Options, Agreements, and Prior Appraisals: Admissibility Issues in Eminent Domain Trials

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In eminent domain proceedings, property owners are granted the right to have a jury determine just compensation. But the presentation of valuation evidence is not a free-for-all; the legislature has declared that certain transactions are simply too doubtful or subject to abuse to aid the jury in rendering its verdict on fair market value. The exceptions to admissibility are codified in Evidence Code section 822, and a recently published California Court of Appeal decision provides an example of just how those limitations can play out in establishing value.

In *City of Corona v. Liston Brick Company of Corona*, the City condemned several easement interests from an 11 acre property. In valuing the part taken, the owner sought to rely on (1) another public agency's appraisal of the entire property, (2) the resulting purchase and sale agreement between the owner and that agency for the portion of the property not being acquired by the City, and (3) the option price offered by the other agency for the entire parcel in the event the City did not complete its acquisition.

The court held that all three types of evidence were inadmissible: the appraisal because it valued a different property than the one being condemned; the purchase and sale agreement because it was a sale to a public agency which could have acquired the property through eminent domain; and the option price for the larger parcel because the option was never exercised. The rationales and the court's analysis overlap, but the bottom line is that the owner was left with no evidence, resulting in the parties' stipulating to the agency's appraised value.

The significance of this case is not the result itself, but the rationale the court applied in reaching the result, along with the Court's discussion of the difference – if any – between using such evidence during the party's case-in-chief presentation, as opposed to using it during cross examination of the other party's experts.

Background

In *City of Corona v. Liston Brick Company of Corona*, 2012 Cal. App. LEXIS 873, the City filed a complaint in order to acquire various easements and a right of way totaling approximately 1.45 acres across a 10.75 acre parcel owned by Liston Brick Company.

Shortly thereafter, and apparently unrelated to the City's action, the Riverside County Transportation Commission ("RCTC") sought to acquire the property for several transportation projects. RCTC's appraisal valued the entire 10.75 acres at $20 per square foot. RCTC and the owner entered into a purchase and sale agreement for the 9.3 acres remaining after the City's partial take, which also gave RCTC the option of purchasing the entire 10.75 acres should the City fail to acquire the partial interest. The option price was $21 per square foot.

In the eminent domain action with the City, the only valuation expert designated by the owner was its vice president, and his valuation opinion was based solely on the RCTC agreement. In other words, the owner himself sought to prove the value of the easements, and he based his opinion exclusively on the transaction between the owner and RCTC for the remainder parcel.

Before trial the City filed two motions in limine seeking to exclude the appraisal that was commissioned by the RCTC, along with the purchase and option agreement between the owner and RCTC. The City relied on Evidence Code section 822, which states:

> (a) In an eminent domain or inverse condemnation proceeding . . . the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property:
>
> (1) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain. . . .
>
> (2) The price at which an offer or option to purchase or lease the property or property interest being valued or any other property was made, or the price at which the property or interest was optioned, offered, or listed for sale or lease . . . .
>
> (4) An opinion as to the value of any property or property interest other than that being valued.

The City claimed the RCTC agreement was inadmissible under subdivision (a)(1) since it was an acquisition for a public use for which the property could have been taken by eminent domain. It also asserted RCTC's option price was inadmissible under subdivision (a)(2) since it was simply an option that had not been exercised. Finally, the City claimed the RCTC appraisal was inadmissible under subdivision (a)(4) since the appraisal valued an interest other than the one being acquired (i.e., the fee interest in the larger parcel, not the easement interests the City sought to acquire).

The trial court granted the City's in limine motions. Acknowledging that the trial court's ruling effectively precluded any challenge to the City's expert valuation, the owner and the City executed a stipulated judgment which valued the 1.45 acres at $181,100 (equating to approximately $2.86 per square foot). The judgment reserved the owner's right to appeal the trial court's evidentiary rulings.

The Appeal

On appeal, the owner argued that Evidence Code section 822 did not preclude the introduction of RCTC's appraisal and purchase agreement in support of the owner's valuation. As this argument was not raised until the reply brief, the Court found that the argument had been waived; nonetheless, the Court addressed the

merits of the owner's argument and agreed with the trial court that the evidence fell squarely within section 822's exclusions and was therefore inadmissible.

The Court then addressed the owner's contention that even if it could not use the evidence to prove value directly, it was nonetheless entitled to use the RCTC appraisal and purchase agreement to cross-examine the City's expert. In support of this contention the owner relied on *State of Cal. ex rel. State Public Works Board. v. Stevenson* (1970) 5 Cal.App.3d 60. In that case, the Court of Appeal held that Evidence Code section 822 did not preclude a property owner from impeaching a condemning agency's valuation expert through cross-examination related to the appraiser's prior appraisal of a nearby property. Such prior inconsistent valuation opinions may be admitted not to establish value but to cast doubt on the expert's opinion and credibility.

The Court of Appeal in the present case, however, distinguished the *Stevenson* decision. *Stevenson* involved impeaching an appraisal expert with that expert's own prior appraisal (albeit on a different property). The Court was unwilling to expand the Stevenson holding to permit cross-examination of an expert based on another appraiser's valuation opinions -- even if those opinions related to the same property. Doing so would effectively permit parties to backdoor the introduction of evidence that should have otherwise been provided pursuant to the eminent domain law's statutory expert exchange provisions.

Conclusion

The Court's decision serves as a good reminder that appraisers should ensure information they rely upon is admissible under Evidence Code section 822, and they should check with an attorney if they have any concerns. Prior to the expert exchange, attorneys, agencies and property owners should double-check admissibility issues as well, as relying on improper matter may not only result in exclusion of that particular piece of evidence, but potentially the entire valuation opinion. And, the decision puts appraisers on notice that they may be impeached on cross-examination with prior appraisal opinions.

While the *Liston Brick Company* decision provides some guidance on the admissibility of a number of issues, unfortunately there remains treacherous waters, as large grey areas still exist in terms of what evidence experts can rely on and, in many cases more importantly, how they rely on it.