

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-008646

03/10/2015

HON. DAWN M. BERGIN

CLERK OF THE COURT  
C. Watling  
Deputy

STATE OF ARIZONA, et al.

RON ASCHENBACH

v.

B D 218 L L C, et al.

DALE S ZEITLIN

DAVINA DANA BRESSLER

**RULING**

The Court has considered the following: (1) the State's Motion to Exclude Defendant's Untimely Disclosed Opinions, filed on November 26, 2014; (2) Defendant's Response and Motion for Rule 11 Sanctions against Plaintiff and Its Attorneys, filed on December 11, 2014; (3) the State's Reply in Support of its Motion to Exclude Untimely Disclosed Opinions; (4) the State's Response to Defendant's Motion for Sanctions; and (5) Defendant's Reply in Support of its Motion for Sanctions. The Court declines to hear oral argument on these motions, and now makes the following findings and orders.

**State's Motion to Exclude Untimely Disclosed Opinions**

The State complains that Defendant's expert, William Dominick, disclosed new opinions on October 13, 2014, one week before his deposition, and 2.5 months after the disclosure deadline when he added three new comparable sales (sales 5, 6 and 7) to his appraisal report. While the addition of these sales changed the calculations supporting the final valuation, it did not change his conclusion that the property's value is \$2.75 per square foot.

As a preliminary matter, sale 6, which is the GKK Sale, can be eliminated from this debate because the Court granted the State's motion to exclude it.<sup>1</sup>

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<sup>1</sup> See Minute Entry dated March 9, 2015.  
Docket Code 019

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That leaves sales 5 and 7, which relate to the SMT Property. Sale 5 was the sale price listed when the SMT Property went into escrow. Mr. Dominick identified sale 5 in his February 22, 2012 rebuttal report, stating that he had not included it in his initial appraisal because he was unaware of it, but that “[t]his sale, when properly adjusted supports my opinion of value.” The SMT Property later fell out of escrow and was sold at a different price (sale 7). The first time Mr. Dominick mentioned sale 7 was in his October 13, 2014 supplemental disclosure.

The State complains that while Mr. Dominick mentioned sale 5 in his February 2012 rebuttal report, he did not explicitly state that he intended to use it as a comparable sale until his October 2014 disclosure. Mr. Dominick explained at his deposition that he believed that the State understood through his reference to sale 5 in his February 2012 rebuttal report that he considered it a comparable sale. With respect to sale 7, Mr. Dominick explained that he did not add sale 7 until October 2014 because he was unaware that it had fallen out of escrow.

The State argues that it is severely prejudiced by the addition of the comparable sales because: (1) they have affected the change in median and average price per square foot and may impact the amount of severance at issue; (2) the State did not have the opportunity to provide rebuttal testimony, thus making it “impossible” to prepare for trial; and (3) the late disclosure has disrupted the Court-ordered schedule. The Court finds these arguments unpersuasive. First, the State’s expert has included sales 5 and 7 as comparable sales in his appraisal; therefore, the State is familiar with the sales and any analysis that would qualify them as comparable sales. Second, the State had the opportunity to depose Mr. Dominick about the opinions. Third, because no trial has been scheduled, the Court is not concerned about a disruption of court-ordered deadlines. And finally, the Court will grant any request from the State to disclose rebuttal opinions by its expert, provided it can show good cause and makes the request promptly.

**IT IS THEREFORE ORDERED** denying the State’s Motion to Exclude Untimely Opinions.

**Defendant’s Motion for Sanctions**

Defendant’s Motion for Sanctions is not well-taken. While the Court denied the State’s motion to exclude Defendant’s expert’s opinions, its position was not unreasonable. This is the second motion for sanctions under Rule 11 that has been filed by Defendant and denied by the Court. The Court admonishes defense counsel that he ought to deliberate more carefully before filing another such motion.

**IT IS ORDERED** denying Defendant’s Motion for Sanctions.