

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-009224

11/19/2009

HONORABLE EILEEN S. WILLETT

CLERK OF THE COURT
J. Rutledge
Deputy

RALPH EDWARD DULEY, et al.

JAMES E VIEH

v.

DESERT HOMES DEVELOPMENT INC

JOHN J BELANGER

STEVEN MICHAEL CHAET
JEFFREY D HOLLAND
J GARY LINDER
ANDREW R PESHEK

RULING

The Court has considered the following, in addition to authorities cited, attachments, and oral argument of counsel:

- *Defendant/Third-Party Desert Homes Development, Inc.'s Motion for Partial Summary Judgment Re: Damages* and the Statement of Facts thereto, filed August 14, 2009;
- *Plaintiffs' Response to Defendant Desert Homes Motion for Partial Summary Judgment Re Damages*, filed September 16, 2009;
- *Defendant/Third-Party Plaintiff Desert Homes Development, Inc.'s Reply in Support of its Motion for Partial Summary Judgment Re: Damages*, filed September 29, 2009;

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- *Defendant/Third Party Plaintiff Desert Homes Development, Inc.’s Motion to Strike Portions of Plaintiff’s Response to Desert Homes’ Motion for Partial Summary Judgment Re: Damages*, filed September 29, 2009;
- *Plaintiffs’ Opposition to Desert Homes’ Motion to “Strike Portions of Plaintiffs’ Response to Desert Homes’ Motion for Partial Summary Judgment Re: Damages”*, filed October 8, 2009, and the entire record.

For good cause shown and reasons stated on the record,

The Court finds that no genuine issue of material fact exists as to the method of calculation of damages in this case, and Defendant is entitled to partial judgment as a matter of law on the issue of methodology to be used to calculate damages. As a matter of law, where cost of repair is less than diminution of value and the economic waste exception is inapplicable, cost of repair is the appropriate damages calculation method to proceed to the jury. The Court further finds, viewing all evidence in a light most favorable to the Plaintiff and drawing all inferences in Plaintiff’s favor, the property would not be substantially destroyed by remedying the defects present. The appropriate measure of damages in this case is therefore cost of repair.

IT IS ORDERED granting Defendant’s Motion for Partial Summary Judgment.

IT IS FURTHER ORDERED denying Defendant’s Motion to Strike, filed September 29, 2009.

The Court has considered *Defendant/Third-Party Plaintiff Desert Homes Development Inc.’s Motion to Compel Continued Deposition of Harvey J. Lawrence*, filed September 16, 2009

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and Plaintiffs' *Opposition to Desert Homes' Motion to Take a Second Deposition of Harvey J. Lawrence*, filed September 30, 2009.

IT IS ORDERED denying Defendant's Motion to Compel, filed September 16, 2009.

The Court has additionally considered *Defendant/Third-Party Desert Homes Development, Inc.'s Motion in Limine Regarding Overlapping Expert Testimony*, filed September 16, 2009 and Plaintiffs' Opposition, filed September 30, 2009.

IT IS ORDERED denying Defendant's Motion in Limine, filed September 16, 2009.

**HONORABLE EILEEN S. WILLETT
MARICOPA COUNTY SUPERIOR COURT
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