

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2020-001031

11/12/2024

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

BANK OF AMERICA N A

DOUGLAS S JOHN

v.

MARICOPA COUNTY

JACK O'CONNOR III

JUDGE AGNE

MINUTE ENTRY

The Court held oral argument on September 27, 2024, on Plaintiff's Motion to Exclude the Testimony and Expert Report of Steven E. Nagy, filed May 31, 2024 ("Motion"), as well as subsequent filings related thereto. The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case. The Court hereby finds as follows regarding the Motion.

Plaintiff moves the Court to exclude the expert report of Steven E. Nagy and preclude his opinion on fair market value contending that such testimony is not permitted under Ariz. R. Evid. 702. (Mot., at 1–2.) Plaintiff contends that Mr. Nagy's sales comparison approach disregards the principle of substitution. (Mot., at 2–3.)

Plaintiff also contends that Mr. Nagy's income approach is problematic because it presumes a sale leaseback with a six-to-twelve-month lease rather than deducting the lease-up costs an investor would typically incur. (Mot., at 3.) Plaintiff contends that Mr. Nagy's opinions of value should be precluded because they are not based on sufficient facts and data nor do they apply reliable principles and methods to the data. (Mot., at 4.)

Defendant contends that disagreements as to the conclusion of expert appraisers should be addressed during cross-examination and the presentation of evidence because appraisal principles and methods are flexible and involve discretion. (Resp., filed July 15, 2024, at 1.)

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Defendant further contends that the appraiser has discretion to identify and prioritize property characteristics when it comes to finding comparable sales. (Resp., at 6.) As to the income approach, Defendant contends that the sale leaseback is consistent with the property's current use. (Resp., at 7.)

“[A]lleged flaws in the application of a reliable methodology should not result in exclusion of evidence unless they so infect the procedure as to make the results unreliable.” *State v. Bernstein*, 237 Ariz. 226, 230 ¶17 (2015) (internal quotations omitted). Although Plaintiff contends that Mr. Nagy's opinion of value is irreparably flawed, such alleged flaws do not rise to the level requiring exclusion of his testimony. Here, **THE COURT FINDS that** Mr. Nagy's opinion of value is permissible under Ariz. R. Evid. 702.

“Moreover, ‘cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible [expert] evidence.’” *State ex rel. Montgomery v. Miller*, 234 Ariz. 289, 298 ¶20 (App. 2014) (quoting *Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 152 (3d Cir. 1999)). Therefore, given the foregoing discussion,

IT IS ORDERED denying Plaintiff's Motion to Exclude the Testimony and Expert Report of Steven E. Nagy, filed May 31, 2024.