

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-004793

03/25/2010

HONORABLE JOHN A. BUTTRICK

CLERK OF THE COURT
C. Castro
Deputy

CITY OF PHOENIX

CHARLES K AYERS
MELINDA A BIRD

v.

ELIZABETH O GARRETSON, et al.

ELIZABETH O GARRETSON
NO ADDRESS ON RECORD

STEVEN B PALMER
DALE S ZEITLIN

RULING

Several pending Motions have been filed and subsequently fully briefed in this matter. The parties agreed to waive oral argument on the Motions which were then taken under advisement.

1. City of Phoenix's Motion for Partial Summary Judgment Regarding Damages Recoverable for Temporary Construction Easement, filed September 9, 2009.

This Motion raises the issue whether damages for a Temporary Construction Easement ("TCE") run only for the period of actual use of the TCE or, rather, from the time period running from the recording of the Irrevocable Right of Entry ("IROE") until the recordation of a release of the IROE. Plaintiff City of Phoenix ("City") asserts the former and Defendants (collectively "Garretson") the latter.

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While no Arizona case is directly on point, the weight of authority from other jurisdictions supports the idea that damages are recoverable only during the period of actual use of the TCE. Here, that period ran from March 20, 2006 and ended on March 14, 2007. It is for that period that Garretson is entitled to TCE damages.

The City's Motion is granted.

2. Defendants' Cross-Motion for Partial Summary Judgment That the Defendants are Entitled to Damages During the Three Year Period of the Irrevocable Right to Entry Agreement, filed October 13, 2009.

This Motion is denied consistent with the ruling above.

3. City of Phoenix's Motion for Partial Summary Judgment on Legal Inadmissibility of City's Pre-Filing Offers to Purchase and Supporting Appraisals, filed September 9, 2009.

The City's Motion seeks a ruling that its pre-filing offers and supporting appraisals are inadmissible at trial. Garretson opposes the Motion and argues the offers and appraisals continue admissions against interest or are evidence to the parties' good faith obligation to negotiate or bear upon Garretson's estoppel defense.

The evidence at issue here is not admissible. *State ex rel. Miller v. Superior Court*, 189 Ariz. 228, 232-33 (App. 1997) (reversing trial court denial of motion in limine seeking to preclude stipulated agreement for immediate possession and supporting appraisal at valuation trial as barred pursuant to Ariz. R. Evid. 408).

The Motion is granted.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>