

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
08/24/2001

08/09/2001

CLERK OF THE COURT
FORM V000A

HONORABLE ROGER W. KAUFMAN

L. Rasmussen
Deputy

CV 2000-015550

FILED: _____

REGENCY CENTER LP

LAURA H KENNEDY

v.

STATE OF ARIZONA DEPT OF
TRANSPORTATION, et al.

JEFFREY T MURRAY

MINUTE ENTRY

In chambers. This is the time set for oral argument on motion to dismiss Plaintiff is represented by Laura Kennedy. Defendants are represented by Jeffrey Murray and William Jameson.

Court reporter is not present.

Discussion is held.

In June of 2001, the court granted a motion to dismiss this action as untimely. The plan and the closing of access were open and obvious. The value of the property was diminished as of the time of closing of access. This is an action for breach of contract. The contract required that access remain open during the construction of the freeway.

Diminution of value continued from the date of breach of contract continuously until access was restored.

Bashas' did not terminate its lease with plaintiffs until long after access had been closed. This, however, did not

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trigger the discovery rule because both breach and the fact of damage were apparent long before the notice of intent to terminate was given.

Unfortunately, the court's order dictated in June of 2001 was not transcribed, and counsel requested oral argument on the motion. Oral argument was held today. Ms. Kennedy cited a case that had not previously been cited to the court, *HSL Linda Gardens Properties, Ltd. v. Freeman*, 176 Ariz. 206, 859 P.2d 1339 (App. 1993).

The court will treat the oral argument today as a motion for reconsideration. Reconsideration is granted.

The court will restudy the material submitted, along with the new citation, and will issue another minute entry as soon as possible.

This matter is taken under advisement.

Matter concludes.

LATER:

The motion to dismiss as untimely is granted. Breach and damage were apparent when access was cut off. The *HSL Linda Gardens'* opinion has language about "substantial" damage. This is dictum and would substantially change the legal effect of limitations provisions if it were implemented in cases like this. It would prolong litigation when the limitations period has run and there is no real discovery issue.

Let the record reflect that this minute entry is faxed to respective counsel on August 10, 2001.