

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-005568

03/13/2008

HONORABLE KRISTIN HOFFMAN

CLERK OF THE COURT
D. Glab
Deputy

JET ENTERPRISES, et al.

JENNIFER B HEALEY

v.

STANFORD J STONEMAN, et al.

SANFORD J GERMAINE

RULING

The Court took this matter under advisement after oral argument on Defendants' Motion for Summary Judgment re Fair Market Value. The Court has considered the pleadings and the argument of counsel.

The parties were partners in the KKGS Partnership. Plaintiffs Jet and Der had a 46.6% interest in the Partnership. Defendants Stoneman and non-party Goldman had a 54.345 interest in the Partnership. Defendant Stoneman also had a Listing Agreement and Management Agreement with the Partnership. The Partnership expired on April 3, 2003 because there was not unanimous agreement to extend the Partnership. The Partnership Agreement provides that "Dissolution of the partnership shall occur: (a) upon the expiration of the term of the partnership unless extended by the consent of all the partners. . .In the event of a dissolution of the partnership. . . , all property then held by the partnership shall be sold as soon as feasible and the proceeds thereof distributed among the partners in proportion to their interest."

Defendants argue that Plaintiffs' appraiser is not qualified to give an opinion as to the value of the real property sold when the partnership was liquidated because he was not a qualified appraiser on the date of the sale. There is no dispute that Mr. Lloyd is currently qualified as an appraiser. The Court finds that the fact that he was not qualified as an appraiser

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at the time the property in question was sold does not disqualify him as an expert in this case. He was qualified at the time he did the appraisal.

The Court does not find in the record before it any agreement among the parties that the remaining Partnership assets were to be sold in bulk as opposed to individual lots. From the record, it appears that the parties were unable to agree about how the Partnership assets should be sold or distributed in connection with the winding up of the partnership.

From the record, it also appears that Plaintiffs had the opportunity to purchase the lots at the bulk sale price plus \$1000.00 but refused to do so although they now claim the land is worth \$249,500.00 more than the bulk sale purchase price. In May 2004, Plaintiffs also turned down an earlier opportunity to purchase the Defendants' and Goldmans' share of land for \$160,220.00 or to have Defendants purchase Plaintiffs' share of the land from them for \$139,980.00.

The lots in question were sold in bulk for \$120,000.00. Plaintiff's expert valued the lots individually at \$359,500.00. Plaintiff's expert was not asked to and did not provide an opinion of the value of the lots in a bulk sale. There is no admissible evidence that contradicts Defendants' witnesses on the value of the lots in a bulk sale.

Defendant's witnesses disagree with Plaintiff's expert's valuation and assessment of the market at the time of the sale. They state that the lots had been on the market for several years as individual lots or in bulk and had not sold. They also say that the individual lot prices given by Plaintiffs' expert are not realistic and would have to be depreciated for cash sales and other items, and that late 2004 was not a good time for bulk sales of property in the Junipine Estates area.

The trier of fact must determine whether a bulk sale was reasonable under the circumstances given the need to sell the partnership assets as "soon as feasible" and to distribute proceeds to the Partners. If the trier of fact determines that a bulk sale was reasonable under the circumstances, the Plaintiffs have presented no admissible evidence that the property was sold for less than fair market value. If the trier of fact determines that a bulk sale was not reasonable under the circumstances, Plaintiffs have presented admissible evidence from which the trier of fact may determine that the lots were worth more than the price for which they were sold.

IT IS ORDERED denying Defendants' Motion for Summary Judgment.