRY
ANDREW R PESHEK
RINA K RAI
DAVID J SANDOVAL
JONATHAN D SCHNEIDER
JAMES M SHINN
SHAWN M PETRI
JEFFREY D HOLLAND
JOHN E DRAZKOWSKI

RULINGS ON MOTIONS TAKEN UNDER ADVISEMENT

The Court has under advisement the following motions by Third-Party Defendants:

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1. Duane Foster Architect's Motion for Summary Judgment.
2. Foster, Century Roofing, Horizon Waste Services, Rudolfo Bros. Plastering, and Sucato Masonry's Joint Motion to Dismiss for Failure to Prosecute and Abandonment of Third-Party Complaint.
3. Century Roofing, Horizon Waste Services, Rudolfo Bros. Plastering, and Sucato Masonry's Motion for Costs and Attorney's Fees.
4. Mitchell Electric, Tucker Plumbing and Rudolfo Brothers Plastering's Motion for Decertification.
5. W.A.T. Plumbing's Motion for Summary Judgment re: Class Members that have Sold their Homes.
6. W.A.T. Plumbing's Partial Motion for Rule 23 (b) Issue Decertification and Dismissal re: Plumbing Claims.
7. W.A.T. Plumbing's Motion to Join or Substitute Great American as a Real Party in Interest and/or Indispensable Party.

After consideration of the pleadings and arguments of counsel, the Court grants and denies the motions as follows:

1. Denying Foster, Century Roofing, Horizon Waste Services, Rudolfo Bros. Plastering, and Sucato Masonry's Joint Motion to Dismiss for Failure to Prosecute and Abandonment of Third-Party Complaint. Diet-Crane, the Third -Party Plaintiff, represents that it is ready to proceed on its third-party complaint at the scheduled trial date.
2. Denying Century Roofing, Horizon Waste Services, Rudolfo Bros. Plastering, and Sucato Masonry's Motion for Costs and Attorney's Fees.
3. Denying W.A.T. Plumbing's Motion to Join or Substitute Great American as a Real Party in Interest and/or Indispensable Party.
4. Granting in part W.A.T. Plumbing's Motion for Summary Judgment re: Class Members that have Sold their Homes. W.A.T. is correct as to how damages would be calculated on the date the class action settled between Plaintiff and Defendant/Third-Party Plaintiff. The damage would be the cost of repair or diminution in value. Third-Party Plaintiff will have to prove what portion of the settlement amount payable to plaintiff home-owners was the due to W.A.T. Plumbing's construction defects.
5. Denying Mitchell Electric, Tucker Plumbing and Rudolfo Brothers Plastering's Motion for Decertification.
6. Denying W.A.T. Plumbing's Partial Motion for Rule 23 (b) Issue Decertification and Dismissal re: Plumbing Claims. Plaintiffs' case having been resolved by settlement, there is no longer a class action pending, only a third-party action between Defendant/Third-Party Plaintiff and Third-Party Defendants.

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7. Granting Duane Foster Architect's Motion for Summary Judgment. The Court agrees with third-party defendant Duane M. Foster, Architect that there is no material issue of fact regarding its alleged breach of contract or tortuous conduct. Dietz-Crane agrees that there is no written contract and offers no admissible evidence that any alleged oral or implied contract supports its claims against Duane M. Foster, Architect.