

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge William J. Martínez

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Courtroom Deputy: Deborah Hansen  
Court Reporter: Gwen Daniel

Date: March 18, 2011

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Civil Case No. 09-cv-00338-WJM-BNB

Counsel:

ROSSETTI ASSOCIATES, INC., a Michigan  
Corporation,

David Shea

Plaintiff,

v.

SANTA FE 125 DENVER, LLC, a Colorado  
Limited Liability Company;  
JFA MANAGEMENT, LLC, an Illinois Limited  
Liability Company; and  
JOSEPH FREED AND ASSOCIATES, LLC, an  
Illinois Limited Liability Company,

Jeffrey Villanueva  
Nicole Schram

Defendants.

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COURTROOM MINUTES

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TRIAL PREPARATION CONFERENCE

10:00 a.m. Court in Session

Appearances

Court's comments

The Court addresses the Proposed Motion for Leave to File Motion in Limine  
(Doc No. 83)

10:03 Argument (by Mr. Villanueva)

10:07 Argument (by Mr. Shea)

10:13 Argument by Mr. Villanueva

Court's comments

**ORDERED: The Proposed Motion for Leave to File Motion in Limine (Doc No. 83) is DENIED. The motion was filed late and there was no attempt to demonstrate good cause as to why it failed to comply with this Court's Practice Standards.**

Court's further comments re proper measure of damages

**ORDERED: Plaintiff shall submit a written proffer on or before March 23, 2011 as to (1) the precise amount of damages it will be seeking at trial on the negligent misrepresentation claim; (2) how it intends to prove up those damages; and (3) an analysis of how those damages comport with the relevant case law limiting the monetary relief on negligent misrepresentation tort claims in Colorado.**

**On or before March 28, 2011 the Defendants shall file their response to said proffer.**

Court's comments re trial

This case is set for a three-day jury trial April 4, 2011.

After the summary judgment ruling, there is only one claim left.

Jury selection, opening statements, and all evidence -- opening case by the plaintiff, the case-in-chief by the defendants, any rebuttals -- shall be completed in two and a half days.

The Court anticipates closing arguments will be given right after lunch on Wednesday, the 6th of April, and the case will then go to the jury.

Discussion re witnesses

Further comments by Mr. Villanueva

The Defendants' case is probably a half a day. If Mr. Shea is done by noon or early afternoon on Tuesday, they will be fine.

**ORDERED: Regarding voir dire, counsel have 15 minutes per side.**

**ORDERED: Regarding the appropriateness of the proposed voir dire questions RULING IS RESERVED for trial.**

**ORDERED:** On or before Friday, March 25, 2011 counsel shall submit a stipulated statement of the case jury instruction, making it as simple as possible.

**ORDERED:** RULING IS RESERVED on the proposed jury instructions and verdict form until trial.

**ORDERED:** Defendants are permitted to submit a verdict form with respect to Defendant Santa Fe which it inadvertently omitted in its submissions to the Court.

The Court is inclined to give a jury instruction on the elements of the claim of negligent misrepresentation which follows *Bedard v. Martin*, 100 P.3d 584 (Colo. App. 2004).

The Court is strongly disinclined to allow any jury instruction on punitive damages. There was no amendment of the initial Complaint in this action to allege fraud, malice or willful and wanton conduct.

Discussion re settlement

Mr. Shea's comments

Plaintiff withdraws the punitive damage jury instruction.

**ORDERED: Plaintiff's proposed punitive damage jury instruction is WITHDRAWN.**

Mr. Villanueva's comments re trial schedule

The Court's Practice Standards set forth the trial schedule: Counsel shall be present at 8:00 a.m. on the first day of trial to go over any final matters before trial begins. On subsequent days counsel must be present no later than 8:30 a.m. On all three days the jury will be brought in at 9:00 a.m.

10:29 a.m. Court in Recess  
Hearing concluded  
Time: /29