

Memorandum 80-18

Subject: Study K-100 - Evidence of Market Value (1980 Legislation)

At the January 1980 meeting, the Commission considered its bill extending the Evidence Code valuation rules to noncondemnation cases and determined to amend the bill substantially as follows:

813. (a) The value of property may be shown only by the opinions of any of the following :

(1) Witnesses qualified to express such opinions ~~+~~ .

(2) The owner of the property or property interest being valued ~~+~~ and .

(3) A married person, if the property or property interest being valued is community property or separate property of the married person or the married person's spouse.

~~(3)~~ (4) An officer, regular employee, or partner designated by a corporation, partnership, or unincorporated association that is the owner of the property or property interest being valued, if the designee is knowledgeable as to the value of the property or property interest.

In addition to this amendment, the Commission requested the staff to investigate whether there are other areas where ownership is in dispute that it might be desirable to permit opinion testimony by a claimed owner. The staff has spoken with Mr. James B. Merzon of Morro Bay, who wrote to the Commission initially raising this problem. Mr. Merzon has experienced buyer-seller problems where both ownership and value of goods is in issue and landlord-tenant problems where both ownership and value of trade fixtures is in issue. Many of these are small cases that would be impractical to bifurcate for separate determinations of ownership and value.

The staff has also spoken with the legal division of the Department of Transportation, which is opposed to permitting opinion testimony by a claimed owner. Their concern is that testimony by unqualified witnesses is unreliable and should be strictly limited. If there are several "owners" in an eminent domain case who give inflated testimony to the jury, there is bound to be a prejudicial effect.

The staff sees a number of options available to the Commission. We can do nothing, on the assumption that if the issue comes up, the trial court will construe "owner" to mean a claimed owner in the case of a dispute. We can make clear by statute that "owner" includes a claimed owner. We can make clear that "owner" includes a claimed owner but make

an exception for eminent domain proceedings. We can permit a claimed owner to testify as an owner if the claim is bona fide, the ownership issue cannot easily be bifurcated, and the claimed owner is knowledgeable as to the value of the property. We can attempt by statute to single out the cases where ownership is the primary issue between the parties and permit both parties to testify in those cases.

Of these options, the staff prefers the last. The staff would amend the bill along the following lines:

(c) For the purposes of subdivision (a), "owner of the property or property interest being valued" includes, but is not limited to, a the following persons:

(1) A person entitled to possession of the property.

(2) Either party in an action or proceeding to determine the ownership of the property between the parties if the court determines that it would not be in the interest of efficient administration of justice to determine the issue of ownership prior to the admission of the opinion of the party.

Comment. Subdivision (c) of Section 813 is amended to make clear that a person claiming to be an owner may testify as an owner in litigation over title. Such litigation may arise, for example, between a buyer and seller concerning title to and value of goods under a contract of sale, or between a landlord and tenant concerning characterization and value of property as trade fixtures.

Respectfully submitted,

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