

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-008338

11/28/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

VAL VISTA MELROSE L L C, et al.

JOHN T MOSHIER

v.

MARIETTA B HUSTON

ERIC M JACKSON

MINUTE ENTRY

The Court has considered Plaintiffs' Motion to Compel and the briefs. Pursuant to Rule 7.1 (c), the Court will rule on the briefs and without oral argument.

Regardless of whether Defendant turned over or attempted to turn over the Huston appraisal to Plaintiff's counsel, thereby waiving any privilege, it is not protected by Rule 26(b)(4)(B). "The test to be applied is whether, in light of the nature of the documents and factual situation in a particular case, the experts and their information can fairly be said to have been obtained or acquired because of the prospect of litigation." *In re Sinking of Barge "Ranger I,"* 92 F.R.D. 486, 489 (D.C.Tex. 1981). Defendant obtained her appraisal, in the first instance, in order to establish whether the result of the Lyons appraisal obtained by Plaintiff was a fair one. While litigation was a likely outcome if her appraisal differed from Plaintiff's, her appraisal was not acquired *because of* the prospect of litigation, but to help her decide whether litigation would be necessary at all. As for relevance, the test is whether the discovery sought is reasonably calculated to lead to the discovery of admissible evidence, a looser standard than that of admissibility at trial. *Brown v. Superior Court*, 137 Ariz. 327, 332 (1983). Even if the contract states that only an appraisal by Ellis is relevant, the existence and substance of the Huston appraisal may still enlighten as to what valuation date the Ellis appraisal should have been based on, an issue apparently in dispute.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-008338

11/28/2006

Therefore, IT IS ORDERED Plaintiff's Motion to Compel is granted.