

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-004740

03/22/2013

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

RONALD A SIMMS, et al.

E JEFFREY WALSH

v.

JERRY E SIMMS, et al.

M ELIZABETH NILLEN

ANDREW ABRAHAM

UNDER ADVISEMENT RULING

Before the court is Plaintiffs' Motion for Order to Show Cause Why the Deposition of Third Party William S. Levine Should Not Go Forward. The Motion is brought pursuant to Ariz. R. Civ. P. 45.1, as was the subpoena served on Mr. Levine.

The underlying action is in California, so any dispute between the litigants concerning discovery ordinarily would be decided by the judge in that matter. But Mr. Levine has also objected to being deposed. Since he is not a party to the California action, Arizona is the appropriate forum to decide the issue. *See* Comment to the Uniform Interstate Depositions and Discovery Act § 6.

By virtue of Rule 45.1(d), the limitations in Arizona's discovery rules govern this dispute. So the first question is whether Mr. Levine's deposition is relevant to the subject matter of the California action. Ariz. R. Civ. P. 26(b)(1)(A). It is. The disputed fact issue in the California appraisal proceeding is the value of the disputed property. The fact that Levine Investments Limited Partnership made an offer to purchase the property for \$76 million and the assumptions regarding the property on which that offer was based, are relevant to the property's value. Similarly, whether the Levine offer was based on accurate or complete information about the property is relevant to how good of an indicator of value it is.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-004740

03/22/2013

Against relevance, however, must be balanced Mr. Levine's interest in confidentiality as a negotiating partner, and the burden on him as a non-party to this dispute. Ariz. R. Civ. P. 26(b)(1)(C). As one party in a negotiation to purchase property, Mr. Levine should not have to disclose private information relating to why he may wish to purchase the property or what he may know bearing on the property's value that his negotiating partner may not. But any communications Mr. Levine had with Defendant Jerry Simms are not confidential as to Plaintiff Ronald Simms. Nor would documents and information Mr. Levine obtained from Jerry Simms be confidential.

Based on the foregoing,

IT IS ORDERED granting the Motion in part as follows:

1. Plaintiff may depose William S. Levine at a reasonable time and place agreed upon among counsel.
2. The deposition shall last no more than three hours.
3. The subject matter of the deposition shall be limited to the following:
 - a. Communications with Jerry Simms (or persons affiliated with him) concerning the subject property.
 - b. Documents or information provided to Levine Investments Limited Partnership by Jerry Simms (or persons affiliated with him).
 - c. Information not provided to Levine Investments Limited Partnership by Jerry Simms (or persons affiliated with him).

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.