

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-090103

01/19/2017

HONORABLE DAVID M. TALAMANTE

CLERK OF THE COURT
M. Kay
Deputy

TAPESTRY ON CENTRAL L L C

RYAN J LORENZ

v.

TAPESTRY ON CENTRAL CONDOMINIUM
ASSOCIATION

KEVIN P NELSON

MICHAEL A WRAPP
ROBERT G ANDERSON
ANDREW B TURK
JACOB REICH

UNDER ADVISEMENT RULING

After oral argument on December 16, 2016, the Court took under advisement Defendant's Motion in Limine requesting an order precluding testimony from Plaintiff's expert, Randall P. Clemson, because of a late disclosure. In addition to the oral argument, the Court has considered Defendant's memorandum, Plaintiff's Response and Defendant's "Response" to Plaintiff Tapestry on Central, LLC's Rule 37(c)(2) Motion to Extend. Plaintiff's Motion to Extend was contained within the memorandum in its response to Defendant's Motion in Limine.

There does not appear to be much disagreement regarding the Plaintiff's disclosure to Defendant in November 2015 of its inability to rely on their previously disclosed expert, Greg Valladao, on the issue of damages. There is considerable disagreement regarding whether good cause exists for the late disclosure and whether the disclosure is harmless. It appears that there were several months between Plaintiff being advised that Mr. Valladao was not available as a witness and the notification to Defendants in November 2015 (by e-mail). Formal notification was provided to Defendant by Plaintiff on January 14, 2016, the discovery deadline in this matter. Plaintiff argues that the delay is partly attributable to miscommunication between

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Plaintiff's present and prior counsel. Plaintiff also argues that the late notice is harmless given that the matter had not yet been set for trial (when Defendant's Motion was filed) and Defendant had not taken any steps to depose Mr. Clemson after the e-mail disclosure in November 2015.

For purposes of this ruling, the Court also notes that Defendant did not file their Motion in Limine until August 15, 2016, more than 7 months after the formal notification of the new expert. The Court also notes that this matter was set for trial at the hearing on November 16, 2016 with a trial date of August 21, 2017.

Finally, as noted by the Court on the record at the oral argument, Plaintiff filed a Motion to Extend Discovery Deadlines on November 19, 2015 and argued in part that good cause exists for extending the deadline for the Plaintiff to disclose a replacement damage expert. In that Motion, Plaintiff advised of its inability to use Mr. Valladao and the need for additional time to retain an expert to replace him. Defendant was not required to respond to that Motion because at a status conference held on November 19, 2015 the Court found Plaintiff's Motion to be moot, without further explanation. The Court did not address Plaintiff's request for an extension of time. The Court finds that the November 19, 2015 Motion filed by Plaintiff is a significant factor in ruling on Defendant's Motion in Limine.

THE COURT FINDS that good cause exists for allowing Plaintiff to utilize the testimony of Mr. Clemson and his report for trial purposes.

IT IS ORDERED denying the Motion in Limine.

IT IS FURTHER ORDERED directing the counsel for the parties to confer and submit a schedule for a limited re-opening of discovery to include the deposition of Mr. Clemson and any necessary additional discovery and disclosure relating to Defendant's rebuttal of the new opinion.

IT IS ORDERED affirming the Telephonic Trial Management Conference set for **August 11, 2017 at 9:00 a.m. (15 minutes allotted)**.

IT IS FURTHER ORDERED affirming the Trial set for **August 21, 2017 at 9:30 a.m. (8 days allotted)**.