

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-004049

05/11/2007

JUDGE ROBERT E. MILES

CLERK OF THE COURT  
K. Ballard  
Deputy

PHOENIX CITY

DAVID A PENNARTZ

v.

LYNN A JOHNSON, et al.

DOUGLAS G MARTIN

RULING

The Court has received and considered Plaintiff's Motion to Preclude New Opinions, Analyses and Bases of Opinions, and Appraisal Supplement by Defendant's Appraiser, Peter Martori for Lack of Timely Disclosure, and the response and reply related thereto. By minute entry dated September 25, 2006, supplementation of Defendant Johnson's expert's opinions was to have occurred by December 3, 2006. In addition, the discovery cutoff was March 30, 2007 (although the parties apparently agreed, without Court approval, to extend this date to April 20, 2007 for Mr. Martori's deposition).

**IT IS ORDERED** that Defendant's expert, Mr. Martori, and all other witnesses will be precluded from testifying as to Mr. Martori's valuation of the properties based on an "income approach," since that opinion – which purportedly was based on "new" lease information that had been in Defendant's possession for more than two years – is untimely.

**IT IS FURTHER ORDERED** that Mr. Martori and all other witnesses will be precluded from testifying about opinions by Mr. Martori as to the value of the property that were not disclosed in Mr. Martori's April 20, 2007 deposition, or prior thereto.

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The Court has also received and considered the parties' Stipulation as to Certain Evidentiary Issues in lieu of and to Limit the Number of Motions in Limine; Plaintiff's Motion in Limine to Preclude Cross-Examination on, Evidence of or Reference at Trial of Nagy, Loper and Nagy Appraisals and any other Appraisals of Other Properties by Other Appraisers than the Parties' Designated Expert Witnesses; Plaintiff's Motion in Limine to Preclude Evidence or Reference at Trial of Pre-Condensation Offers by Plaintiff and Sell Appraisal and Its Conclusions of Value; and Plaintiff's Motion to Strike Exhibit 2 and References in Defendant's Response to Two Motions in Limine to Exhibit 2 and Ruling by a Trial Judge in a Different Case.

**IT IS ORDERED** as follows:

With respect to the appraisals of other properties by appraisers who will not testify in this case, Defendant states that no other appraisal reports will be offered as evidence and that neither Mr. Martori, nor Defendant, will make specific reference to other appraisers or their reports. Since the other reports were not relied on by Mr. Martori, he may not testify about them unless Plaintiff chooses to cross-examine him about them. Ms. Johnson may not testify that she relied on the information in other appraisal reports in forming her opinion of value as it appears she did not timely disclose that fact.

With respect to the Sell Appraisal, Ms. Johnson may discuss that an appraisal was done and the information in that appraisal, to the extent that influenced her opinion of value, but may not testify that the appraisal came from the City.

Ms. Johnson may testify on direct examination as to the bases for her opinion of value, if timely disclosed.

**IT IS FURTHER ORDERED** denying Plaintiff's Motion to Strike Exhibit 2.

Any other evidentiary issues the parties may wish to raise that are not resolved by this minute entry will be dealt with at the Pretrial Management Conference.