

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-016817

06/30/2006

HON. COLIN F. CAMPBELL

CLERK OF THE COURT
M. Sahli
Deputy

FILED: 07/11/2006

PHOENIX CITY

JANIS M HAUG

v.

R E M INVESTMENT COMPANY, et al.

SAMUEL J SUTTON JR.

WILLIAM D RISKE
SAMUEL J SUTTON
2141 E HIGHLAND AVE #155
PHOENIX AZ 85016
ANNE V SUTTON
4933 E ARROYO VERDE DR
PARADISE VALLEY AZ 85353
H JAMES VAN DOLA
10220 N 37TH ST
PHOENIX AZ 85028

MINUTE ENTRY

The Court took under advisement Defendant's Motion for Summary Judgment on Condemnation Damages, Plaintiff's Response to Defendant's Motion for Summary Judgment on Condemnation Damages, and Defendant's Reply in Support of Summary Judgment on Condemnation Damages. After careful consideration, the Court denies Defendant's Motion for Summary Judgment.

Most courts will not grant summary judgment if the facts are disputed, or the evidence presented could lead reasonable minds to arrive at different conclusions. *Orme School v. Reeves*, 166 Ariz. 301, 306, 802 P.2d 1000, 1005 (1990). A motion for summary judgment should only be granted if "the facts produced in support of the claim or defense have so little probative value

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. . . that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.” *Id.* at 309, 802 P.2d at 1008. Here, there are issues of fact that cannot be ruled upon by summary judgment.

The Arizona Constitution states that “[n]o private property shall be taken or damaged for public or private use without just compensation having first been made.” ARIZ. CONST. art. 2, § 17. A “court or jury shall ascertain and assess the value of the property sought to be condemned” ARIZ. REV. STAT. § 12-1122 (2006). In general, the value of land sought to be condemned “is to be determined by market value.” *Selective Res. v. Superior Court*, 145 Ariz. 151, 153, 700 P.2d 849, 851 (Ct. App. 1984). Market value is defined as “the highest price which the land would bring if exposed for sale in the open market with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it was adapted and for which it is capable.” *Id.* As the Constitution requires “just compensation,” in order to determine the fair market value of the condemned property “the trial court must use the measure of damages which is most appropriate under the circumstances to insure fair compensation to the landowner whose property rights are taken. The constitutional test makes it mandatory upon the trial court to determine what is fair and just compensation” *Id.* at 154, 700 P.2d at 852. Thus, the amount of compensation for condemnation is a question of fact and is to be determined by a trier of fact.

In addition, here, the facts are in dispute as to the amount of damages to which Defendant is entitled. Both parties employed an appraiser to determine the value of the condemned property, and the appraisers disagree as to the value of the subject property. This presents a question of fact for the court. Furthermore, Defendant asserts that Plaintiff’s appraisal report “was based on remote and dissimilar comparables and deeply flawed adjustments” (Def.’s Mot. for Summ. J. on Condemnation Damages at 4.) This, too, is a question of fact for the court and cannot be decided on a motion for summary judgment. Therefore,

IT IS ORDERED Defendant’s Motion for Summary Judgment is denied.