

Court of Appeals, Division One

Civil Appeal

1 CA-CV 14-0264

THIENES v. CITY CENTER et al.

Appellate Case Information

Case Filed: 30-Apr-2014
Case Closed:

Dept/Composition

Department B
Hon. Kent E Cattani
Hon. Lawrence F Winthrop
Hon. Peter B Swann

Consolidated with: 1 CA-CV 14-0077

Side 1. BRIAN THIENES, an individual; JOHN BALL and MONICA BALL, husband and wife; THE THOMPSON FAMILY TRUST; JUAN BRACAMONTE and JACQUELINE BRACAMONTE, husband and wife, Plaintiff/Appellee (Litigant Group) BRIAN THIENES et al.

- Brian Thienes
John Ball
Monica Ball
The Thompson Family Trust
Juan Bracamonte
Jacqueline Bracamonte

Attorneys for: Plaintiffs/Appellees
Franklyn D Jeans, Esq. (AZ Bar No. 4657)
Cory L Broadbent, Esq. (AZ Bar No. 24049)
Cassandra H Ayres, Esq. (AZ Bar No. 25937)

Side 2. CITY CENTER EXECUTIVE PLAZA, LLC; INFORMATION SOLUTIONS, INC.; and JERRY and CINDY ALDRIDGE, Defendant/Appellant (Litigant Group) CITY CENTER EXECUTIVE PLAZA et al.

- City Center Executive Plaza LLC
Information Solutions Inc
Jerry Aldridge
Cindy Aldridge

Attorneys for: Defendants/Appellants
Daniel C Barr, Esq. (AZ Bar No. 10149)
John H Gray, Esq. (AZ Bar No. 28107)
Joshua M Crum, Esq. (AZ Bar No. 27302)

Side 3. THE REFUGE COMMUNITY ASSOCIATION, Defendant/Appellee (Litigant Group) THE REFUGE COMMUNITY ASSOCIATION

- Refuge Community Association Inc

Attorneys for: Defendant/Appellee Refuge Comm
Penny L Koepke, Esq. (AZ Bar No. 14996)
Nicole Miller, Esq. (AZ Bar No. 23365)
Solomon S Krotzer, Esq. (AZ Bar No. 27985)

CASE STATUS

Nov 23, 2016....Pending in ASC

Table with 6 columns: PREDECESSOR CASE(S), Cause/Charge/Class, Judgment/Sentence, Judge, Role <Comments>, Trial, Dispo. Row 1: MOH, S8015CV201001563, Breach of Contract; Breach of Covenant of Good Faith and Fair Dealing [see filing], Lee Frank Jantzen, Authoring Judge of Order.

Table with 2 columns: DESCENDENT CASE(S), Dispo. Row 1: ASC, CV-16-0281-PR.

Court of Appeals, Division One

Civil Appeal

1 CA-CV 14-0264

THIENES v. CITY CENTER et al.

CASE DECISION

22-Sep-2016 MEMORANDUM DECISION

Lawrence Winthrop.....Author
Kent Cattani.....Concur
Peter Swann.....Concur

Filed: 22-Sep-2016

Mandate:

Table with 1 column: Decision Disposition. Content: Affirmed in Part, Vacated in Part, Remanded

DECISION APPLIES TO THE FOLLOWING OTHER CASE(S)

1 CA-CV 14-0077

THIENES et al. v. CITY CENTER et al.

93 PROCEEDING ENTRIES

- 1. 30-Apr-2014 FILED: Appellants' Motion to Consolidate Appeal with Pending Appeal No. 1CA-CV 14-0077; Notice of Appeal; Certificate of Service (Appellant)
2. 6-May-2014 RECEIPT No.: 2014-00528 ; \$280.00, Authorization: # 25025716340, Applied to: CITY CENTER EXECUTIVE PLAZA et al. - Class A Filing Fee (\$280.00) Paid for: Perkins Coie LLP - By Integrated Resource Systems IN
3. 14-May-2014 FILED: Appellees' Opposition to Motion to Consolidate Appeal with Pending Appeal No. 1 CA-CV-14-0077; Certificate of Service (Appellee)
4. 16-May-2014 FILED: Appellants' Reply in Support of Motion to Consolidate Appeal with Pending Appeal No. 1-CA-CV 14-0077; Certificate of Service; Exhibits 1 and 2 (Appellant)
5. 19-May-2014 FILED: Appellee Refuge Community Association's Response to Appellants' Motion to Consolidate; Certificate of Service (Appellee)
6. 19-May-2014 RECEIPT No.: 2014-00601 ; \$140.00, Authorization: Ref1#39011321355, Applied to: BRIAN THIENES et al. - Appellee's Filing Fee (\$140.00) Paid for: Beus Gilbert PLLC - By Intresys Inc
7. 20-May-2014 FILED: Appellants' Reply to the Refuge Community Association, Inc.'s Response to Appellants' Motion to Consolidate Appeal; Certificate of Service; Exhibit 1 (Appellant)
8. 21-May-2014 RECEIPT No.: 2014-00621 ; \$140.00, Authorization: #40012357147, Applied to: THE REFUGE COMMUNITY ASSOCIATION - Class B Filing Fee (\$140.00) Paid for: Ekmark & Ekmark LLC - By Integrated Resource Systems IN
9. 11-Jul-2014 FILED: e-Record on Appeal: Instruments/Minute Entries e-Reporter's Transcripts 9/15/10, 11/15/10, 3/21/13, 4/15/13, 4/16/13, 4/17/13, 4/18/13, 4/19/13, 4/22/13, 4/23/13, 4/24/13, 4/25/13, 4/26/13, 4/29/13, 4/30/13, 5/1/13, 5/2/13, 5/3/13, 5/6/13, 11/13/13; e-Exhibit: List and # E2 E5 E7 E12 320 E32 E46 E91 E92 E120 E121 E122 E130 E135 E139 E151 E153 E158 E232 3238 E239 E240 E246 E250 E266 E299 E301 E323 E328 E329 E330 E336 E337 E340 E341E342 E43 E45 E346 E347 E352 E353 E368 E384 E385
10. 11-Jul-2014 FILED: Index of Record, Notice of Appeal filed in Maricopa County Superior Court on 6/17/14 Bond Filed in Superior Court: None Docketing Statement Filed in Superior Court: 4/28/14
11. 11-Jul-2014 FILED: Reporters Transcript (09/15/10 [Steven L Garwood])
12. 11-Jul-2014 FILED: Reporters Transcript (03/21/13 [Theresa Salsberry])
13. 11-Jul-2014 FILED: Reporters Transcript (11/15/10 [Steven L Garwood])
14. 11-Jul-2014 FILED: Reporters Transcript (04/15/13 [Theresa Salsberry])
15. 11-Jul-2014 FILED: Reporters Transcript (04/16/13 [Theresa Salsberry])
16. 11-Jul-2014 FILED: Reporters Transcript (04/17/13 [Theresa Salsberry])
17. 11-Jul-2014 FILED: Reporters Transcript (04/18/13 [Theresa Salsberry])
18. 11-Jul-2014 FILED: Reporters Transcript (04/19/13 [Theresa Salsberry])
19. 11-Jul-2014 FILED: Reporters Transcript (04/22/13 [Theresa Salsberry])
20. 11-Jul-2014 FILED: Reporters Transcript (04/23/13 [Theresa Salsberry])

**Court of Appeals, Division One****Civil Appeal****1 CA-CV 14-0264****THIENES v. CITY CENTER et al.****93 PROCEEDING ENTRIES**

21. 11-Jul-2014 FILED: Reporters Transcript (04/24/13 [Theresa Salsberry])
22. 11-Jul-2014 FILED: Reporters Transcript (04/25/13 [Theresa Salsberry])
23. 11-Jul-2014 FILED: Reporters Transcript (04/26/13 [Theresa Salsberry])
24. 11-Jul-2014 FILED: Reporters Transcript (04/29/13 [Theresa Salsberry])
25. 11-Jul-2014 FILED: Reporters Transcript (04/30/13 [Theresa Salsberry])
26. 11-Jul-2014 FILED: Reporters Transcript (05/01/13 [Theresa Salsberry])
27. 11-Jul-2014 FILED: Reporters Transcript (05/02/13 [Theresa Salsberry])
28. 11-Jul-2014 FILED: Reporters Transcript (05/03/13 [Theresa Salsberry])
29. 11-Jul-2014 FILED: Reporters Transcript (05/06/13 [Theresa Salsberry])
30. 11-Jul-2014 FILED: Reporters Transcript (11/13/13 [Theresa Salsberry])
31. 15-Jul-2014 ORDERED: Per Eaton Fruit, appeal stay to/incl. 8/14/14. FURTHER ORDERED: appellant shall file a notice with this court within ten days after the superior court issues a ruling on the application. FURTHER ORDERED: if the appeal has not been reinstated by the filing of a signed order, the appeal shall be automatically reinstated by 8/15/14. FURTHER ORDERED: deferring a ruling on appellants' Motion to Consolidate Appeal with Pending Appeal No. 1 CA-CV 14-0077 until after the superior court enters a signed order and the appeal is reinstated. Melina Brill ProTem Judge - Author
32. 12-Aug-2014 FILED: Notice of Ruling on Application for Signed Order; Certificate of Service; Notice-Order-Ruling (Appellant)
33. 18-Aug-2014 ORDERED: granting appellants' motion and consolidating case 1 CA-CV 14-0077 with 1 CA-CV 14-0264. Case no. 1 CA-CV 14-0077 is designated the primary number. FURTHER ORDERED: opening brief for the issues in appeal 1 CA-CV 14-0264 shall be filed on or before 9/19/14. Hon Margaret H Downie - Author
34. 20-Aug-2014 FILED: Notice/Order/Ruling (Mohave County Superior Court)
35. 19-Sep-2014 FILED: Appellants' Opening Brief; Certificate of Compliance; Certificate of Service; Exhibit A (Appellant City Center)
36. 10-Oct-2014 FILED: Procedural Motion: Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Certificate of Service; Declaration of Daniel C. Barr in Support of Appellants' Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Proposed Order Granting Appellants' Procedural Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion (Appellant)
37. 13-Oct-2014 FILED: Statement of Limited Consent to Motion Regarding Procedural Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Certificate of Service (Appellant City Center)
38. 29-Oct-2014 FILED: Thienes Appellees' Answering Brief on Fee Issue; Certificate of Compliance; Certificate of Service (Appellee Thienes)
39. 29-Oct-2014 FILED: Answering Brief of Appellee The Refuge Community Association, Inc.; Certificate of Compliance; Certificate of Service (Appellee Refuge Community)
40. 29-Oct-2014 FILED: Appendix to Appellee's Answering Brief (Appellee Refuge)
41. 30-Oct-2014 FILED: Motion for Leave of Court to File Amicus Brief (LHCPED); Certificate of Service (Amicus Curiae)
42. 3-Nov-2014 FILED: Thienes Appellees' Response to Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Certificate of Service (Appellee)
43. 4-Nov-2014 FILED: Reply to Motion to Re-Vest Jurisdiction for the Limited Purpose of Considering Appellants' Rule 60(c) Motion; Certificate of Service (Appellant)
44. 12-Nov-2014 FILED: Procedural Motion: Motion For Extension of Length of Appellants' Reply Brief; Certificate of Service; Declaration of John H. Gray; Proposed Order (Appellant)

**Court of Appeals, Division One****Civil Appeal****1 CA-CV 14-0264****THIENES v. CITY CENTER et al.****93 PROCEEDING ENTRIES**

45. 12-Nov-2014 ORDERED: staying the appeal to and including 12/12/14, and revisiting jurisdiction in the Superior Court of Mohave County for the purpose of permitting that court to consider the pending Rule 60(c) motion. FURTHER ORDERED: on 12/15/14, this appeal shall be automatically reinstated, unless before that date appellants file a notice reinstating the appeal, a motion to dismiss the appeal, or a motion to continue the stay of the appeal. FURTHER ORDERED: appellant shall file a notice with this court within ten days after the superior court rules on the motion. FURTHER ORDERED: this order does not affect the deadline for filing the reply brief for the issues in appeal 1 CA-CV 14-0264. Melina Brill ProTem Judge - Author
46. 18-Nov-2014 FILED: Amicus Curiae Brief (Amicus Curiae NAR)
47. 18-Nov-2014 FILED: Motion for Leave to File Amicus Curiae Brief; Certificate of Service Re: Motion for Leave to File Amicus Curiae Brief (Amicus Curiae National Association of Realtors (NAR))
48. 20-Nov-2014 FILED: Appellants' Notice of No Reply to Motion for Extension of Length of Reply Brief; Certificate of Service (Appellant)
49. 20-Nov-2014 FILED: Appellee The Refuge Community Association, INC.'s Joinder in Thienes Appellees' Response to Appellants' Motion for Extension of Length of Appellant's Reply Brief; Certificate of Service (Appellee)
50. 20-Nov-2014 FILED: Thienes Appellees' Response to Appellants' Motion for Extension of Length of Appellants' Reply Brief; Certificate of Service (Appellee)
51. 24-Nov-2014 FILED: Appellants' Consolidated Reply Brief; Certificate of Compliance; Certificate of Service; Exhibit A (Appellant)
52. 25-Nov-2014 ORDERED: granting appellants' motion and allowing appellants to file a consolidated reply brief with up to 14,000 words. FURTHER ORDERED: granting the motion and accepting for filing the brief of the National Association and Realtors and the Arizona Association of Realtors lodged on 11/18/14. FURTHER ORDERED: any party desiring to respond to the amicus curiae brief shall file a response within twenty days of the date of this order. Hon Diane M Johnsen - Author
53. 26-Nov-2014 FILED: Notice of Withdrawal and Disassociation from Firm; Certificate of Service (Appellant)
54. 8-Dec-2014 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
55. 15-Dec-2014 FILED: Motion to Continue Stay of Appeal and to Re-Vest Jurisdiction in the Superior Court; Certificate of Service (Appellant)
56. 15-Dec-2014 FILED: Thienes Appellees' Response to Amicus Brief; Certificate of Compliance; Certificate of Service (Appellee)
57. 17-Dec-2014 FILED: Notice of Superior Court Order and Request to Reinstate Appeal; Certificate of Service; Exhibit A; Exhibit B (Appellant)
58. 17-Dec-2014 ORDERED: Motion to Continue Stay of Appeal and to Re-Vest Jurisdiction in the Superior Court (Appellant) = GRANTED/continuing stay to/including 1/15/15. Appeal will be reinstated on 1/16/15, unless appellants file request to continue stay. Melina Brill ProTem Judge - Author
59. 19-Dec-2014 ORDERED: reinstating this appeal. FURTHER ORDERED: clerk shall schedule appeal for consideration on merits. Melina Brill ProTem Judge - Author
60. 29-Jan-2015 CLNDR: MONTHLY COURT CASE CALENDAR, Department B, 3-3-15, 11:00 am, COURTROOM 2.
61. 4-Feb-2015 FILED: Notice of Oral Argument
62. 5-Feb-2015 FILED: Motion for Procedural Order Re: Continuance of Scheduled Oral Argument; Certificate of Service (Appellee)
63. 5-Feb-2015 FILED: Appellant's Response to Motion for Procedural Order Re: Continuance of Scheduled Oral Argument; Certificate of Service (Appellant)
64. 9-Feb-2015 FILED: Return Receipt for Notice of Oral Argument, signed by Franklyn D Jeans on 2/5/15 (Appellees Thienes, et al)
65. 9-Feb-2015 FILED: Reply in Support of Appellees' Motion for Procedural Order Re: Continuance of Scheduled Oral Argument; Certificate of Service (Appellee)
66. 10-Feb-2015 ORDERED: OA currently scheduled for 3/3/15 is vacated. FURTHER ORDERED: OA shall be rescheduled for 4/21/15 @ 10:15 am before Dept B. FURTHER ORDERED: Each side have 20 minutes to present OA. Hon Kent E Cattani Judge - Author
67. 11-Feb-2015 FILED: Return Receipt for Notice of Oral Argument, signed by Penny L Koepke on 2/4/15; Certificate of Service (Appellee The Refuge)
68. 26-Feb-2015 FILED: Appellants' Motion for Clarification Regarding Oral Argument Presentation Time; Certificate of Service (Appellant)

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69. 2-Mar-2015 ORDERED: confirming total time for argument consolidated matter will be 40 minutes, w/ 20 minutes each for appellants/appellees. Hon Kent E Cattani Judge - Author
70. 10-Mar-2015 FILED: Notice of Oral Argument
71. 20-Apr-2015 ORDERED: (on its own motion, vacates OA set on 4/21/15 @ 10:15 am) Setting OA on 5/12/15 @ 11:15 am before Dept. B.
72. 21-Apr-2015 FILED: Return Receipt for Notice of Oral Argument, signed by Penny Koepke on 4/20/15.; Certificate of Service (Appellee Refuge Com.)
73. 21-Apr-2015 FILED: Return Receipt for Notice of Oral Argument, signed by Franklyn D Jeans on 4/20/15.; Certificate of Service (Appellees Thienes)
74. 12-May-2015 FILED: Sign-in Sheet/Case is Under Advisement (Dept B)
75. 6-Sep-2016 FILED: Courtesy Copy – Minute Entry filed 09/02/2016 in Mohave County Superior Court re: The Refuge Community Association's 08/31/2016 Supplement to Application for Order to Show Cause and Request for Emergency Telephonic Hearing, including the attached Affidavit and Exhibits
76. 22-Sep-2016 MEMORANDUM DECISION (Affirmed in Part, Vacated in Part, Remanded) Hon Lawrence F Winthrop - Author; Hon Kent E Cattani Judge - Concur; Hon Peter B Swann - Concur
77. 22-Sep-2016 FILED: Memorandum Decision Distribution List
78. 6-Oct-2016 FILED: Thienes Appellees Application for Award of Attorneys Fees and Cost; Certificate of Service (Appellee)
79. 6-Oct-2016 FILED: Appendix 1 to Application for Fees (Appellee)
80. 6-Oct-2016 FILED: Application for Attorneys' Fees and Taxable Costs of Appellee The Refuge Community Association, Inc.; Certificate of Service; Affidavit In Support of Application for Attorneys' Fees and Taxable Costs of Appellee/Defendant/Counterclaimant The Refuge Community Association, Inc. (Appellee)
81. 6-Oct-2016 FILED: Statement of Costs For Appellee The Refuge Community Association, Inc.; Certificate of Service (Appellee)
82. 7-Oct-2016 FILED: Motion for Clarification and Reconsideration (with Appendix); Certificate of Compliance; Certificate of Service (Appellant)
83. 26-Oct-2016 FILED: Appellants' Opposition to Refuge Community Association's Application for Attorneys' Fees and Costs; Certificate of Service (Appellant)
84. 26-Oct-2016 FILED: Appellants' Opposition to Thienes Appellees' Application for Attorneys' Fees and Costs; Certificate of Service re: Appellants' Opposition to Thienes Appellees' Application for Attorneys Fees and Costs (Appellant)
85. 28-Oct-2016 FILED: Courtesy Copy - Minute Entry filed in Mohave County Superior Court re: Order to Show Cause Hearing
86. 31-Oct-2016 FILED: Motion for Leave to File Supplemental Brief to Motion for Clarification and Reconsideration; Certificate of Service re Motion for Leave to File Supplemental Exhibit; Exhibit 1 (Appellant)
87. 7-Nov-2016 ORDERED: Motion for Clarification and Reconsideration (with Appendix) (Appellant) = DENIED. FURTHER ORDERED: Motion for Leave to File Supplemental Brief to Motion for Clarification and Reconsideration (Appellant) = DENIED. Hon Lawrence F Winthrop - Author
88. 7-Nov-2016 ORDERED: granting the Application for Attorneys' Fees and Taxable Costs in part and awarding fees of \$40,000.00 and costs of \$3,569.25 to Defendant/Appellee The Refuge Community Association and against Appellants. Hon Lawrence F Winthrop - Author
89. 7-Nov-2016 FILED: Thienes Appellees' Reply in Support of Their Application for Award of Attorneys' Fees and Costs; Certificate of Service (Appellee)
90. 23-Nov-2016 FILED: Email Notice from ASC re: Petition for Review filed 11/22/16; request for partial record
91. 25-Nov-2016 FILED: Letter forwarding partial record to Arizona Supreme Court
92. 5-Jan-2017 ORDERED: granting the Application for Attorneys' Fees and Taxable Costs in part and awarding fees of \$130,000.00 and costs of \$262.00 to Thienes Appellees and against Appellants. Hon Lawrence F Winthrop - Author
93. 9-Jan-2017 FILED: Courtesy Copy - Minute Entry filed 01/06/2017 in Mohave County Superior Court re: Application for a Contempt of Court Order against the City Center Defendants for violating terms and provisions of the injunction and judgment