

TEXAS SUPREME COURT HEIGHTENS EVIDENTIARY BAR FOR “STIGMA DAMAGES”

By

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In a recent decision involving damages for environmental contamination, the Texas Supreme Court reversed a jury award because the plaintiff failed to meet the high standard for establishing loss of market value—and the even higher standard for “stigma” damages associated with environmental contamination of real property in the absence of a sale of the underlying property. The decision in *Houston Unlimited, Inc. Metal Processing v. Mel Acres Ranch* highlights the impropriety of permitting stigma damages when a plaintiff fails to ground expert testimony regarding damages on established and clear principles.

Cattle ranch Mel Acres sued a neighboring metal-processing facility, Houston Unlimited, for market value loss for chemical contamination allegedly caused by the plant. The ranch owner’s expert testified that the stigma accompanying the contamination reduced the value of the plaintiff’s property—although the ranch had not been put up for sale. The jury found Houston Unlimited liable and awarded the ranch owner approximately \$350,000 in damages. Despite a dissent criticizing the damages testimony of the ranch owner’s expert, the Texas Court of Appeals affirmed.

In focusing on the legal sufficiency of the ranch owner’s evidence of damages, the Texas Supreme Court found the evidence in the record inadequate to prove that the contamination diminished the fair-market value of the property. While the Court did not categorically reject the expert’s “percentage-reduction-in-value” approach, it found that the “manner in which” the expert “used the approach here is fatally flawed” in three ways:

Unreliable Data. The Court found that “the facts on which [the expert] relied” for her calculations “do not *actually* support her” opinions. The expert’s data, it said, were “not temporally connected to the contamination,” and the Court held that “[w]hen the facts support several possible conclusions, only some of which support the expert’s conclusions, the expert must explain to the fact finder why those conclusions are superior based on verifiable evidence, not simply the expert’s opinion.”

Unsupported Assumptions. While noting that when competing “evidence conflicts, it is the province of the jury to determine which evidence to credit,” the Court asserted that “if the record contains no evidence supporting an expert’s material factual assumptions, or if such assumptions are contrary to conclusively proven facts, opinion testimony founded on those assumptions is not competent evidence.”

In this case, the ranch owner’s expert based her opinion on the assumption that the “diminutions she found for [the comparable properties] were 100 percent attributable to contamination that occurred.” Accepting *arguendo* that diminution occurred, the Court noted that the expert “did not attempt to establish that the contamination caused some or all of the diminution in market value that she found, nor did she attempt to rule out other plausible causes.

Analytical Gaps. Finally, the Court noted that a verdict may not rest on expert testimony “if there is simply too great an analytical gap between” the relied upon “data and the opinion proffered.” In this case, the expert failed to account for differences between the property at issue and the comparable properties.

Lessons. Counsel defending against claims for stigma damages can use *Houston Unlimited* to illustrate the uncertainty of whether such damages are available in Texas and, even assuming that they are, to illustrate the high evidentiary standard that must be met to recover such damages. Even outside of stigma damages, this case provides useful precedent to defend against more traditional claims for loss of market value.

One should note that the Court did not take issue with the fact that the defendant failed to object to the plaintiff's expert testimony at trial. Nonetheless, prudence dictates objecting to and highlighting flaws at an available opportunity to create a supportive record for review.

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