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metadata:  BPOs, appraisals, property valuation

https://appellate.nccourts.org/opinions/?c=1&pdf=36659

<https://www.nar.realtor/legal-case-summaries/licensee-testimony-improperly-excluded>

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The North Carolina Department of Transportation (“Department”) condemned 2.193 acres of land in a 240-unit apartment complex for road construction. A group composed of former and current owners, the lessee, and the mortgage holder for the apartment complex (collectively, “Challengers”) brought a proceeding challenging the taking of land. The Department deposited with the court $276,000 as compensation for the taking. The Challengers argued that this amount was insufficient compensation and sought a trial to determine the correct amount of compensation.

During the trial, the Challengers tried to introduce the testimony of a licensed real estate broker (“Licensee”) about the fair market value of the apartment complex before and after the proposed taking. The Licensee determined that the appropriate level of compensation for the taking was $3.374 million. The Department moved to exclude the Licensee’s testimony, arguing that a real estate license only permitted him to provide broker price opinions (“BPOs”) and comparative market analysis (“CMAs”), as only appraisers could prepare valuations of the property. The trial court agreed and excluded the Licensee’s testimony and report. Following a trial, a jury determined that just compensation for the Department’s taking was $350,000. The Challengers appealed, and the appellate court affirmed the trial court. The Challengers appealed to the state’s highest court.

The Supreme Court of North Carolina reversed the lower courts and ordered a new trial. The court first looked at the state statute used to exclude the Licensee’s testimony and report. The statute restricts real estate licensees to the preparation of BPOs and CMAs when an appraisal is required and does not otherwise allow the real estate licensees to provide valuation reports for a fee; instead, only a licensed appraiser can prepare such a report. When reviewing the statute, the court found that while the language restricted real estate licensees to preparing only BPOs and CMAs in exchange for a fee and prohibited them from referring to their reports as appraisals, the language did not limit real estate licensees (or anyone else) from testifying about property valuations when providing expert testimony. Indeed, the court found that the lower court’s reliance on the statutory language would only limit real estate licensees from testifying as an expert about the fair market value of a property and no one else, which the court found to not make sense. Therefore, the court ruled that the lower courts had improperly excluded the testimony of the Licensee.

Next, the court considered whether the exclusion of the Licensee’s testimony prejudiced the Challengers. Looking at the standards for admitting expert testimony, the court determined it was likely the Licensee would have been permitted to testify and this testimony potentially could have impacted the jury verdict, as he estimated the value of the taking to be much higher than the amount that the jury determined to the be the fair market value. The court stated that the Department could impeach the Licensee’s testimony as not being qualified to prepare such a report, but that was not a reason to exclude the testimony. Since the exclusion of the Licensee’s testimony caused prejudice to the Challengers, the court reversed the lower courts and send the case back to the trial court for a new trial.

***N. Carolina Dep't of Transportation v. Mission Battleground Park, DST***, 810 S.E.2d 217 (N.C. 2018).