

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-014350

10/24/2019

HONORABLE MICHAEL W. KEMP

CLERK OF THE COURT
C. Avena
Deputy

STATE OF ARIZONA, et al.

MISTY DAWN GUILLE

v.

BUCKEYE 59TH AVENUE L L C, et al.

DOUGLAS G MARTIN

DAVINA DANA BRESSLER
JUDGE KEMP

MINUTE ENTRY

The Court has reviewed Defendant Buckeye 59th Avenue, LLC's Motion to Strike the Unsupported Expert "After Condition" Highest and Best Use Opinion Based Upon Arizona Evidence Rule 702, Plaintiff's Response and Defendant's Reply.

Defendant seeks to preclude testimony from Steven Nagy asserting that his opinions are not based upon reliable application of reliable principles and methods. The burden is on the plaintiff to show that proposed expert testimony is both relevant and reliable. *State ex. Rel. Montgomery v. Miller*, 234 Ariz. 289, 298, 321 P.3d 454, 463 (2014).

First, Defendant argues that Mr. Nagy failed to give a full analysis of the after condition highest and best use. Defendant points to page 131 of his deposition and claims this is his only after condition analysis. However, his deposition testimony just prior to this does lay out his after condition analysis. Although Defendant points to an appraisal book published by appraisal expert J.D. Eaton, there is no legal basis that Mr. Nagy must follow this procedure. Whether his analysis was in accord with other experts in the field and whether his after condition analysis was thorough goes to the weight not the admissibility of his testimony. Likewise, Mr. Nagy did

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consider project changes in his analysis, and whether he followed reliable principles and methods will be subject to cross-examination.

Second, Defendant states in the motion that Mr. Nagy dumped documents on Counsel during a deposition, and these documents and Mr. Nagy's reliance upon them put into question his level of expertise prompting this motion. This is again a subject for cross-examination, and Counsel was given ample time to review those documents prior to continuing the deposition.

Third, Defendant points out the fact that Mr. Nagy found no severance damages. A.R.S. § 12-1122 and Arizona case law do not require an expert to find severance damages. The question whether damages exist is for the trier of fact, as is the amount of damages deemed appropriate. The Court assumes Defendant will present expert testimony that severance damages are appropriate.

Finally, both parties cite the comment to the 2012 amendment of Rule 702 of the Arizona Rules of Evidence. The court is well aware of its gatekeeping function. Mr. Nagy's testimony is obviously relevant. The remedy for Defendant is to challenge the reliability of his opinion through cross-examination, presentation of contrary evidence and reliance upon proper burden of proof instructions. *Montgomery*, 234 Ariz. at 298, 321 P.3d at 463.

The Motion to Strike is denied.