

N.C. Supreme Court Holds Real Estate Brokers May Testify on the Issue of Fair Market Value

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In a recent opinion, the North Carolina Supreme Court expanded the possibilities of allowable testimony about a property's fair market value.

In its decision in *North Carolina Department of Transportation v. Mission Battleground Park Leaseco, LLC et al.* the court, on March 2, 2018, held that the trial court had improperly excluded the

testimony of a commercial real estate broker regarding the fair market value of property condemned by the North Carolina Department of Transportation ("NCDOT"). This article briefly explores the case facts and the reasoning of the decision and also discusses how this ruling affects condemnation or other types of cases.

Case Overview

Mission Battleground involved the NCDOT's condemnation of just over two acres of commercial property. The NCDOT valued the "just compensation" at \$276,000 for the property taken. The current and former owners of the property, the property lessee, and the mortgage holder all contested the NCDOT's valuation, and they hired a licensed real estate broker to testify that "just compensation" was \$3.734 million.

The NCDOT argued against allowing the broker's testimony based on North Carolina General Statute § 93A-83, which regulates how and what licensed real estate brokers can provide with respect to broker price opinions and comparative market analyses. The statutory restrictions specifically distinguish between licensed brokers, who are only allowed to provide opinions of "probable selling price or leasing price," and certified appraisers, who may provide estimates of the value of real property. At trial, the court agreed with the NCDOT and excluded the broker's testimony. On appeal, the North Carolina Court of Appeals also agreed and found no error in the trial court's exclusion of the broker's testimony.

In its decision reversing the appellate court's ruling, the North Carolina Supreme Court stated that the authority allowing experts to testify is based on the Rules of Evidence, not a statute such as North Carolina General Statute § 93A-83. In other words, any lay person who meets the standard articulated in Rule of Evidence 702 and its related case law (a more thorough discussion of which is beyond the scope of this article) can testify as an expert, without having to rely on some other form of authority. The court also pointedly noted that "under [NC]DOT's reading of the statute, subsection 93A-83(f) would bar a licensed broker from testifying about fair market value simply because he holds a broker's license—even when an intelligent lay person, without any license, could potentially testify about fair market value." In other words, just because real estate brokers are not permitted by law to provide broker price opinions or comparative market analyses that contain opinions of fair market value, that does not mean that they are barred from coming into court and testifying about fair market value

(assuming, of course, that they are qualified as an expert under the Rules of Evidence). Relying on this reasoning, the court reversed the earlier appellate ruling and sent the case back for a trial to include the testimony of the real estate broker.

Impact on Condemnation Cases

In a condemnation case, the parties, typically the landowner whose property has been condemned and taken and the governmental entity, utility, or other such party who has lawfully taken the property, raise arguments that center on the key issue of fair market value. At risk of grossly oversimplifying the process, certified appraisers for each side provide competing testimony about the fair market value of the property taken, the jury is instructed by the judge as to how to apply the law, and the jury renders its verdict of "just compensation."

After the decision in *Mission Battlefield*, it is now clear that certified appraisers, although they can figure prominently in such cases, are not the only ones qualified to testify about fair market value. In fact, the North Carolina Supreme Court expanded the circle of those qualified to offer such testimony beyond just real estate brokers. In its decision, the court explicitly stated that any lay person who is qualified as an expert under the Rules of Evidence can testify to fair market value. This potentially opens up several new options for all parties who are trying to convince a jury of the value of property.

Other Impact Beyond Condemnation Cases

The impact of the decision in *Mission Battleground* expanding the types of individuals who are qualified to testify about fair market value is likely not limited to just condemnation cases. Real estate brokers and other lay individuals possibly may find increased demand to testify in any case where fair market value is a critical factor in the outcome of the dispute. For example, real estate brokers and lay people could be called upon to testify as fair market value experts, whether as the sole expert or supplemental to another, in domestic equitable distribution cases, catastrophic insurance loss claims, and other similar matters.

There is some concern that another effect of the *Mission Battleground* decision could be to create confusion in the real estate brokerage profession about the allowable activities of brokers on the one hand and appraisers on the other. For example, the question may now arise that if a real estate broker can testify in court to fair market value, why can't they provide a broker price opinion or comparative market analysis of the fair market value of a piece of property? While it is obvious that some confusion can exist, it is important to remember that the opinion in *Mission Battleground* addressed brokers' testimony and it did not invalidate or overturn North Carolina General Statute § 93A-83 and its attendant statutory scheme of distinguishing between the specific authorized activities of appraisers and brokers.

Conclusion

Questions about the decision in *Mission Battleground* or how it may affect you either as a defendant in a condemnation or other case, a real estate broker or appraiser, or a lay person with expertise in property valuation should be directed to an attorney. Ward and Smith has qualified attorneys who can assist you with these or other legal topics.

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