

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-018889

05/15/2015

HON. SALLY SCHNEIDER DUNCAN

CLERK OF THE COURT

C. Keller

Deputy

T K C AEROSPACE INC

BRIAN D MYERS

v.

PHOENIX HELIPARTS INC, et al.

SHARON A URIAS

HOWARD R CABOT

D & C MATERIALS-CSC

JUDGMENT SIGNED

Courtroom SCT 6C

1:28 p.m. This is the time set for oral argument on various motions. Present on behalf of Plaintiff, TKC Aerospace, Inc. (TKCA), are counsel, Damien R. Myer, Brian D. Myers, and *pro hac vice* counsel, Douglas B. Mishkin and Douglas C. Proxmire. Present on behalf of Defendant, Phoenix Heliparts, Inc. (PHP), are counsel, Sharon Urias and Scott Boehm.

Court Reporter, Robin Bobbie, is present.

A record of the proceedings is also made by audio and/or videotape.

The Court notes that it has received the following:

1. Notice of Settlement between Plaintiff and Non-Party Dickstein Shapiro, LLP, filed on April 2, 2015.
2. Defendant's Notice of Association of Appellate Counsel, filed on March 31, 2015.

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3. Plaintiff TKCA's Application for Reasonable Attorneys' Fees, Costs and Expenses, filed on March 2, 2015.
4. Supplement to Plaintiff TKCA's Application for Reasonable Attorneys' Fees, Costs and Expenses, filed on March 18, 2015.
5. Form of Final Judgment
6. Defendant's Objection to Proposed Form of Final Judgment, filed on March 31, 2015.
7. Defendant Phoenix Heliparts, Inc.'s Opposition to Plaintiff TKCA's Application for Reasonable Attorneys' Fees and Expenses, filed on April 6, 2015.
8. Plaintiff's Reply in Support of Plaintiff TKCA's Application for Reasonable Attorneys' Fees, Costs and Expenses, filed (under seal) on April 30, 2015.
9. Notice of Filing Under Seal Defendant's Financial Statements for the Period Ending December 31, 2014, filed (under seal) on May 7, 2015.
10. Defendant's Motion to Set Supersedeas Bond and Stay Execution of Judgment Pending Appeal, filed on May 14, 2015.

Argument is heard and considered regarding Plaintiff TKCA's Application for Reasonable Attorneys' Fees, Costs and Expenses.

IT IS ORDERED taking this matter under advisement.

IT IS ORDERED directing the Clerk of the Court to seal Financial Statements dated December 31, 2013, not to be opened without further order of the Court.

FILED: Financial Statements dated December 31, 2013

IT IS FURTHER ORDERED directing the Clerk of the Court to seal Financial Statements dated December 31, 2014, not to be opened without further order of the Court.

FILED: Financial Statements dated December 31, 2014

Court and counsel discuss Defendant's Motion to Set Supersedeas Bond and Stay Execution of Judgment Pending Appeal.

2:16 p.m. Court stands at recess.

2:56 p.m. Court reconvenes with the parties and respective counsel present.

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Court Reporter, Robin Bobbie, is present.

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The parties have agreed to the following schedule:

1. PHP will produce all other documents they have not yet produced in response to TKCA's previous request by **May 26, 2015**.
2. TKCA will provide further written request(s) for discovery by **May 29, 2015**.
3. PHP will respond to TKCA's further request(s) by **June 11, 2015**.
4. The parties request a telephonic status conference the week of June 15th.
5. The parties will take depositions of (PHP's current accountant, Gary Allen, Tina Cannon, the corporate designee for PHP and PHS, Andy Gutierrez and Theresa Dotts) by **August 15, 2015**.
6. TKCA will file its opposition to Defendant's Motion to Set Supersedeas Bond and Stay Execution of Judgment Pending Appeal by **September 15, 2015**.
7. PHP will file its reply by **September 30, 2015**.
8. The parties request the Court set a 1-Day Evidentiary Hearing when briefing is completed.

Regarding taking the depositions of Mr. Nichols and Mr. Brown, TKCA may notice the depositions.

TKCA requests a forensic accounting examination of PHP 30 days after the telephonic status conference with the Court.

For the reasons set forth on the record,

IT IS ORDERED TKCA will identify the expert forensic accountant of its choosing by **May 29, 2015**, and include what the accountant envisions will be needed.

IT IS FURTHER ORDERED PHP will disclose agreements, PHP and PHS books and records. It will designate what is confidential and what is "AEO."

The parties further agree to take the deposition of the forensic accountant.

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IT IS ORDERED the parties will file simultaneous briefing on exemplary damages (referencing A.R.S. § 12-2108) versus the punitive issue by **September 15, 2015**. Additionally, the parties will brief the issue of attorney and expert fees.

TKCA requests that PHP shares all of the forensic accountant's fees. The Court will not enter an order on this issue now. Briefing may be needed later.

Regarding commission agreements, to the extent redactions need to be made, the parties will make those redactions.

3:33 p.m. Court stands at recess.

3:40 p.m. Court reconvenes with the parties and respective counsel present.

Court Reporter, Robin Bobbie, is present.

A record of the proceedings is also made by audio and/or videotape.

IT IS ORDERED setting a Telephonic Status Conference on **June 22, 2015, at 3:00 p.m. (30 minutes allotted)**. The parties request a court reporter for this status conference. The parties will provide the Court with the dial in number.

To the extent the parties come up with agreements of accounting,

IT IS ORDERED by **June 11, 2015**, PHP will disclose what it proposes to do by way of an audit.

3:44 p.m. Matter concludes.

LATER:

The Court has made extensive findings in its January 30, 2015 (with a file date of February 2, 2015), ruling that establishes the bases for the award of attorneys' fees, costs and expenses in this matter. The Court has very carefully reviewed Plaintiff's Affidavit in support of its request. The Court is able to interpret the fees, costs and expenses and connect them to the litigation that unfolded before the Court and to the file the Court has reviewed. Defendant objects, for example, to some limited "block billing" done by Plaintiffs' lawyer(s) during trial. The Court is extremely familiar with the extremely long hours spent by all the lawyers and other professionals engaged in this case and is also aware that many of Plaintiff's attorneys long hours were occasioned by late disclosures and issues created by the opposing party. Considering all

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relevant factors, the Court finds that Plaintiff is entitled to reasonable attorneys' fees, costs and expenses it has requested in full.

The Court further states that no further matters remain pending and that this judgment should be entered as a final judgment pursuant to Rule 54(c), Ariz.R.Civ.P. and good cause appearing herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff TKCA is granted judgment against Defendant PHP as follows:

- A. For judgment on Plaintiff's Verified Complaint on the following counts:
1. As to Count I, judgment in the amount of Twenty Million Two Hundred Ninety-Five Thousand Seven Hundred Eighty-Two and 58/100 Dollars (\$20,295,782.58), which includes:
 - i. Misappropriation damages under A.R.S. § 44-403(A) of Six Million Seven Hundred Sixty-Five Thousand Two Hundred Sixty and 89/100 Dollars (\$6,765,260.89) (the sum of \$2,883,055.86 for lost profits and \$3,882,205.00 for research and development costs); and,
 - ii. Exemplary damages pursuant to A.R.S. § 44-403(B) of Thirteen Million Five Hundred Thirty Thousand Five Hundred Twenty-One and 72/100 Dollars (\$13,530,521.72) for PHP's willful and malicious misappropriation of Plaintiff's trade secrets.
 2. As to Counts II and III, judgment in the amount of Eight Million Six Hundred Forty-Nine Thousand One Hundred Sixty-Seven and 58/100 Dollars (\$8,649,167.58), which includes:
 - i. Compensatory damages of Two Million Eight Hundred Eighty-Three Thousand Fifty-Five and 86/100 Dollars (\$2,883,055.86); and,
 - ii. Punitive damages of Five Million Seven Hundred Sixty-Six Thousand One Hundred Eleven and 72/100 Dollars (\$5,766,111.72);
- B. For Plaintiff's taxable costs incurred in the sum of One Hundred Thirteen Thousand Three Hundred Twenty-One and 37/100 Dollars (\$113,321.37);
- C. For Plaintiff's reasonable attorneys' fees pursuant to A.R.S. §§ 44-404(3) and 12-349; and, Rule 11 and Rule 37, Ariz.R.Civ.P.; incurred in the sum of Four Million Five Hundred Ninety-Six Thousand Eight Hundred Sixty-Five 06/100 Dollars (\$4,596,865.06);
- D. For Plaintiff's expenses (i.e., items in addition to "taxable costs") incurred pursuant to Rule 11 and Rule 37, Ariz.R.Civ.P.; and, A.R.S. §12-349(A); in the sum of One Million Forty-Five Thousand Eight Hundred Seventy-Five and

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20/100 Dollars (\$1,045,875.20);

- E. For interest on the amounts of Paragraphs A through D of this judgment at the applicable statutory rate per annum from the date of entry of judgment until paid in full; and,

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, in order to avoid double recovery, Plaintiff shall recover the judgment entered herein on Counts II and III only in the event the judgment for Count I is vacated; and,

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Defendant PHP against Plaintiff TKCA on Count IV, Conversion.

/ s / HON. SALLY SCHNEIDER DUNCAN

HON. SALLY SCHNEIDER DUNCAN
JUDICIAL OFFICER OF THE SUPERIOR COURT