

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-007265

10/03/2005

HONORABLE JANET E. BARTON

CLERK OF THE COURT  
B. Navarro  
Deputy

FILED: 10/05/2005

CITY OF PHOENIX

CHARLES K AYERS

v.

KAUFMAN MORTGAGE COMPANY, et al.

GARY L BIRNBAUM

CASE TRANSFER COOR-CCC

**FINAL PRETRIAL MANAGEMENT CONFERENCE**

9:14 a.m. This is the time set for a Final Pretrial Management Conference. Plaintiff is represented by counsel, Charles K. Ayers, Joseph M. Hillegas and Melinda Bird. Defendants Kaufman Mortgage Company, Central One, Inc., 5<sup>th</sup> Street Investors, L.L.C. and JHKPHX, L.L.C. are represented by counsel, Gary L. Birnbaum and Barry Sanders. Representatives Landowners James Kaufman and Eric Kaufman are present.

A court reporter is not present.

For the reasons set forth on the record,

**IT IS ORDERED as follows:**

- 1) Granting Defendants' Motion in Limine to Exclude Evidence of Expression of Interest to Buy Property at Central and Van Buren.
- 2) Granting in part and denying in part Plaintiff's Motion in Limine to Exclude: (1) All Settlement Negotiations Between the Parties, Including (But Not Limited to) the Partial Judgment Entered April 19, 2002, and the High-Low Agreement Therein; and (2) The Kalinowski Appraisal. Plaintiff's Motion is granted with the exception that the Kalinowski Appraisal can be used for impeachment purposes on the issue of whether Defendants' expert properly used Camelback corridor comparables.

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- 3) Granting in part and denying in part Defendants' Motion to Enforce Rule 26(b)(4)(D)'s Requirement that Only One Independent Expert May Testify on an Issue. John McNamara and Elliott Pollack will be allowed to offer rebuttal expert witness testimony.
- 4) Granting Plaintiff's Motion in Limine to Exclude: Defendants' Future Intent and Admittedly Unfeasible Plans for Subject Property.
- 5) Granting Plaintiff's Motion in Limine to Exclude Evidence of Post-Date of Valuation Downtown Developments. The Court clarifies permissible testimony. No later than **5:00 p.m. on October 5, 2005**, Defendants shall produce to this Court a copy of the report prepared by Mr. Elliott Pollack for this case and the report prepared recently as referenced in Defendants' papers.

This case is scheduled for a 4-day jury trial on October 18, 2005. The possibility of starting the trial the following week is discussed.

Due to this Court's trial calendar,

**IT IS ORDERED** sending this matter to the Case Transfer Coordinator for placement with another Judge. If this Court's trial calendar clears up, this matter will be returned back to this Judge for trial.

The following issues are discussed:

- Trial schedule
- *Voir dire* protocol
- Struck method will be used during jury selection
- Joint summary of the case shall be presented to the Court
- Number of jurors

A prospective jury panel of 30 will be brought for jury selection. 8 jurors will be selected and a verdict shall be reached upon agreement of at least 6 out of 8 jurors. If a juror is excused for cause during the course of the trial, a verdict shall be reached upon agreement of 5 out of 7 jurors. There will not be an alternate juror, all jurors will deliberate.

The Rule of Exclusion of Witnesses is invoked by Defendants.

- Marking of exhibits. All exhibits shall be submitted to the Clerk no later than **5:00 p.m. on October 4, 2005**. Duplicate exhibits shall not be presented to the Clerk.
- Juror notebooks

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- Deposition transcripts
- The set up of electronic equipment being used for trial
- Space during the presentation of the parties' respective case
- Speaking objections
- Advise witnesses of the Court's rulings on motions in limine; remind witnesses not to talk over one another; witnesses' awareness of objections

10:05 a.m. Matter concludes.