

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-005205

03/06/2006

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT
L. Gilbert
Deputy

FILED: 03/10/2006

JERRY SIMMS

JOSEPH C DOLAN

v.

NORMAN A MCDUGALL, et al.

WARREN R BROWN

JOSEPH B SWAN JR.
CHRISTOPHER WATSON
1529 E CAMPBELL AVE
GILBERT AZ 85234

MINUTE ENTRY

Defendants MK Custom's Motion for Partial Summary Judgment re: Limitation of Damages has been under advisement. The Court has considered all memoranda submitted and the arguments of counsel.

The Court notes that these defendants seek a legal ruling from the Court as to the measure for damages applicable to this case. Defendants argue that the proper measure of damages to real property is the lesser of 1) the cost to repair the damage plus loss of use damages or 2) the diminution in value. City of Globe v. Rabogliatti, 24 Ariz. 392, 210 P. 685 (Ariz. 1922), SDR Associates v. ARG Enterprises, Inc. 170 Ariz. 1, 821 P.2d 268 (Ariz. App. 1991), A.I.D. Ins. Servs. V. Riley, 25 Ariz. App. 132, 541 P.2d 595 (1975), Founders Bank of Arizona v. Chrysler Realty Corp., 86 F. Supp. 2d 968 (D.Ariz., 2000).

Plaintiff urges that this Court should allow damages for "stigma" damage, i.e., loss in value due to the fact that damage had occurred, even though repairs have been done to the real property. Plaintiff relies on Dobbs Law of Remedies (2d ed.) (1993), Max of Switzerland c. Allright Corp. of Delaware, 187 Ariz. 496, 930 P.2d 1010 (1997), and Farmers Ins. Co. v. R.B.L. Inv. Co., 138 Ariz. 562, 675 P.2d 1381 (App. 1983). Further, plaintiff argues that damages awarded for damage to vehicles should be the same as damage to real property.

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The Court finds that the Arizona courts have made it clear that the measure for damages to real property that can be repaired is the cost to repair or replace plus damages for loss of use. If the property cannot be repaired, the measure of damages is the diminution in value immediately before and after the damage occurred. Plaintiff's claim that he cannot recover his full damages without an award for "stigma" damages is without merit; plaintiff has the burden of establishing his claim that the property cannot be repaired completely because of the stigma and if this burden is met, the measure of damages will be the difference between the fair market value before and after the injury occurred.

The Court finds that plaintiff is entitled to the lesser of the sum of the cost to repair plus loss of use damages or the diminution in value of the property immediately before and after the injury.

IT IS ORDERED granting defendants' Motion for Partial Summary Judgment re:
Limitation of Damages.