

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2000-018290

10/22/2004

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
S. Brown
Deputy

FILED: 10/29/2004

CITY OF EL MIRAGE

JAMES T BRASELTON

v.

RC ROBERTS CORPORATION, et al.

DOUGLAS G ZIMMERMAN

FINAL PRETRIAL CONFERENCE

9:15 a.m. This is the time set for final trial management conference. Plaintiff is represented by counsel, Douglas Zimmerman and Jacob Sherrard. Defendant is represented by counsel, Brian Mueller.

Court reporter, Michele Ortiz, is present.

The Court hears argument on Plaintiff's Motion in Limine to Exclude Expert Opinions of Appraisal Technology, Inc.

The Court having heard oral argument on Plaintiff's Motion in Limine,

IT IS ORDERED denying Plaintiff's Motion in Limine to Exclude Expert Opinions of Appraisal Technology, Inc. This order does not address the late disclosure that was delivered as of October 5, 2004.

The Court hears argument on Defendant's Motion in Limine Prohibiting Plaintiff from Introducing Evidence Regarding the Completion of the Construction of the Wastewater Treatment Plant.

The Court having heard oral argument on Defendant's Motion in Limine,

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IT IS ORDERED denying Defendant's Motion in Limine Prohibiting Plaintiff from Introducing Evidence Regarding the Completion of the Construction in this regard: Plaintiff may introduce the testimony previously solicited and of record with regard to Mr. Carroll Reynolds. This includes the facts that the plant is not on line, what the process of the plant was as of the deposition of Mr. Reynolds, and any and all systems contemplated to be placed in the plant as of the deposition of Mr. Reynolds.

Court and counsel discuss Plaintiff's late and non-disclosure of witnesses and opinions.

The Court instructs Plaintiff's counsel to isolate any new items in the disclosure statement to which counsel can agree that Defendant was not provided previous to the close of discovery.

10:40 a.m. Court stands at recess.

10:55 a.m. Court reconvenes with respective counsel present.

Court reporter, Michele Ortiz, is present.

The Court hears argument on Plaintiff's trial witnesses who were disclosed prior to and after the discovery deadline.

The Court has determined that there has been no compliance by Plaintiff with relevant rules of discovery including Rule 26.1. Plaintiffs have failed to properly disclose opinions or the factual basis of the opinions of the witnesses.

The Court further does not find good cause for the delay in the non-disclosure.

IT IS ORDERED excluding the testimony of the following witnesses: Lucky Roberts and/or Henry Locke, Jan Sell and Robert Polk for lack of disclosure.

Court and counsel discuss exhibit objections.

Counsel for Defendant withdraws objections on Plaintiff's exhibits 2, 3, 4, and 5.

IT IS ORDERED the following exhibits are excluded: 1, 7, 8, 9, 10, 11 and 12.

IT IS FURTHER ORDERED allowing exhibit number 6, the design plans of the city, in as evidence. Defendant may depose Mr. Reynolds if necessary.

The length of the trial is discussed. In that regard, the Court is advised the trial is anticipated to last **4 days**.

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Counsel stipulate to the selection of **nine** jurors. Counsel further stipulate that all **nine** jurors will be permitted to deliberate, and an agreement of **seven of the nine** jurors will be necessary to return a verdict in this matter.

The Court advises counsel that it uses the "struck" method for jury selection. Counsel are further advised that at the conclusion of the Court's voir dire, counsel will be permitted to ask their own voir dire questions.

Counsel are directed to submit a joint statement of the case to the Court **three days prior** to the trial date, briefly setting forth the specific assertions and defenses of this matter. The Court will read a joint summary of the case to the prospective jurors at the beginning of jury selection.

Counsel are advised that the Court's normal trial days and times are as follows: Monday through Thursday, 9:30 a.m. to 4:30 p.m. daily. A lunch recess will be taken from noon to 1:30 p.m., and two 15-minute recesses will be taken throughout the day.

COURTROOM PROCEDURES AND POLICIES

1. Counsel shall restrict their movements to the lectern and the area immediately surrounding it;
2. Counsel shall respect the space of the jurors;
3. Counsel shall request permission to approach the bench, witness, and the clerk for retrieval of exhibits;
4. No speaking objections will be allowed, counsel shall state the legal basis only in accordance with Rule 103;
5. Counsel shall stand when making objections, and counsel shall apprise their witnesses that upon their standing they shall not answer questions that have been objected to until further ordered by the Court;
6. Offers of proof shall be made outside of the jury's presence;
7. Bench conferences shall be held at the side of the bench area;
8. Exhibits shall be introduced into evidence prior to substantive testimony being presented. In this regard, counsel shall attempt to stipulate to the admission of as many exhibits as possible prior to testimony being presented;

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9. The Court provides the jurors with juror notebooks which contain jury instructions, court contact information, and paper for note taking. Court will distribute juror notebooks to the jurors. The Court strongly suggests counsel provide all expert curriculum vitas at the beginning of trial for placement in the juror notebooks;

10. The parties shall exchange and provide to the Court a **comprehensive outline of each expert's separate opinions** and a **detailed/exhaustive description of the factual/substantive basis for each such opinion** to the point non-disclosed or cumulative objections can be flushed out prior to the trial;

11. All of the Preliminary, Standard, and Final Jury Instructions agreed upon by counsel shall be submitted to the Court on diskette in Word format;

12. All disputed instructions shall be separately submitted to the Court in hard copy form and on a diskette in Word format. Counsel shall also submit hard copies of case authority counsel rely upon in support of the requested instruction; and

13. Counsel shall exchange schedules of witnesses with each other that outlines who will testify and in what order so that the trial can proceed without interruption.

11:35 a.m. Matter concludes.