

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-020505

08/07/2013

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
D. Harding
Deputy

CITY OF GLENDALE, THE

DIANE M MILLER

v.

BELL & 63RD INVESTMENTS L L C, et al.

GARY A GOTTO

MARY COLLINS CRONIN

UNDER ADVISEMENT RULING

The Court has reviewed the Motions In Limine ("MIL") and subsequent responses filed in this matter and having heard oral argument, rules as follows:

Plaintiff's MIL Re: Mark Grumley's 2007 Appraisal: Denied. The appraisal document itself is inadmissible (absent a stipulation by the parties to admit it). However, the fact that the City obtained the appraisal is potentially relevant to the dedication issue. It is not clear to the Court whether Defendant will call Mr. Grumley at trial. If he is called to testify, the Court will hear any disclosure objections in advance and rule on the admissibility of Mr. Grumley's opinion as to the appraised value.

Plaintiff's MIL Re: Mr. Loper's Testimony: Granted as to testimony regarding compound interest.

Regarding rental value, the motion is on hold pending Plaintiff's evidence of actual damages. If Plaintiff presents evidence of actual damages, then Mr. Loper's testimony as to the value of those damages (which he calculates as rent) may be admissible.

The Court concludes that the holding in *Corrigan v. City of Scottsdale*, 149 Ariz. 538, 720 P.2d 513 (1986) is more applicable to the facts here than *Calmat of Arizona v. State ex. Rel.*

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Miller, 176 Ariz. 190, 859 P.2d 1323 (1993). Unlike Scottsdale, Glendale did not enter the land and build a project on it. Former owners, the Adams Group, built the road. For 17 years, the road served as a public road. An issue now is whether the Adams Group dedicated the property with the road to the City. Whether a jury finds that there was a dedication or not, there was mutual use and acknowledgement of a public road for 17 years. There was no condemnation of the land. Therefore, the *Calmat* approach of calculating lost rent without proof of actual damages does not apply.

Under *Corrigan*, Defendant may be entitled to damages if the jury finds that there was no dedication of the road and that the City used the road in some fashion to Defendant's detriment for which Defendant is entitled to compensation. His damages must be actual damages provable to a reasonable certainty by the evidence. Therefore, Defendant must present evidence that he sustained actual damages before Mr. Loper may present his testimony regarding the measure of damages, i.e., rental value.

Plaintiff's MIL Re: Owner's Testimony: Granted in part. The motion is granted as to unconsummated offers on the property, except that evidence regarding Circle K's written 2009 offer may be admissible. The motion is further granted as to owner's opinions regarding value of the property, claims of discrimination, legal testimony by owner (including his views on the Constitution), and any testimony contrary to previous stipulations made in this case.

Defendant's MIL to Exclude Evidence Re Dedication: Denied. The Court has already determined that the issue of whether there was a dedication is an issue of fact for the jury.

Defendant's Second MIL to Exclude Certain Testimony by Plaintiff's Expert Dennis Lopez: Denied. Defendant's arguments go to the weight, not to the admissibility, of Mr. Lopez' opinions.

Defendant's Third MIL to Exclude Argument or Testimony by Plaintiff's Expert Dennis Lopez re "Landlocked" Parcel: Denied. The disputed testimony relates to Mr. Lopez' opinion as to why his valuation of the front part of the parcel, purchased by MWE, is right and Defendant's expert's opinion is wrong. Mr. Lopez may state the bases for his opinion.

Defendant's Fourth MIL to Exclude Argument or Testimony Concerning Mr. Bien-Willner's Purchase Price of the Property: Denied. The purchase price is relevant to the calculation of Plaintiffs expert's calculation of rental value.

Defendant's Fifth MIL to Exclude Argument or Testimony Concerning Mr. Bien-Willner's Actions, Knowledge, or Assumptions Concerning the Purported Dedication:

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Denied. Defendant may make objections to specific questions at trial. As a general matter, evidence regarding Defendant's knowledge, thought process, and actions relative is potentially relevant to damages.

Defendant's Sixth MIL to Exclude Argument or Testimony Concerning Mr. Bien-Willner's Wealth or Being a "Developer": Denied as to Defendant's land ownership and management; **granted** as to other evidence of his personal wealth and use of the term "developer."

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.