

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-004103

05/06/2009

HONORABLE ROBERT BUDOFF

CLERK OF THE COURT

L. Carlson

Deputy

STEVEN H CHAPMAN, et al.

ANTONIO M ROSACCI

v.

MARICOPA COUNTY

JORGE FRANCO JR.

RULING

After Oral Argument on May 4, 2009, this Court took under advisement that portion of Defendant's Motion in Limine filed April 20, 2009, relative to "Measure of Damages for Real Property".

The matters presented to the Court have been considered, including, but not limited, to case law contained in City of Globe v. Rabogliatti, 24 Ariz.392, 210 P.2d 685 (1922); State of Arizona v. Brockell, 187 Ariz. 226, 928 P.2d 650 (1996); and City of Tucson v. Apache Motors, 74 Ariz. 98, 245 P.2d 255 (1962).

Defendant's position as expressed in its Motion in Limine is that this Court should limit Plaintiffs' measure of damages to the lesser of:

1. The cost of repair or replacement; or
2. The diminution in the value of the property immediately before and immediately after the injury.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-004103

05/06/2009

Plaintiffs' position is that since the cause of the injury is "non-permanent" and the risk of future injury will continue until Stacey Road is fixed, the measure of damages is "the most certain and satisfactory" compensation for Plaintiffs.

It is clear that under Plaintiffs' theory of the case until Stacey Road is repaired, the risk of future injury to Plaintiffs exists. When future injury may occur is speculative.

This Court determines that the correct measure of damages is as set forth by Defendant in its Motion in Limine, that is, the lesser of the cost of repair or replacement or the diminution of value of the property immediately before and immediately after the injury. This is in accordance with the original holding in Globe.

In making this determination it is recognized by the Court that if there is no "fix" that there may be future injury to Plaintiffs' property and said injury may be the subject of a future claim. This litigation only involves damages that occurred as a result of the rainstorm damage of July 23, 2003, and August 2, 2005.

In accordance with the above ruling Defendant's Motion in Limine as to the measure of damages is granted.

IT IS FURTHER ORDERED signing this minute entry as an order of the Court.

/ s / HONORABLE ROBERT BUDOFF

JUDICIAL OFFICER OF THE SUPERIOR COURT