SUPERIOR COURT OF ARIZONA *** FILED ***
MARICOPA COUNTY 08/13/2002

08/09/2002 CLERK OF THE COURT
FORM V000A

HONORABLE CATHY M. HOLT E. Schneider
Deputy

CV 2002-000004

FILED: _____

TAMARAC PROPERTIES LLC MERRICK B FIRESTONE

v.

CITY OF PHOENIX BRADLEY D GARDNER

MINUTE ENTRY

After oral argument the Court took under advisement Defendant City of Phoenix's ("Defendant") Motion to Dismiss. Defendant requests that this Court dismiss this action for Plaintiff Tamarac Properties L.L.C.'s ("Plaintiff") alleged failure to comply with A.R.S. §12-821.01. This statute sets forth certain prerequisites for filing an action against a public entity. Defendant contends that Plaintiff failed to comply with that aspect of A.R.S. §12-821.01 that requires that Plaintiff's claim against a public entity "contain a specific amount for which the claim can be settled …" The Notice of Claim letter served upon Vicky Miel, City Clerk for the City of Phoenix, on or about March 8, 2001 Plaintiff provides as follows:

> On September 16, 1993, the City of Phoenix and Tamarac Properties, L.L.C. entered in to contract entitled "Downtown Area Redevelopment and Improvement Plan Phoenix, Arizona Historic Preservation Project 802-830 North Second Avenue and 801-805 North Third Avenue Disposition and

Development Agreement." The contract provides that Tamarac Properties L.L.C. has the right to purchase property at Lots 1, 2, 3, 4, 6, 8, 10, 12, 14, and 16 for the agreed appraisal value of $16,000 for each lot provided that Tamarac Properties, L.L.C. would rehabilitate historic structures on lots 6, 10, 14, and 16 and develop buildings in a character consistent with the architecture on the remaining lots within a prescribed time period specified in the agreement. In addition, the agreement provides that Tamarac Properties, L.L.C. would have the right to sell a conservation easement to the City of Phoenix on the historic properties.

On January 31, 2001 the City of Phoenix terminated the agreement. Tamarac Properties, L.L.C. has a breach of contract action against the City of Phoenix for terminating the contract. Tamarac Properties, L.L.C. demands that the DDA be reinstated at this time, and that the City of Phoenix not sell any of the properties in question until this matter is resolved in its entirety. This claim cannot be valued.

Thus, at the time of the Notice of Claim letter Plaintiff demanded specific performance of the Disposition and Development Agreement ("DDA") rather than a request for damages as a result of the alleged breach of the DDA. Defendant cites *Young v. City of Scottsdale,* 193 Ariz. 110, 970 P. 2d 942 (App. 1999) in support of its argument that even if it is difficult to quantify damages a plaintiff must still give its best estimate of the damages and the reasons that a more specific number cannot be given. Defendant further argues that Plaintiff could have estimated its damages because paragraph 14 of it Complaint alleges consequential damages to be proven at trial.

There are no reported Arizona cases as to whether a demand for specific performance complies with the requirements of A.R.S. §12-821.01. But the intent and purpose of the statute is:

1. To afford an opportunity to the [government] agency to investigate the merits of the claim and seasonably assess its potential;

2. To afford the opportunity to arrive at a settlement of the controversy and thus avoid litigation between the state and its citizens; and

3. To establish an orderly procedure by which the legislature will be advised of claims in instances where no provision has been made for payment.

Young v. City of Scottsdale, 193 Ariz. 110. 970 P. 2d 942, 945 (App.1999) (citing *State v. Brooks,* 23 Ariz. App. 463, 534 P. 2d 271, 274 (1975).

Moreover, the "specific sum" requirement of the claim notice statute must be reasonably interpreted to give effect to the purpose of the statute. *Hollingsworth v. City of Phoenix,* 164 Ariz. 462, 793 P. 2d 1129 (App. 1990). Thus, the "specific amount" requirement "must be interpreted in light of the claim statute's purposes as explained in *Brooks* and the reasonableness standard as explained in *Hollingsworth.*" *Young,* 970 P.2d at 946.

The DDA contained an express provision allowing a non-defaulting party, at its option, to commence an action for specific performance. The Notice Of Claim letter succinctly sets forth the dispute and that the dispute can be settled by reinstating the DDA. Thus, the Notice of Claim letter meets the purpose of the notice of claim statute of permitting a public entity to investigate the merits of a claim and settle the dispute short of litigation. The rigid reading of the statute proposed by Defendant would be inequitable under the circumstances of this case where it is indisputable that Defendant was fully apprised of the dispute, had an opportunity to investigate the merits, and could have arrived at settlement of the controversy by reinstating the DDA as demanded by Plaintiff in the Notice of Claim but chose not to do so. That

Plaintiff now instead seeks monetary damages does not change the fact that prior to the filing of this action Defendant was given timely sufficient information as to the dispute and what it could be settled for short of litigation--- namely reinstatement/specific performance of the DDA. Nothing in the notice of claim statute limits a plaintiff in an action filed subsequent to the notice of claim as a result of the parties not resolving the dispute short of litigation from seeking damages other than those demanded/requested in the notice of claim.

Dismissal based upon alleged technical defects in the notice of claim is disfavored where, as here, Defendant shows no prejudice and the notice of claim is consistent with the purpose of the notice of claim statute. Accordingly,

IT IS ORDERED denying Defendant's Motion to Dismiss.