ATTENTION TO DETAIL

The impact of minor details on major cases

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As I sit here in a very complex trial lasting several weeks with 30 witnesses and several thousand documents, I am reminded of another case I was involved in a few years ago. After three years of preparation, one missed detail became the defining difference for a judgment in favor of my client.

Case Overview

The California Department of Transportation, better known as *Caltrans*, planned and designed a freeway widening project in Orange County, California. The property and business owner (one in the same) rejected the State's offer of compensation and the matter became a condemnation of a small part-take area in fee and a permanent easement from property occupied by a gas station along a busy offramp. Caltrans needed a 500-square foot permanent easement and a 100-square foot area in fee for the freeway widening and offramp realignment project. The fee take area was needed for relocation of a traffic signal switch box and the permanent easement was required for relocation of the sidewalk, curb and gutters. The proposed new public improvements were identified and depicted in the project construction plans.

Pre-trial tasks included written discovery of documents and depositions of the business owner, accountant, appraisers, architect and business valuation experts. There were negotiations, offers, demands and a voluntary settlement conference, yet the parties remained nearly $500,000 apart in valuing the case. The difference in values was due to the opinions of the opposing business goodwill appraisers. The property owner's appraiser found that the loss of business goodwill was $450,000. The Caltrans appraiser found no loss of business goodwill at all. Both appraisers were well-qualified with appropriate education and experience credentials. However, it was noted at deposition that the property owner's business goodwill appraiser missed the one project detail that would lead to a pivotal moment during trial.

Business Goodwill Valuation

Valuation of loss of business goodwill requires the comparison of the before and after conditions of the business impacted by the property taken for the public project. From there, it must be determined if there has been a loss in the business goodwill caused by the taking.

Before trial in this case, the appraiser's deposition was taken. His working files and all the documents he acquired for this assignment were reviewed. The appraiser was questioned about each opinion made and how each document supported his final conclusions. The appraiser's working files contained several hundred documents, including financial records of the business, research of recently sold gas station businesses and reconciliation worksheets. Additionally, the files contained the planning, design and construction documents for the public project.

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One Missing Detail

The deposition revealed that the appraiser's loss of business goodwill opinion for this gas station in the after condition was based upon the permanent loss of one of the three driveway access points for the property. Property accessibility, especially for a gas station business, is essential for customers and for product deliveries. Removal of a third access point for this gas station business would hinder future business operations and profitability. This property owner's appraiser argued that profitability in the after condition would be lessened by $45,000 per year. That amount capitalized at a rate of 10 percent would result in a loss of business goodwill of $450,000. By contrast, the appraiser for Caltrans opined that there would be no impact to the business in the after condition once the project was constructed and that there would be an improvement of traffic circulation and an increased number of cars driving by this location.

How could two qualified appraisers arrive at such different opinions? The property owner's appraiser identified a driveway closure on a map in the construction plans and assumed that it was a permanent loss. He had relied upon a traffic sign placement map in the construction plans, which depicted the driveway closure. But he failed to recognize that the identified driveway closure was only temporary for the reconstruction of the curb, gutter and sidewalk.

In Conclusion

At the trial in this case, the appraiser's oversight was brought forth during the cross-examination portion of his valuation testimony and his opinions were appropriately discredited. The court initially agreed to completely exclude his testimony for lack of appropriate foundational basis, but the court later decided that the "one missed detail" was not enough to exclude his opinion entirely. Instead, it should go to the weight of his testimony. Not surprisingly, the case ended up with a judgment of no loss of business goodwill. As evidenced here, even the smallest of details in cases matter. ✪