

COMMON SENSE

Ignore Logic at Your Own Peril



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Prior to this year's global pandemic, the last time the Major League Baseball (MLB) season was interrupted/canceled was on August 11, 1994 because the players went on strike. The players and franchise owners could not agree on a collective bargaining agreement so the team owners locked the players out and ended the baseball season without games being played. With the events of 2020, I am reminded of an especially memorable jury trial that included the consideration of the canceled 1994 baseball season as evidence.

The Details

Between the years 1993 and 1995, the State of California, Department of Transportation (Caltrans) was actively acquiring right of way for a freeway widening project along the most heavily trafficked segment of the Interstate 5 freeway through Orange County, California. The freeway widening project included a reconfigured and improved on-off ramp, as well as grading and reconstruction of nearby



commercial business driveways to match the new frontage road elevations. This case involved one property with a major hotel chain and a sports themed restaurant and bar.

The jury trial with Caltrans involved the National Sports Grill Restaurant and Bar (NSG). NSG was a popular “watering hole” for sports fans. One hundred television monitors were positioned everywhere to showcase every sport imaginable, including basketball, golf, tennis, football, hockey and baseball. The location for NSG was not by chance or coincidence. It was about a quarter mile from Anaheim Stadium (home of the then Anaheim Angels baseball team), within one mile of the arena (home of the Anaheim Ducks professional hockey team) and about a mile from Disneyland. NSG was only a few hundred convenient feet away from a freeway on-off ramps.

The project to reconstruct the on-off ramp system was specifically designed to improve freeway traffic efficiency and connections with the local system of city streets. Intended beneficiaries of the project included the nearby sports stadium and arena. Major traffic congestion occurred both to and from those sports destinations on game days. These venues also held many other events on non-sports days, such as concerts and local school graduation ceremonies.

A Disagreement Arises

There was no real dispute over the “just compensation” for the few hundred square feet of additional right of way and a temporary construction easement that was needed for the driveway reconstruction. Before trial, Caltrans settled the right of way valuation issue with the property owner (hotel) and NSG. The sole issue that remained for jury trial was whether NSG had business goodwill and how much business goodwill was lost as a result of the Caltrans project. Loss of business goodwill cases require a comparison of the before and after conditions of the business, as well as the alleged detrimental effect of the Caltrans project on the profitability of NSG. In this case, there were no physical impacts or interference with the NSG leased area and no personal property or fixtures were acquired.

The attorney for the property owner requested and obtained a complete set of Caltrans design and construction plans before instructing their experts to identify the business changes necessitated by the project and to quantify the financial impacts of the Caltrans project on NSG’s ability to maintain revenue and profitability in the before and after conditions. NSG took the depositions of the Caltrans project design engineer and the right of way project manager. NSG’s goodwill expert opined that the loss of business goodwill was estimated to be no less than \$1.1 million.

In turn, Caltrans sought and obtained the relevant NSG business and financial records to analyze the profitability in the before condition and to estimate after condition impacts. Thousands of documents were produced and reviewed. Following the document discovery, depositions were taken of key NSG employees and managers to authenticate financial records and to verify the NSG claim of loss of business goodwill caused by the Caltrans project. The business goodwill expert for Caltrans opined that there would not be a loss of business goodwill caused by the project.

Reviewing the Facts

Comparing NSG revenue and profitability from year to year, there was a very dramatic dip in both revenue and profitability when comparing the financial records for the years 1990 through 1994. A significant dip in revenue coincided with the Caltrans project that broke ground in 1994. NSG’s expert attributed the loss of NSG customers and revenue to the inability and discontent of customers forced to navigate through the Caltrans construction zone and detours. Customers chose to not suffer through the inconveniences of construction zone traffic delays and they consistently stayed away from NSG—leading to lost profitability. The NSG expert opined that customers were permanently lost and would simply go elsewhere.

But there was another explanation. The NSG revenue decline from 1993 to 1994 coincided with the canceled MLB season. This led to a more in-depth look at NSG revenues against each season of the nearby professional sports teams. A direct correlation was found between the success of the Anaheim Angels baseball club and rises and dips in NSG revenues. Losing baseball seasons meant fewer fans and a corresponding drop in NSG customers and restaurant revenue. Winning baseball seasons assured greater attendance in the stadium, an increase in the number of NSG customers before and after games, and more revenue and profitability. It was a solid theory.

However, what sealed the jury’s decision at trial in favor of the Caltrans in this instance was the NSG’s unapologetic expert and manager testimony that the success of the Angels baseball team had zero impact on customer counts and revenue. The jurors explained after the verdict that they simply could not ignore the simple logic and common sense that the profitability of a sports restaurant and bar business intentionally built next to a sports stadium will ebb and flow with the tide of the sports teams’ success. This was certainly a memorable lesson from jurors. ✪



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