

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2000-001517

08/04/2003

THE HONORABLE MICHAEL A. YARNELL

CLERK OF THE COURT
M. L. Smith
Deputy

FILED: 08/06/2003

ANTHONY J MARTORI, et al.

BRAD K KEOGH

v.

DUDLEY GREER, et al.

MICHAEL S MCCOY

CRAIG R THOMPSON
14040 N CAVE CREEK RD STE 305A
PHOENIX AZ 85022
MICHAEL J O'CONNOR
RYAN J MCCARTHY

MINUTE ENTRY

4:30 p.m. In Chambers.

Time set for oral argument on Defendant Greer's Motion for Summary Judgment Re Plaintiffs' Failure to Prove Damages filed June 20, 2003. Counsel, David K. Keogh is present for Plaintiffs. Counsel, Michael J. O'Connor and Michael S. McCoy, are present for the Greer Defendants. Counsel, Ryan McCarthy is present for Defendant Eagle Butte.

Court Reporter, Patty Connelly, is present.

Oral Argument is heard.

IT IS ORDERED taking this matter under advisement.

LATER:

This motion presents the issue of whether or not a prima facie case for damages is present on this record, on all disputed and undisputed facts, and inferences, taken most favorably to

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Plaintiff. Under the Court's minute entry order of December 12, 2002, the motion was timely filed. Defendant Eagle Butte has joined in the motion.

The first issue presented is whether or not the expert testimony of Lori Keegan presents a prima facie case of "lost crop" damages to "Martori Farms." This court concludes that a prima facie case of "lost crop" damages to "Martori Farms" is present. The quality and persuasiveness of that evidence is for the jury.

The second issue is whether or not the named Plaintiffs have established, on the disputed and undisputed facts, and inferences, taken most favorably to named Plaintiffs, a prima facie right to any such proven "lost crop" damages. This second issue has not previously been presented to the Court, nor has it been previously ruled on.

It is undisputed named Plaintiffs own Section 36 and seek lost profits in this action. There is no claim for diminution in value of Section 36. It is undisputed that named Plaintiffs neither farm Section 36 nor do they sell the produce from Section 36.

While one might casually assume the owner of Section 36 would be impacted in some monetary manner by lowered crop production on Section 36, there is no proof whatsoever on this record that any such damages have been incurred as a result of the alleged crop loss. While there is evidence of lost profits on this record, there is no evidence on this record as to the lost profits, if any, suffered by named Plaintiffs (as opposed to non-party entities who actually farm Section 36 and/or sell the produce). Any request by named Plaintiffs to name additional party Plaintiffs in this action comes too late.

Because of the absence of a prima facie case of compensable damage to named Plaintiffs,

IT IS ORDERED granting Defendant Greer's Motion for Summary Judgment Re Plaintiffs' Failure to Prove Damages filed June 20, 2003, joined by Defendant Eagle Butte, LLC.

FURTHER ORDERED dismissing this action, with prejudice, each party to bear their own attorney's fees.

FURTHER ORDERED vacating the final pretrial conference set at 10:00 a.m., August 11, 2003, and the trial set at 9:30 a.m., August 19, 2003.

FURTHER ORDERED Defendant's shall lodge an appropriate form of judgment by **5:00 p.m. August 25, 2003.**