

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-009294

09/23/2005

HONORABLE ROBERT C. HOUSER

CLERK OF THE COURT
C. Johnston
Deputy

FILED: 09/28/2005

ARIZONA STATE, et al.

CHRISTOPHER W KRAMER

v.

VALLE DEL ORO INVESTMENT LIMITED
PARTNERSHIP, et al.

DAMIAN M FELLOWS

MINUTE ENTRY

1:32 p.m. This is the time set for Oral Argument on Pending Motions. State is represented by counsel, Christopher Kramer. Defendant Valle Del Oro Investment Limited Partnership is represented by counsel, Christopher Kramer and G. Lawrence Schubart.

A recording of this proceeding is made by CD (FTR) in lieu of a court reporter.

Defendant's Motion for Order Compelling Disclosure/Motion to Amend Scheduling Order/Request to Continue Trial.

Arguments are presented.

Defendant's Motion in Limine to Exclude Evidence of post-Date of Valuation Sale of the Remainder,

Arguments are presented.

IT IS ORDERED taking the Motion in Limine to Exclude Evidence of Post-Date of Valuation Sale of the Remainder under advisement.

State's Motion in Limine re: Changes to Havins Appraisal Report,

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Arguments are presented.

IT IS ORDERED denying the Motion in Limine re: Changes to Havins Appraisal Report.

State's Motion in Limine to Exclude Havins Comparable Sale #6.

Arguments are presented.

IT IS ORDERED denying the Motion in Limine to Exclude Havins Comparable Sale #6.

2:57 p.m. Court stands at recess.

3:18 p.m. Court reconvenes with respective counsel present.

State's Motion in Limine to Exclude Defendant's Third Supplemental Disclosure Statement, Witnesses and Evidence/State's oral Motion to Exclude Mr. Alvarez,

Arguments are presented.

IT IS ORDERED taking the State's Motion in Limine to Exclude Defendant's Third Supplemental Disclosure Statement, Witnesses and Evidence/State's oral Motion to Exclude Mr. Alvarez under advisement.

Defendant's Motion to Strike Plaintiff's Reply in Support of Motion in Limine to Exclude Defendant's Third Supplemental Disclosure Statement, Witness, and Evidence,

Defendant withdraws the Motion.

Defendant's Opposition to Motion in Limine to Exclude Untimely Disclosed Evidence, Theories, and Improper Argument,

Arguments are presented.

IT IS ORDERED taking Defendant's Opposition to Motion in Limine to Exclude Untimely Disclosed Evidence, Theories, and Improper Argument under advisement.

Discussion is held re: Trial date.

State withdraws Motion to Return Case to Downtown Phoenix Judicial District without prejudice.

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Discussion is held re: Defendant's Motion for Order Compelling Disclosure/Motion to Amend Scheduling Order.

The Order Compelling Disclosure is moot.

IT IS ORDERED granting Defendant's Motion to Amend the Scheduling Order as follows:

1. Defendant shall supplement its disclosures with regard to the noise issue and with regard to the appraisal to the extent that the opinion regarding the value is impacted by the noise experts opinion by no later than **5:00 p.m. on September 30, 2005**. Disclosure shall be limited to the opinion and the basis of the opinion that would be expressed by Ms. Lori Wood with regard to the noise levels that could be expected as a result of this project and any supplemental disclosure with regard to the opinion to be provided on the issue of value by Mr. Havins that results from the opinion on noise levels to be provided by Ms. Wood.
2. Continue Trial from October 3, 2005 at 9:30 a.m. to **October 11, 2005 at 9:30 a.m. (3-day jury trial)**.

State's oral Request for Leave to Take Video Deposition of Cory Sukert on October 6, 2005.

Statements are presented.

IT IS ORDERED granting the State leave to take video deposition of Cory Sukert on October 6, 2005.

IT IS FURTHER ORDERED granting leave for Mr. Garcia to testify with regard to the results of Ms. Woods analysis at the time of trial. The State shall make Mr. Garcia available for an interview by defense counsel at his convenience prior to trial.

IT IS FURTHER ORDERED setting Telephonic Final Pretrial Management Conference for **October 5, 2005 at 9:15 a.m.** before this division.

At the PTMC, counsel who will try the case shall appear and be prepared to discuss and resolve where applicable:

- A. Time limits for *voir dire*, opening statements, witness examinations and closing arguments.
- B. Stipulations and objections regarding witnesses and exhibits. If time permits, the court will rule on objections.

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- C. Jury instructions, juror notebooks (counsel shall bring any proposed juror notebooks to the conference), mini opening statements, *voir dire* and verdict forms.
- D. Agreed-upon deposition summaries and excerpts from depositions including objections thereto.
- E. Scheduling, equipment or interpreter issues.
- F. Status of settlement efforts.
- G. Motions in *limine* and other pending motions.
- H. Use of short-trial or summary jury trial.
- I. Other matters addressed in the updated joint pretrial statement.

A joint pretrial statement (JPTS) addressing at least all of the items set forth in Rule 16(d), Ariz. R. Civ. P., shall be filed three (3) judicial days before the PTMC. The following shall be filed with the JPTS:

- A. Proposed *voir dire* questions.
- B. A list to be read to the jury with names of all witnesses who may testify.
- C. A set of agreed-upon jury instructions.
- D. Separate sets of requested instructions that have not been agreed upon. (Review *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993) and the Recommended Arizona Jury Instructions (RAJI) Civil 4th “Statement of Purpose and Approach” before requesting non-RAJI instructions.) RAJI’s need not be typed and may be requested in the following manner: RAJI Civil 4th Preliminary—Duty of Jurors or by use of the jury instruction and verdict request forms contained in RAJI Civil 4th. Non-RAJI instructions should be typed. Each instruction should cover only one subject.
- E. A stipulated, brief summary of the case, which the court can read at the outset of *voir dire*.
- F. Proposed findings of fact and conclusions of law (if a request for findings has been or will be filed).

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- G. All deposition or other transcribed testimony to be used at trial including Rule 106 additions. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony and the grounds for such objections are also to be set forth.
- H. A listing of the estimated time needed for direct, cross and re-direct examination of each witness a party actually intends to call at trial and the day on which that party intends to call each witness.

All exhibits shall be exchanged 30 days before trial. Counsel shall confer regarding exhibits so duplicates are avoided. **At least ten days before trial, counsel or their knowledgeable assistants shall call the division clerk at (602) 506-5424 to discuss procedures for marking exhibits.** Original depositions are provided to the clerk for the record and not marked as exhibits.

4:09 p.m. Hearing concludes.