

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch**

Date: December 1, 2009
Courtroom Deputy: J. Chris Smith
FTR Technician: Kathy Terasaki

Civil Action No. 05-cv-01016-RPM

MICHAEL L. ZINNA,

Plaintiff,

Christopher P. Beall
Adam M. Platt

v.

JAMES CONGROVE,

Defendant.

Patrick D. Tooley
Kevin M. Coates

COURTROOM MINUTES

Trial to Jury Day Two

9:04 a.m. Court in session.

Jurors present.

9:06 a.m. Continued direct examination of Mr. Zinna by Mr. Beall.

Reference to Plaintiff's Exhibit 1.

Plaintiff's Exhibits 44, 39 (A, B and C) and 49 identified, offered and received.

Plaintiff's Exhibit 48 identified and offered.

9:53 a.m. to 9:54 a.m. Mr. Tooley voir dres Mr. Zinna regarding Plaintiff's Exhibit 48.

Plaintiff's Exhibit 48 received.

Defendant's Exhibit B-16 identified and referenced.

Plaintiff's Exhibits 53 (2 photos) and 54 identified, offered and received.

Reference to Plaintiff's Exhibit 31.

Court reads Stipulations of Fact.

Plaintiff's Exhibits 26 and 30 identified, offered and received.

Court instructs jurors.

Jurors excused.

10:33 a.m. Court in recess.

10:48 a.m. Court in session.

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Jurors present.

10:51 a.m. Continued direct examination of Mr. Zinna by Mr. Beall.

10:55 a.m. to 10:56 a.m. Bench conference regarding no economic damage claim with respect to the foreclosure action. Court states it will give a limiting instruction.

Court instructs jurors regarding no economic damage claim due to foreclosure.

Plaintiff's Exhibits 3B, 3C, 3D and 34 identified, offered and received.

11:35 a.m. Cross examination of Mr. Zinna by Mr. Tooley.

Defendant's Exhibits A-12, A-25 and B-1 identified, offered and received.

Court instructs jurors.

Jurors excused.

12:00 p.m. Court in recess.

1:15 p.m. Court in session.

Jurors present.

1:16 p.m. Continued cross examination of Mr. Zinna by Mr. Tooley.

Defendant's Exhibits B-2, B-3, B-4 and B-5 identified, offered and received.

Court instruct jurors regarding discovery with respect to depositions.

Reference to the deposition transcripts of Mr. Zinna taken February 12 and 13, 2007.

Defendant's Exhibits B-19, A-1, D-10 and A-2 identified and referenced

February 22, 2005 recording played.

Defendant's Exhibits A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8 and A-9 identified, offered and received.

Court instructs jurors.

Jurors excused.

2:40 p.m. Court in recess.

2:55 p.m. Court in session.

Jurors present.

2:56 p.m. Continued cross examination of Mr. Zinna by Mr. Tooley.

Defendant's Exhibits A-13 and A-18 identified, offered and received.

Reference to Plaintiff's Exhibit 48.

Defendant's Exhibit A-24 identified and referenced.

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Court instructs jurors regarding BJC / damages.

Defendant's Exhibits B-7, A-17, A-19, A-23, B-23, C-2, C-3 and C-8 identified, offered and received.

Reference to the deposition transcripts of Mr. Zinna taken February 12 and 13, 2007 and November 17, 2008.

Court instructs jurors.

Jurors excused until 9:00 a.m. December 2, 2009.

Discussion and argument (Mr. Beall and Mr. Tooley) regarding Plaintiff's Motion for Leave to Amend Witness List [296].

ORDERED: Plaintiff's Motion for Leave to Amend Witness List, filed November 22, 2009 [296], is denied and Mr. Murphy is excluded from testifying at trial.

Plaintiff's Bench Memorandum Regarding Privilege for Executive Session Discussions Under Colorado Open Meetings Law, filed (12/1/2009) in open court by Mr. Beall.

Argument by Mr. Beall and Mr. Tooley.

Argument by Ms. Patricia W. Gilbert present representing Jefferson County.

Court instruct Ms. Gilbert to research records as directed.

4:46 p.m. Court in recess.

Trial continued. Total time: 6 hr. 25 min.