

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-009294

09/26/2005

HONORABLE ROBERT C. HOUSER

CLERK OF THE COURT
C. Johnston
Deputy

FILED: 09/29/2005

ARIZONA STATE, et al.

CHRISTOPHER W KRAMER

v.

VALLE DEL ORO INVESTMENT LIMITED
PARTNERSHIP, et al.

DAMIAN M FELLOWS

MINUTE ENTRY

This matter was taken under advisement following a hearing held September 23, 2005 on various motions filed by the parties.

1. Plaintiff's Motion in Limine to Exclude Defendant's Third Supplemental Disclosure Statement Witnesses and Evidence.

The Court has considered the Motion, Defendant's Opposition to Motion in Limine to Exclude Defendant's 3rd Supplemental Disclosure Witnesses & Evidence, Plaintiff's Reply In Support of Motion in Limine to Exclude Defendant's Third Supplemental Disclosure Statement: Witnesses and Evidence and the arguments presented at the hearing.

Now, therefore,

IT IS ORDERED denying Plaintiff's Motion in Limine.

2. Plaintiff's Motion in Limine to Exclude Untimely Disclosed Evidence, Theories and Improper Argument.

The Court has considered Plaintiff's Motion, Defendant's Opposition to

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Motion in Limine to Exclude Untimely Disclosed Evidence, Theories, and Improper Argument, Plaintiff's Motion to Strike filed June 29, 2005, Defendant's Opposition filed July 19, 2005, Plaintiff's Reply filed July 26, 2005 and the arguments presented at the hearing.

Now, therefore,

IT IS ORDERED denying Plaintiff's Motion in Limine.

3. Defendant's Motion in Limine to Exclude Evidence of Post-date of Valuation Sale of the Remainder.

The Court has considered Defendant's Motion, Plaintiff's Response to Defendant's Motion in Limine to Exclude Evidence of Sale of the Remainder, Defendant's Reply Re: Motion in Limine to Exclude Evidence of Sale of the Remainder and the arguments presented at the hearing.

Evidence of subsequent sales including the sale of the remainder after the valuation date in this case is admissible if the necessary foundation is established.

In *Defnet Land & Inv. Co. v. State ex rel. Herman*, 14 Ariz.App. 96 (1971), the court stated:

"Defendants also complain that since the date of valuation was May 22, 1961, any sales after that date, even to prove the after value of the property, should not have been admitted into evidence. This contention is without merit. Even in valuing the property in the before situation, sales occurring after the date of the take can be admitted into evidence. Post taking sales are admissible to prove the after value of the remaining area."

The Court in *Commonwealth v. Goehring*, 408 S.W.2d 636 (Ky. 1966), cited approvingly in *Defnet*, noted that sale of the remainder would be admissible on the issue of value:

"The judgment must be reversed because of excessive damages. Since there may be a new trial we make two observations . . . *If the remainder of this farm was sold within a reasonable time after this taking, its sale price is admissible as a comparable sale unless lack of comparability is established.*" [Emphasis added.]

Likewise, in *City of Tucson v. Ruelas*, 19 Ariz. App. 530 (1973), the court affirmed the trial court's denial of the City's motion to strike the testimony of defendant's appraiser where the appraisal relied on the sale of the remainder as one of the sales used to estimate value, stating:

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“Sales occurring after the date of taking can be used to show the value of the subject property in the 'before' situation. *Defnet Land & Investment Co. v. State*, 14 Ariz.App. 96, 418 P.2d 1013 (1971)¹.

For the foregoing reasons, the evidence of the sale of the remainder here is admissible subject to foundation.

The Court further finds that evidence of the sale of the remainder is not unfairly prejudicial under Ariz. R. Evid. 403. See *Town of Paradise Valley v. Laughlin*, 174 Ariz. 484 (App. 1992).

Now, therefore,

IT IS ORDERED denying Defendant’s Motion in Limine to Exclude Evidence of Post-Date of Valuation Sale of the Remainder.

¹ *Yoder v. City of Hutchinson*, 228 P.2d 918 (Kan. 1951), cited by Defendant, is not to the contrary. There the court upheld the trial court’s exclusion of evidence of the sale of the subject property where the record does not appear to have been well-developed: “[A]ll we know from the record is that in one transaction the Yoders purchased the lands and an assignment of Lancasters' right in the appeal taken by them and that, under the circumstances, was not to be said to be a sale in ordinary course. . . . Whatever may be the rule under other circumstances, we think what the Yoders paid for lands and a lawsuit cannot be said to be any evidence of the value of the lands.” The opinion does not mandate exclusion of evidence of a sale of the remainder under all circumstances. In any case, the authorities in this jurisdiction establish that the evidence is admissible upon a proper showing.