

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-028389

03/02/2011

HONORABLE JEANNE GARCIA

CLERK OF THE COURT  
A. Beers/M. Hovorka  
Deputy

GUARANTY SOLUTIONS L L C

WILLIAM SCOTT JENKINS

v.

VOYAGER AT WHITE MOUNTAIN LAKES L L C, et al. SALLY M DARCY

DANIEL L KLOBERDANZ  
JOE F TARVER JR.  
EVAN L THOMPSON

MINUTE ENTRY

Courtroom 303 – Old Courthouse.

9:04 a.m. This is the time set for Telephonic Status Conference to address a discovery dispute. Plaintiff is represented by counsel, William Scott Jenkins. Defendants Wayne S. Smith, Petrina M. Smith, Mark H. Wright, and Mary L. Wright are represented by counsel, Evan L. Thompson. Defendant Jacob Gechman is represented by counsel, Daniel L. Klobberdanz.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held.

The court may need to reschedule the evidentiary hearing from May 5 and 6 to May 4 and 5. Counsel are to check with their experts to see if rescheduling is possible.

**IT IS ORDERED** taking this matter under advisement.

9:40 a.m. Matter concludes.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-028389

03/02/2011

LATER:

Plaintiff asserts the KS Appraisals should be excluded on the basis that they would be cumulative and would violate the one expert per party presumption under Rule 26(b)(4)(D), Ariz. R. Civ. P. Additionally, Plaintiff asserts their preclusion on the basis that the appraisals were prepared by its consulting witness in anticipation of this litigation under Rule 26(b)(4)(B), Ariz. R. Civ. P. Counsel avows that despite the face of the report noting they were prepared to assist in loan underwriting, he can provide an affidavit to the effect that the intended purpose was for an internal gauge of the price at trustee sale.

Defendants assert the evidence is factual in nature and that court should have all available information before it to determine the value of the property at the upcoming evidentiary hearing. Defendants also assert the appraisals are distinct rather than cumulative and are needed because the information was provided at the time of the foreclosure.

The court is unable to determine whether the information is truly cumulative because it has not seen any of the expert reports. However, the court agrees with Defendants that information provided contemporaneous with the event meets the exceptional circumstances test of Rule 26(b)(4)(B). Although a current opinion is feasible, facts relative to the market at the time of the trustee sale are available only through the evaluation done at that time. Therefore, the court concludes that the KS Appraisals should not be precluded on the consulting expert basis.<sup>1</sup>

The court further concludes that the KS Appraiser is not an independent expert retained for testimonial purposes. (See Committee Comment to 1991 Amendments to Rule 26(b)(4)(D)) Therefore, the “one independent expert witness” limitation is not implicated. Even if it was, given the fluctuating real estate market in recent years and the contemporaneous appraisals, the court finds good cause has been established.

The court has given much consideration to Plaintiff’s proffered “middle ground” course of action of allowing the report but not the KS Appraiser’s testimony, allowing each expert to address the report. The only problem with that approach is that it could open the door to speculation for the opinions which should be avoided if possible. The court concludes the better course is to allow the testimony even if it requires a later date and/or more time allotted for the hearing to allow for the full preparation and presentation that all would benefit from. Accordingly,

---

<sup>1</sup> This conclusion assumes that Plaintiff’s counsel will supply the affidavit proffered during the status conference.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-028389

03/02/2011

**IT IS ORDERED** that the KS Appraisals will be considered along with the testimony of their author.

**IT IS ORDERED** setting a Telephonic Status Conference for **March 11, 2011 at 10:30 a.m. (time allotted: 15 minutes)** in this Division at which time the parties shall be prepared to discuss a firm date for the Evidentiary Hearing. Counsel for Plaintiff shall initiate the conference call to this Division at 602-372-0610. **The parties and counsel shall not be permitted to participate in conferences via cell phones or speakerphones.**

**NOTE:** All court proceedings are recorded by audio method and not by a court reporter. Any party may request the presence of a court reporter by calling this Division five (5) judicial days before the scheduled hearing.

**DUE TO JUDICIAL ROTATIONS, EFFECTIVE JUNE 27, 2011, THIS CASE WILL BE ASSIGNED TO THE HONORABLE SALLY S. DUNCAN, 602-506-9042 (LOCATION PENDING).**

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.