

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2001-008401

06/21/2004

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT  
S. Brown  
Deputy

FILED: 06/29/2004

MARICOPA COUNTY FLOOD CONTROL  
DISTRICT

KATHLEEN A PATTERSON

v.

LARRY ROVEY FARMS, et al.

DALE S ZEITLIN

MARK A HOLMGREN

**HEARING SET**

The Court received and considered Plaintiff's *Motion in Limine to Exclude Late Appraisal Disclosure and for Other Sanctions; Motion to Extend Disclosure/Discovery deadlines*, the responsive pleading and the reply.

This is a condemnation claim. Briefly stated, Plaintiff seeks to exclude an untimely supplemental appraisal report recently disclosed by Defendant. Plaintiff asserts that the disclosure was made approximately six months after a scheduling order set a deadline for any such disclosures.<sup>1</sup> Plaintiff affirmatively asserts that Defendant failed to diligently investigate pre-existing information and timely produce the appraisal. Further, that the untimely disclosure of this appraisal was made shortly prior to the formal closure of discovery in this matter.

It is Plaintiff's position that the supplemental appraisal submitted by Defendant fundamentally changes the basis and measure of damages previously submitted. Further, that given the late submission of this appraisal and the current closure of discovery that Plaintiff was not provided with adequate time to investigate and prepare a defense to this evidence.

Although a trial date has not been set in this matter, Plaintiff asserts it has been further prejudiced as follows:

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<sup>1</sup> The parties' had stipulated to a scheduling order deadline for the disclosure of their respective appraisals. These deadlines were subsequently adopted by the Court.

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- The delay now caused in concluding this litigation;
- The added statutory interest Plaintiff will be obligated to pay during the time consumed by this delay; and
- The added professional appraisal fees and expenses it will now incur in the preparation of its' responsive defense and rebuttal.

Defendant affirmatively asserts that there exists no substantial prejudice as a trial date has not been established. Further, that it was diligent in producing the supplemental appraisal and that Plaintiff will have the opportunity to complete its discovery.

Finally, Plaintiff asserts that the Court's exclusion of this important evidence would be highly prejudicial to its case in this matter.

The central issue presented in this litigation is the market value of the property taken by Plaintiff's exercise of its governmental authority. Thus, the valuation placed on this parcel is extremely important to both parties' preparation. However, the late disclosure of Defendant's supplemental appraisal will necessarily create a delay in the conclusion of this litigation.

The Court, having considered these circumstances, does not find sufficient prejudice to Plaintiff to warrant an exclusion of this untimely disclosed appraisal. It is well established in this jurisdiction that the trial court should interpret its procedural rules to maximize the likelihood of a decision on its merits.<sup>2</sup>

However, the Court also finds that Defendant's late disclosure was harmful to Plaintiff and has caused a delay in the litigation of this matter. Plaintiff will now need to engage in further investigation, preparation and discovery to revise its prior assessment of market value in this matter.

IT IS ORDERED denying Plaintiff's *Motion in Limine to Exclude Late Appraisal Disclosure*.

IT IS FURTHER ORDERED granting Plaintiff's *Motion to Extend Disclosure/Discovery Deadlines*. The discovery deadline is continued for a period of 120 days or through August 30, 2004 solely to allow Plaintiff to complete its discovery regarding Defendant's supplemental appraisal.

IT IS FURTHER ORDERED granting Plaintiff leave at the conclusion of this litigation to address the impact the delay in proceeding has had on the potential accrual of statutory interest.

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<sup>2</sup> Allstate Insurance Co. v. O'Toole, 182 Ariz. 284, 896 P.2d 254 [1995].

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IT IS FURTHER ORDERED setting this matter for a hearing on **September 10, 2004 at 3:30 p.m. (Time allotted: 30 minutes)** to address the issue of good cause and to further address potential sanction[s] pursuant to Rules of Civil Procedure, rules 16 [f], 37 [c] and 26.1 [a], including but not limited to additional fees and expenses incurred by Plaintiff in this matter.