

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-003679

12/23/2009

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

JOHN BARKER

FRANKLYN D JEANS

v.

PHOENIX CITY

DAVID A PENNARTZ

MINUTE ENTRY

The court has received and reviewed the following motions and the responses thereto: Plaintiff's Motion in Limine No.1: Limiting Testimony Regarding Plaintiff's Former Counsel; Plaintiff's Motion in Limine No.2: Regarding Plaintiff John Barker; Plaintiff's Motion in Limine No.3: Limiting Evidence of City of Phoenix Building Code Violations; Defendant's Motion in Limine #1 to Exclude Information First Disclosed by Plaintiff on December 4, 2009 in his Second Supplemental Disclosure Statement; Defendant's Motion in Limine #2 on Planned Use of Property as Art Gallery, Artist Studio or Housing and Evidence of Similar Uses in Area of Subject Property; Defendant's Motion in Limine #3 to Exclude All Evidence Regarding the Pre- and Post-Condemnation Value of the Property; Defendant's Motion in Limine #4 to Exclude Evidence of Cost to Repair; Defendant's Motion in Limine #5 on Temporal Damages After March 30, 2006; Defendant's Motion in Limine #6 to Exclude Opinions and Expert Testimony of Peter J. Martori; Defendant's Motion in Limine #7 on Evidence of Property Damage; Plaintiff's Motion To Exclude Defendants' Appraisal Expert; Plaintiff's Motion To Exclude Defendants' Restoration Expert's Report and Portions of Testimony; and Plaintiff's Objection To Subpoena Duces Tecum; and makes the following rulings.

Plaintiff's Motion in Limine No.1: Limiting Testimony Regarding Plaintiff's Former Counsel is DENIED. The city has named Mr. Plummer as a non-party at fault and the grant of this motion would be the equivalent of entering partial summary judgment rather than resolving an evidentiary issue which is the purpose of a motion in limine.

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Plaintiff's Motion in Limine No.2: Regarding Plaintiff John Barker is DENIED. The motion is too broad to make a blanket pre-trial ruling on as specific evidence is not listed other than evidence pertaining to the underlying condemnation action. As to that category of evidence the motion is specifically DENIED. Other evidence which the motion seeks to exclude will have to be addressed as it is offered or about to be offered.

Plaintiff's Motion in Limine No.3: Limiting Evidence of City of Phoenix Building Code Violations is DENIED. The physical condition of the buildings on the property is relevant to plaintiff's damages.

Defendant's Motion in Limine #1 to Exclude Information First Disclosed by Plaintiff on December 4, 2009 in his Second Supplemental Disclosure Statement is GRANTED as to any information not disclosed at least 60 days before trial and DENIED as to any information disclosed prior to 60 days before trial, e.g. information disclosed by plaintiff's appraiser in the October, 2003 report in the condemnation action. Rule 37(c) of Civil Procedure requires the exclusion of evidence which is not disclosed within 60 days of trial.

Defendant's Motion in Limine #2 on Planned Use of Property as Art Gallery, Artist Studio or Housing and Evidence of Similar Uses in Area of Subject Property is DENIED. The information about the proposed use of the property for artisan apartments was disclosed in Mr. Martori's October 14, 2003 appraisal report in the condemnation action.

Defendant's Motion in Limine #3 to Exclude All Evidence Regarding the Pre- and Post-Condemnation Value of the Property is DENIED. Calmat of Arizona v. State, 176 Ariz. 190, 859 P.2d 1323 (1993).

Defendant's Motion in Limine #4 to Exclude Evidence of Cost to Repair is DENIED. City of Phoenix v. Wilson, 200 Ariz. 2, 21 P3d 388 (2001) and Calmat of Arizona v. State, 176 Ariz. 190, 859 P.2d 1323 (1993).

Defendant's Motion in Limine #5 on Temporal Damages After March 30, 2006 is DENIED.

Defendant's Motion in Limine #6 to Exclude Opinions and Expert Testimony of Peter J. Martori is DENIED. Defendants' objections go to the weight of the proposed testimony.

Defendant's Motion in Limine #7 on Evidence of Property Damage is DENIED to the extent of the evidence of the condition of the property at the time of the order of immediate possession in Don Duncan's 2001 appraisal and evidence of the damage to the property contained in the March 31, 2005 of Frank Consulting, Ltd.

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Plaintiff's Motion to Exclude Defendants' Appraisal Expert is DENIED. Plaintiff's motion goes to the weight of Mr. Duncan's report and testimony.

Plaintiff's Motion To Exclude Defendants' Restoration Expert's Report and Portions of Testimony is DENIED. Plaintiff's objections go to the weight of the proposed testimony and reports of Donald Ball and Bob Bates.

Plaintiff's Objection To Subpoena Duces Tecum is SUSTAINED as to documents previously produced by plaintiff in this and in the condemnation action (CV2001-008301) and OVERRULED as to the documents claimed to be privileged as neither this court nor the defendants can address this objection without a privilege log. .