

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-007495

09/18/2014

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
M. Nielsen
Deputy

ARIZONA PUBLIC SERVICE COMPANY

ROBERT J MOON

v.

RAINBOW VALLEY 2011 L L C, et al.

THOMAS K IRVINE

DAVINA DANA BRESSLER

ORDER ENTERED BY COURT

The Court has reviewed and considered the briefing submitted by these parties' on Defendants Motion For Summary Judgment. The Plaintiff has requested oral arguments. However, the Court finds that the briefing is sufficient and further that oral arguments will not add to the court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. rule 7.1[c][2], to expedite the business of the Court. This Court's ruling herein follows.

General Background. Plaintiff seeks to acquire a 3-acre easement over undeveloped property owned by Defendants in an area outside Phoenix. Plaintiff alleges that development in this outlying area is increasing and that its existing electrical infrastructure is incapable of handling both the current and future demands of its residential and commercial customers. The requested easement would allow the construction and installation of an additional 69 vK electrical distribution line. This new line would, in turn, increase the supply of electrical power to this area and help meet the demands of its customers.

These Defendants seek dismissal of this action based upon Plaintiff's alleged non-compliance with A.R.S. §§ 12-1116[A][1] and [A][2]. Briefly stated, Defendants assert that prior to filing its condemnation action, Plaintiff failed to comply with the predicate statutory

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requirements. Specifically that Plaintiff failed to provide both an appraisal of their property and an adequate description of the projected construction project that allowed an assessment of any residual severance damage.

Plaintiff asserts that there has been substantial compliance with the mandates of this statute and further that there exist genuine issues of material fact that preclude granting summary judgment as a matter of law.

Standard of Review. To grant summary judgment, the Court must determine that the record before it contains “no genuine issue as to any material fact” and, thus, “that the moving party is entitled to judgment as a matter of law.” [Rule 56 [c]]. In determining whether to grant summary judgment, the Court will view the facts and inferences from these facts in the light most favorable to the nonmoving party.¹

Summary judgment is appropriate “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.”²

The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. A material fact is any factual dispute that might affect the outcome of the case under the governing substantive law. A factual dispute is genuine if the evidence is such that a reasonable jury could resolve the dispute in favor of the nonmoving party.

A party opposing a motion for summary judgment cannot rest upon mere allegations or denials in the pleadings or papers, but instead must set forth specific facts demonstrating a genuine issue for trial.

Discussion. A.R.S. §12-1116[A] provides that in condemnation cases, “...at least twenty days before filing an action...”, Plaintiff is to provide property owners with “...[1] a written offer to purchase the property... and for any compensable damages to any remaining property...” and “...[2] one or more appraisals that support the amount of the proposed compensation...” Defendants alleged that it is undisputed that Plaintiff failed to comply with the strict mandates of this statute and as a consequence this action should be dismissed.

Plaintiff alleges that its pre-condemnation offer was proper and consistent with Arizona law. Specifically, Plaintiff alleges that its offer was supported by an appraisal report that

¹ *Matsushita Elec. Co. v Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348 [1986].

² *Celotex Corp. v Catrett*, 477 U.S. 317, 106 S. Ct. 2548 [1986].

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adequately estimated the per-acre value of property in the area, including Defendants property. Further, Plaintiff asserts that the parties' appraisal experts agreed that there exist no severance damages in this case.

There exist no allegations of bad faith in this matter and/or allegations that Plaintiff failed to make an offer. The pre-condemnation offer made to these Defendants in May of 2013 included an appraisal. This report covered property adjacent to and/or including Defendants property. It provided a valuation of the property.

There exists no Arizona appellate decision that supports Defendants legal position, i.e. that failure to strictly comply with A.R.S. §12-1116 [A] [1] and [2] warrants dismissal. Further, this Court does not construe the applicable statutory language as establishing a pre-filing jurisdictional mandate. In addition, the statute does not expressly require a Plaintiff to affirmatively plead compliance with this pre-condemnation statute.

For these reasons and those expressed by Plaintiff in its moving papers, this Court finds that Plaintiff has substantially complied with the requirements of the applicable pre-condemnation statute and further that it has jurisdiction to proceed in this matter. The Court also finds that Defendants are not entitled to dismissal as a matter of law.

IT IS ORDERED denying Defendants' Motion for Summary Judgment.