

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-002097

07/30/2018

HONORABLE CONNIE CONTES

CLERK OF THE COURT  
D Arrieta  
Deputy

STATE OF ARIZONA, et al.

ADRIENNE M WEINKAMER

v.

ESTATE OF JOHN M WILLIAMS JR, THE, et  
al.

DALE S ZEITLIN

DAVINA DANA BRESSLER  
STEVEN H WILLIAMS  
4650 W DOBBINS RD  
LAVEEN AZ 85339  
JUDGE CONTES

**MINUTE ENTRY**

This ruling is prompted by the Motion *in Limine* filed by the Williams defendants to exclude from evidence the State's valuation expert witness Jan Sell, and plaintiff State of Arizona's response thereto. The court has considered the filings of the parties, applicable case law, and matters of the record.

Motions *in limine* are not to be granted "except upon a clear showing of non-admissibility." *State ex rel. Berger*, 108 Ariz. 396, 397, 499 P.2d 152, 153. In this eminent domain action, defendants argue for the application of the doctrine of judicial estoppel but fail to establish the three requirements of the doctrine. *State v. Towery*, 186 Ariz. 168, 182, 920 P.2d 290, 304 (1996) (holding for the doctrine of judicial estoppel to apply, "(1) the parties must be the same, (2) the question involved must be the same, and (3) the party asserting the inconsistent position must have been successful in the prior judicial proceeding"). Because defendants have failed to show that the legal question involved in an immediate possession action, A.R.S. §12-1116, is the same legal question involved at a condemnation trial, A.R.S. §12-1122(A), the court cannot apply the doctrine of judicial estoppel. Nor have defendants shown that the State has asserted an inconsistent position and was the successful party in a prior judicial proceeding.

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Finally, the State is not in violation of Rule 26(b)(4)(D), Ariz. R. Civ. P., by disclosing only one valuation expert at the condemnation trial.

Defendants have cited no authority to support their position that the State is bound to use in the condemnation trial the same appraiser who valued the property during the required pre-filing process. Nor is the court now being asked to rule upon the admissibility of evidence of the State utilizing two different valuation experts at different phases of these proceedings. The relief requested by defendants' motion *in limine* must be denied.

**IT IS THEREFORE ORDERED** denying defendants' motion for limine, filed May 16, 2018.