

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-010876

12/21/2011

HONORABLE GEORGE H. FOSTER, JR.

CLERK OF THE COURT  
J. Polanco  
Deputy

STEARNS BANK

JOHN M O'NEAL

v.

PONDEROSA HEIGHTS L L C, et al.

PONDEROSA HEIGHTS L L C  
NO ADDRESS ON RECORD

IVY L KUSHNER  
TIMOTHY J THOMASON  
ANDREW B TURK

**UNDER ADVISEMENT RULING  
HEARING VACATED**

The Court took under advisement the matter of the Motion to Exclude filed by the Defendants in this case. The Court has considered the Motion, the Response and the arguments of counsel and finds as follows.

The Defendants have filed a Motion to Preclude the introduction of untimely evidence on the basis that the Plaintiff disclosed a new appraisal less than sixty (60) days before trial. The Plaintiff responds that the appraisal and the witness who would provide testimony are merely in rebuttal to a disclosure made by the Defendants. The evidence in each disclosure appears to be relevant to the full determination of fair market value. Each party should be afforded the full and fair opportunity to be heard regarding said value.

Nevertheless, the Court is of the belief that all discovery and disclosure must come to a close. More importantly, each party should also have the full and fair opportunity to discern the nature of all disclosures and theories of the case. The disclosures in this matter are each fairly close to the original trial date and did not give either side sufficient time for review, analysis and depositions, if necessary. It is the intent of the Court that the parties have the opportunity to do so. Accordingly,

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**IT IS ORDERED vacating** the trial set for December 22, 2011 at 9:00 a.m. in this Division.

**IT IS FURTHER ORDERED** the Defendant may take any deposition or seek other discovery it believes necessary to address the matters in the disclosed appraisal and the opinions of the appraiser. Said depositions shall be concluded by **January 30, 2012**. The deponent shall provide to the Defendant the relevant supporting documentation pursuant to and outlined in a subpoena *duces tecum*. If the Plaintiff fails to make the witness available for a deposition by that date, or if the Plaintiff fails to provide supporting documentation, the witness or certain opinions may be excluded by the Court.

**IT IS ORDERED** denying the Motion to Exclude.

**IT IS FURTHER ORDERED resetting** the hearing to a date and time convenient to the parties. The Court's Judicial Assistant shall contact the parties for a new trial date.

This all in accordance with the formal written Order signed by the Court on December 21, 2011 and filed (entered) by the Clerk on December 21, 2011.

**ALERT:** Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 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.