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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE ex rel. DEPARTMENT OF
TRANSPORTATION,

Plaintiff and Respondent,

v.

GILIGIA COLLEGE,

Defendant and Appellant.

B235573

(Los Angeles County
Super. Ct. No. BC427703)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rolf M. Treu, Judge. Affirmed.

Barbara S. Harper for Defendant and Appellant.

Ronald W. Beals, Chief Counsel of the State of California Department of Transportation, Linda Cohen Harrel, Deputy Chief Counsel, Eric J. Fleetwood and Mark A. Berkebile, Deputy Attorneys, for Plaintiff and Respondent.

Giligia College appeals from the judgment entered in favor of the People of the State of California, ex rel. Department of Transportation (Caltrans) following a bench trial in which the court found Giligia College was not entitled to compensation for loss of goodwill in this eminent domain action. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Complaint for Eminent Domain and Requests To Continue Trial

In December 2009 Caltrans filed an action in eminent domain to acquire commercial property in Glendale for the widening of the Interstate 5 freeway. Giligia College, a vocational school owned by Hovhanes Kartounian, was one of the property's tenants. In April 2010 Giligia College filed its answer, claiming it was entitled to damages including loss of goodwill. Prior to trial the property owners and other tenants settled with Caltrans.

On April 9, 2010 the trial court set trial for March 7, 2011. On February 18, 2011 Caltrans filed a joint ex parte application with Giligia College to continue the trial date until June 2011. In a one-page memorandum that lacked a statement of facts or any citation to law, Caltrans stated, “[T]he sole issue to be tried to the jury [is] the amount of just compensation to be awarded to Giligia College,” and explained Caltrans had been “unable to retain an expert business valuation witness until October 2010” “[d]ue to the absence of a State Budget.” The court denied the application because it did not include a proper supporting memorandum (Cal. Rules of Court, rule 3.1113(c)).¹

On February 24, 2011 Caltrans filed a second joint ex parte application, contending, pursuant to rule 375(b), a motion to continue trial will be granted on a showing of good cause including consideration of “[w]hether the interests of justice are best served by the continuance” and “[a]ny other fact or circumstance relevant to a fair determination of the motion.” Caltrans argued the lack of sufficient time since mid-October for its expert to review the financial documents, depose the business owner and formulate two opinions of value constituted good cause for a continuance. The court

¹ Citation to a rule or rules are to the California Rules of Court.

denied the application, explaining rule 375(b) “has been repealed for several years now. This application having been brought twice and denied for legal insufficiency, the court will hear not further ex parte motion on this issue absent compliance with [Code of Civil Procedure section 1008],” which permits “[a] party who originally made an application for an order which was refused in whole or part . . . [to] make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before . . . and what new or different facts, circumstances, or law are claimed to be shown.”

On February 28, 2011 Giligia College filed an ex parte application to continue the trial date, arguing its expert witness was not available for trial because he was involved in three other matters that had priority. It also argued the parties had stipulated to a continuance, warranting a 30-day trial continuance pursuant to Code of Civil Procedure section 595.2 (“[i]n all cases, the court shall postpone a trial . . . for a period not to exceed thirty (30) days” when parties stipulate to such a continuance). The trial court denied the application, finding the declaration of Giligia College’s attorney in support of the application “contain[ed] conclusory and hearsay statements”; when the court initially set the matter for trial it had provided the parties four months “extra time based on the assertion it was needed so the appraisal process could be accommodated”; and the request was not made as soon as reasonably practical.

Also on February 28, 2011 Caltrans filed an ex parte application to bifurcate the trial, contending evidence had recently become available demonstrating Giligia College could not meet its burden of proof to show it was entitled to compensation for loss of goodwill and thus that issue should be determined by the court before a jury was empanelled to determine goodwill valuation.² Caltrans proposed trial on valuation be set 30 days after a finding of entitlement, permitting the parties to exchange appraisals and depose experts. The trial court denied the application.

² Giligia College’s entitlement to compensation for loss of goodwill and, if it was, the proper valuation for loss of goodwill were apparently the only issues to be resolved in the eminent domain action.

On March 3, 2011 Caltrans provided Giligia College with its goodwill valuation and filed its trial brief. Caltrans argued Giligia College was unable to demonstrate its loss of goodwill could not reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt, the second element of the four part test for proving entitlement to compensation for loss of goodwill.

On March 8, 2011, the first day of trial, Giligia College exchanged its goodwill valuation. At the outset of trial the court informed the parties that trial would be initially limited to determining whether Giligia College was entitled to compensation for loss of goodwill.

2. Summary of the Evidence Presented at Trial

a. Giligia College

Kartounian testified in October 2007 he leased space in the Glendale property to operate Giligia College. The lease indicated the property was targeted for acquisition in connection with the Interstate 5 improvement project. Toward the end of 2008 Caltrans representatives met with Kartounian when they came to investigate the property. In March 2009 Richard Saretsky, a Caltrans relocation agent, informed Kartounian that Giligia College would have to vacate the premises by the end of December 2009. Kartounian denied he was given a notice of eligibility, which informs business owners they are entitled to relocation benefits and describes the available resources. On May 1, 2009 Kartounian posted a notice informing the teachers and students of the building's condemnation. Shortly thereafter teachers quit and students canceled their classes, requiring Giligia College to refund their tuition. According to Kartounian, it was a "disaster."

In April 2009 Caltrans had provided Kartounian with a list of 25 possible relocation sites in Glendale. Kartounian testified none was suitable: Some were too small; some had insufficient parking; some had onerous rules; and most were too expensive. On July 1, 2009 Giligia College leased residential property in Northridge that required remodeling to operate as a school. Kartounian testified the property was owned

by a friend and Kartounian, who is also an architect, had designed an addition to it. After stating he had no idea whether Giligia College would need a zoning variance to operate in a residential zone, Kartounian conceded he might need one and estimated it would cost \$20,000. Additionally, although Kartounian had testified Giligia College was not required to pay rent at the Northridge location until it reopened, he later claimed he paid \$30,000 in rent and ran out of money during construction.

Giligia College presented the testimony of Chris Pedersen, an expert in business relocation, who opined Giligia College had acted in a reasonably prudent manner in attempting to prevent or mitigate its loss of goodwill. Pedersen described the relocation process set forth in Caltrans's manual, which he characterized as a fairly exhaustive and good guide, and the role of the relocation agent. With respect to Giligia College's relocation needs, Pedersen testified "the site itself should be located . . . within the Armenian community because . . . that is the majority of its clientele"; "it, of course, has to be properly zoned"; "the site should be at least a couple thousand square feet, 2-to 4,000 square feet. And he was growing a lot, so larger sites would have been acceptable if they weren't too expensive"; and it "has to have adequate parking per the code of the number of students they have."

Pedersen further testified he did not believe it would be difficult to find a suitable location for Giligia College: "This isn't the type of business that would be real hard to find the physical structure. Schools really are allowed in a lot of places. It's not . . . like a scrap metal yard or junkyard or something. So that wouldn't have been as hard except for the financial part of it." But, crediting Kartounian's contention he had not received a notice of eligibility even though Pedersen had never seen a case in which a business owner was not given one, Pedersen opined Giligia College had not been provided with any relocation assistance "and he did not have anybody when the time counted."³ Hesitating in calling the Northridge site "a replacement site," Pedersen testified "[i]t

³ On cross-examination Pedersen testified the failure to give Giligia College a notice of eligibility was the major failing of Caltrans.

could have been a lifeboat maybe if it could have got up and running faster, but there wasn't any, other than that, any other replacement site that was identified" by Giligia College.

b. *Caltrans*

Daniel Dunn, a senior right-of-way agent with Caltrans responsible for administering the relocation assistance program and Saretsky's supervisor, testified Saretsky had retired, but Dunn reviewed his relocation diary, which all relocation agents are required to keep in the ordinary course of business to document communications with business owners. In an entry dated April 27, 2009 Saretsky stated he presented Kartounian with the notice of eligibility and explained its provisions, but Kartounian refused to sign it, claiming he would do so later and mail it to Saretsky. Dunn testified Caltrans is obligated to deliver or serve the notice, but is not required to obtain a signature.

Other diary entries stated Saretsky had contacted various agencies responsible for licensing and regulating Giligia College and conveyed information he learned to an employee of Giligia College and its counsel. Additionally, Caltrans gave Giligia College an advance of \$5,000 toward its reestablishment. Dunn testified Caltrans will pay a business owner's actual moving costs, business licenses, variance and increased rent up to \$10,000 as long as the costs are supported by documentation and are actual, reasonable and necessary. Dunn personally approved the advance because Kartounian had signed a lease for the Northridge property. Giligia College could have applied for additional advances, but did not. In contrast, another business located in the same commercial building had submitted bids for its relocation expenses and received a combination of advance and progress payments totaling \$1,147,386.

According to Dunn, the difference between working with the other business and Giligia College "was a matter of cooperation and providing substantiation for payments." For example, Dorothy Manning, who was assigned to work with Giligia College after Saretsky had retired, told Dunn that Kartounian was very uncooperative and refused to talk to her. Kartounian told Manning he was "in extreme financial difficulty and did not

have the funds necessary to begin the relocation process.” Dunn told Manning he had authorized an advance and instructed her to contact Giligia College’s attorney to offer assistance or begin proceedings to recover the advance. Manning called Giligia College’s attorney, but she informed Manning “her client said he does not want to meet because there is nothing to discuss at this point.”

Caltrans presented the opinion testimony of Dave Girbovan, a business appraiser for 27 years. Girbovan testified he investigated the feasibility of opening a school on the Northridge property, which he described as “in the middle of a quiet residential neighborhood.” Girbovan determined Giligia College would have to obtain a variance because a private school is not allowed in a residential zone and would also have to provide on-site parking. Girbovan also discovered the construction at the property was being done pursuant to a 2008 building permit for an addition to the home’s living room and patio. Girbovan testified the rent for the Northridge property was \$1.50 per square foot while rent for one of the properties in Burbank on the Caltrans list of potential relocation sites was \$1.40 per square foot. The Burbank site had been used as a school and was leased again for school use in the winter of 2009.

3. *The Trial Court’s Findings After Kartounian’s Direct Examination and Ruling After Trial That Giligia College Had Failed To Prove It Was Entitled to Compensation for Loss of Goodwill*

After Kartounian’s direct examination had concluded, the court instructed counsel for Caltrans he did not need to cross-examine Kartounian about whether the relocation properties proposed by Caltrans were “too expensive” because his testimony was conclusory “without laying any foundation in fact whatsoever.” Later the court instructed Caltrans’s counsel there was no need to cross-examine Kartounian regarding other reasons for his rejection of the relocation properties because there was “insufficient evidence on the defense with respect to the reasonableness of his rejection of any or all of these properties.” After closing argument the court ruled Giligia College had failed to carry its burden to prove it was entitled to compensation for loss of goodwill “based upon the evidence in this case and upon a serious doubt of the credibility of the defendant. The

court specifically makes the finding, to extent it is necessary, that . . . the notice of eligibility was in fact given to Mr. Kartounian and that he refused to sign it.”

CONTENTIONS

Giligia College contends it demonstrated it took reasonable steps to relocate its business and the trial court misapplied the law in concluding otherwise; the court abused its discretion in excluding relevant testimony from Kartounian that would have established Giligia’s entitlement to seek compensation for loss of goodwill; and the court abused its discretion in denying a trial continuance.

DISCUSSION

1. *Giligia College Failed To Prove It Was Entitled to Compensation for Loss of Goodwill*

a. *Legal principles and standard of review*

A private property owner is entitled to just compensation when property is taken for public use. (Cal. Const., art. I, § 19; Code Civ. Proc., § 1263.010, subd. (a).)⁴ A lessee possesses a leasehold interest and “is entitled to ‘compensation for the value of his leasehold interest [taken], if any, and any of his property taken’ therewith, including ‘goodwill.’” (*City of Vista v. Fielder* (1996) 13 Cal.4th 612, 616; see § 1263.510, subd. (a) [“owner of a business conducted on the property taken . . . shall be compensated for loss of goodwill if the owner proves” entitlement].) Goodwill “consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of any new patronage.” (§ 1263.510, subd. (b); see *Galardi Group Franchise & Leasing, LLC v. City of El Cajon* (2011) 196 Cal.App.4th 280, 284 [“purpose of the statute is to ‘provide monetary compensation for the kind of losses which typically occur when an ongoing small business is forced to move and give up the benefits of its former location’”] (*Galardi*)). “Goodwill . . . is generally defined as the amount a willing buyer

⁴ Statutory references are to the Code of Civil Procedure unless otherwise indicated.

would pay for a going concern above the book value of the assets.” (*Redevelopment Agency of City of San Diego v. Attisha* (2005) 128 Cal.App.4th 357, 367 (*Attisha*).

To recover lost goodwill the business owner has the initial burden of proving entitlement, including demonstrating the loss could not have reasonably been prevented by relocating the business “or by taking steps and adopting procedures that a reasonably prudent person would [have] take[n] and adopte[ed] in preserving goodwill.”

(§ 1263.510, subd. (a)(2); see *Galardi, supra*, 196 Cal.App.4th at p. 284.)⁵ “By referring to the steps and procedures that a ‘reasonably prudent person would take and adopt in preserving the goodwill,’ (§ 1263.510, subd. (a)(2)) the statute itself calls for an objective standard.” (*Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 831.) Whether the business owner has proved entitlement to compensation for loss of goodwill is a question for the trial court. Only if the court has found the business owner is entitled to compensation “does the remaining issue of the value of the goodwill loss, if any, go to the jury.” (*City of Santa Clarita v. NTS Technical Systems* (2006) 137 Cal.App.4th 264, 270, fn. omitted.)

In making the threshold determination of entitlement, the trial court must resolve any disputed facts and “assess the credibility of witnesses relating to the existence of the requisite conditions. [Citation.] We must examine the entire record and affirm the trial court’s resolution of disputed factual issues so long as they are supported by substantial evidence.” (*Galardi, supra*, 196 Cal.App.4th at p. 284 [issue was whether trial court erred in determining lessor of business was not entitled to compensation for loss of goodwill because it did not own the business].) However, when ““the issue on appeal

⁵ Section 1263.510, subdivision (a), provides, “The owner of a business conducted on the property taken, or on the remainder if the property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves all of the following: [¶] (1) The loss is caused by the taking of the property or the injury to the remainder. [¶] (2) The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill. [¶] (3) Compensation for the loss will not be included in payments under Section 7262 of the Government Code. [¶] (4) Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.”

turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." (Sonic Mfg. Technologies, Inc. v. AAE Systems, Inc. (2011) 196 Cal.App.4th 456, 466; see generally Valero v. Board of Retirement of Tulare County Employees' Retirement Assoc. (2012) 205 Cal.App.4th 960, 965 ["[a]lthough the issue on this appeal has been framed as whether there is substantial evidence in the record to support the trial court's conclusion that [employee] had not met his burden to show a real and measurable connection between his psychiatric disability and his employment, there is a conceptual and substantive distinction within the substantial evidence analysis depending on who has the burden of proof on a particular issue, which party prevailed on that issue and who appealed".])

b. *Uncontradicted and unimpeached evidence does not compel the finding that Giligia College took reasonable steps to preserve its goodwill*

Giligia College essentially contends the evidence demonstrated that it did everything possible to preserve its goodwill by finding a landlord who would forgive rent until the school had reopened and that, because Caltrans failed to compensate him for his losses, Kartounian ran out of money and was unable to finish remodeling the Northridge property and apply for the requisite licenses, permits and variance. Giligia College also argues the trial court misapplied the law by focusing on its failure to demonstrate why it did not relocate to one of the sites proposed by Caltrans instead of looking at the reasonableness of the steps it had taken to find a suitable site.

Giligia College's characterization of the record is grossly at odds with the evidence, including the testimony of its own expert witness. Pedersen opined it should not have been difficult to find a suitable relocation site for Giligia College in the Armenian community and properly zoned with adequate parking. The relocation site in Northridge did not meet any of these criteria. Pedersen's view Giligia College had

nonetheless acted in a reasonably prudent manner in attempting to prevent loss of its goodwill was predicated on accepting Kartounian's demonstrable false contention he "wasn't even given the most fundamental thing, which is [t]he notice of eligibility. No assistance whatsoever." In fact, the evidence established Kartounian had been given the notice of eligibility, but refused to sign it, and was offered substantial relocation assistance, but utterly failed to cooperate with Caltrans. Giligia College's argument, "If Kartounian refused to sign for the [notice of eligibility], then he did not in fact receive it," is simply absurd.

To be sure, Giligia College was not required to relocate to a site proposed by Caltrans nor prove by a preponderance of the evidence that each site proposed by Caltrans was unacceptable based on objective criteria. Nevertheless, any meaningful evaluation whether the loss of goodwill could have reasonably been prevented by relocation of the business or by taking steps a reasonably prudent person would have taken necessarily includes some assessment of Giligia College's rationale for rejecting the 25 relocation sites proposed by Caltrans. The explanation offered by Kartounian, not only for rejecting the proposed relocation sites but also for choosing the Northridge site, was sparse and, at that, found not credible by the trial court: Kartounian claimed all of the sites proposed by Caltrans were "too expensive." Yet Girbovan testified the proposed relocation site that had previously been used as a school cost 10 cents less per square foot than the Northridge property. Moreover, although Giligia College argues on appeal Kartounian's new landlord "would forgive rent until Giligia [College] was up and running," Kartounian testified he was required to pay \$30,000 in rent. Similarly, Kartounian's assertion parking was an issue at the proposed relocation sites was discredited and, frankly, nonsensical given the complete lack of on-site parking at the Northridge property. His bare explanation the sites were not suitable because "they had their own rules and . . . there is no freedom to operate there" was virtually meaningless.

Giligia College insists the trial court's finding Kartounian lacked credibility was not supported by substantial evidence. However, a credibility determination is not subject to substantial evidence review: Reviewing courts may not judge "the credibility

of witnesses [citation], and the trier of fact is entitled to accept or reject all or any part of the testimony of any witness.” (*Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 409; see *People v. Elliott* (2012) 53 Cal.4th 535, 585 [“it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends”]; *Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 833 [“with respect to whether he satisfied the statutory requisites for goodwill compensation, it was decidedly the province of the trial court to assess Dr. Sheily’s credibility”]; cf. *Linear Technology Corp. v. Tokyo Electron, Ltd.* (2011) 200 Cal.App.4th 1527, 1534 [“we may not reweigh the evidence or judge the credibility of witnesses unless their testimony is ‘inherently improbable or clearly false’”].)

2. *The Trial Court Did Not Abuse Its Discretion in Limiting Kartounian’s Testimony*

A trial court’s ruling on the admissibility of evidence is generally reviewed for abuse of discretion. (E.g., *People v. Williams* (1997) 16 Cal.4th 153, 196-197 [“In determining the admissibility of evidence, the trial court has broad discretion. . . . On appeal, a trial court’s decision to admit or not admit evidence. . . is reviewed only for abuse of discretion.”]; accord, *People v. Alvarez* (1996) 14 Cal.4th 155, 203 [“appellate court reviews any ruling by a trial court as to the admissibility of evidence for abuse of discretion”]; *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 885 [“[w]e review a trial court’s decision to admit or exclude evidence under the abuse of discretion standard”]; *Zhou v. Unisource Worldwide, Inc.* (2007) 157 Cal.App.4th 1471, 1476 [same].) An erroneous exclusion of evidence will be deemed harmless or nonprejudicial if the evidence was “of so little materiality or value that its admission would not have had any substantial influence on the result,” or it “would have been merely cumulative or corroborative of evidence properly in the record.” (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 255; see 9 Witkin, *Cal. Procedure* (10th ed. 2008) Appeal, § 431, p. 486.)

Giligia College contends the trial court deprived it of a fair trial by excluding Kartounian's testimony that would have demonstrated what steps he took to get Giligia College running at the Northridge property, including what licenses would be required. However, the portion of the reporter's transcript Giligia College identifies in support of its argument relates to questions and testimony about the steps Kartounian took to find and move Giligia College to the Glendale property in 2007. The court properly found that was not relevant to the only question at issue to establish entitlement—whether the loss of goodwill could not have reasonably been prevented by relocating the business or by taking steps and adopting procedures a reasonably prudent person would have taken and adopted.

Giligia College's complaint the trial court repeatedly interrupted its counsel, invited objection from Caltrans and sustained objections when there was none pending is, although exaggerated, not entirely inaccurate. Nevertheless, "Every court has the inherent power, in furtherance of justice, to regulate the proceedings of a trial before it; to effect an orderly disposition of the issues presented; and to control the conduct of all persons in any manner connected therewith. [Citations.] The exercise of this power is a matter vested in the sound legal discretion of the trial court, subject to reversal on appeal only in those instances where there has been an abuse of that discretion.'" (*Schimmel v. Levin* (2011) 195 Cal.App.4th 81, 87.) The trial court was merely attempting to keep Giligia College's counsel on point and thus did not abuse its discretion. For example, one of the two examples Giligia College cites in support of its argument is a question about a document relating to an approval at the Glendale property, which the court had repeatedly instructed was not a relevant topic.

3. *There Was No Abuse of Discretion in Denying a Continuance of the Trial*

Trial continuances are disfavored and may be granted only on an affirmative showing of good cause. (Rule 3.1332(c); see rule 3.1332(a) [“dates assigned for a trial are firm”].) A party seeking a continuance must do so “as soon as reasonably practical once the necessity for the continuance is discovered.” (Rule 3.1332(b).) “Circumstances that may indicate good cause [for continuance] include” the unavailability of a party, trial counsel or an essential lay or expert witness due to death, illness or other excusable circumstances; the substitution of trial counsel when the substitution “is required in the interests of justice”; “[a] party’s excused inability to obtain essential testimony, documents or other material evidence despite diligent efforts”; or “[a] significant, unanticipated change in the status of the case as a result of which the case is not ready for trial.” (Rule 3.1332(c).) “In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination” including, for example, “[t]he proximity of the trial date” and “[w]hether any previous continuances were granted.” (Rule 3.1332(d).)

We review a court’s decision denying a continuance under the deferential abuse of discretion standard. (*Foster v. Civil Service Com.* (1983) 142 Cal.App.3d 444, 448.) Under this standard the reviewing court will “only interfere with [the lower court’s] ruling if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge reasonably could have reached the challenged result.” (*Estate of Billings* (1991) 228 Cal.App.3d 426, 430.) The trial court abuses its discretion when it has “exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.” (*Mendoza v. Club Car, Inc.* (2000) 81 Cal.App.4th 287, 301.)

“In determining whether a denial [of a continuance] was so arbitrary as to deny due process, the appellate court looks to the circumstances of each case and to the reasons presented for the request.” (*People v. Frye* (1998) 18 Cal.4th 894, 1013, overruled on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421.) Factors to consider include ““the benefit which the moving party anticipates[,] . . . the likelihood that such

benefit will result, the burden on other witnesses, jurors and the court and, above all, whether substantial justice will be accomplished or defeated by a granting of the motion.””” (*People v. Jenkins* (2000) 22 Cal.4th 900, 1037; see also *People v. Howard* (1992) 1 Cal.4th 1132, 1171-1172 [“[I]t is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel.’ [Citation.] Instead, ‘[t]he answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.’”].)

Giligia College’s ex parte application, as well as Caltrans’s two failed applications, were based on the need for more time for the parties’ experts to prepare goodwill valuation reports and for the parties to depose the experts. Giligia College argued, “Here, based upon representations from Caltrans that it would seek a continuance of the trial due to its postponed inability in retaining an expert witness to prepare a valuation report[,] Giligia withheld spending a considerable amount of money for the expert and his preparation of a report for exchange, pending status from Caltrans. As a result, Giligia’s expert is now unavailable for trial on March 7, and even more importantly, will not be able to complete the valuation report before March 14, of which is instrumental in settlement negotiations and for trial evidence and testimony.”

We need not determine whether Giligia College’s failure to timely prepare its own case in reliance on representations from Caltrans or to seek a continuance when it became clear the parties would not be prepared to exchange expert valuation reports as required by section 1258.220 constituted good cause for a trial continuance.⁶ Denial of a continuance to permit completion and exchange of expert valuations did not prejudice Giligia College because valuation ultimately was never at issue in this case. (See, e.g.,

⁶ Section 1258.220, subdivision (a), provides, “[T]he ‘date of exchange’ is the date agreed to for the exchange of their lists of expert witnesses and statements of valuation data by the party who served a demand and the party on whom the demand was served or, failing agreement, a date 90 days prior to commencement of the trial on the issue of compensation or the date set by the court on noticed motion of either party establishing good cause therefor.”

§ 475 [“[n]o judgment, decision or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction or defect, was prejudicial, and also that by reason of such error, ruling instruction or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling instruction or defect had not occurred or existed”]; *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal.App.4th 29, 51-52 [prejudice will not be presumed; burden rests with party claiming error to demonstrate not only error, but also a resulting miscarriage of justice].)

Attempting to demonstrate prejudice where none exists, Giligia College argues Caltrans did not inform it until a few days before trial that Caltrans intended to challenge its entitlement to compensation for goodwill: “By withholding notice, Caltrans lulled Giligia into belief that entitlement was not an issue, preventing it from preparing its best case that it was entitled to seek compensation for loss of goodwill.” Along similar lines, Giligia College argues Caltrans’s counsel failed to abide by the high standard of conduct required of government attorneys “drag[ging] its feet in its dealings with Giligia” throughout the litigation, including failing to serve the complaint in a timely manner, failing to appraise its fixtures and equipment, which would have set the date of value, waiting at least one month to move for a continuance after the parties had agreed Caltrans would do so and delaying providing its expert valuation.

To be sure, “[t]he duty of a government attorney in an eminent domain action, which has been characterized as ‘a sober inquiry into values, designed to strike a just balance between the economic interests of the public and those of the landowner’ [citation] is of high order. ‘The condemnor acts in a quasi-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of the theory and practice of just compensation.’” (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871.) Nevertheless, the government attorney is not the attorney for the condemnee, and the condemnee retains responsibility for protecting its own interests. It was Giligia College’s initial burden to show entitlement to

compensation for loss of goodwill; absent a stipulation to the contrary, Giligia College should have been prepared to present its evidence. (Cf. *Redevelopment Agency v. Thrifty Oil Co.* (1992) 4 Cal.App.4th 469, 479 [parties had stipulated on the issue of entitlement].) While governmental misconduct (if it occurred) should not be rewarded, to the extent Giligia College asserts counsel for Caltrans had failed to honor its commitment from the outset of the litigation, at some point Giligia College should have realized that it was not prudent to rely on Caltrans to timely or thoroughly prepare the application for a continuance and that Caltrans might not have finalized its own trial strategy.

Moreover, nothing prevented Giligia College from timely serving a demand to exchange lists of expert witnesses (see § 1258.210), which would have obviated several of Giligia College's complaints on appeal. (Cf. *Hirano v. Hirano* (2007) 158 Cal.App.4th 1, 6 ["But only the party who makes a demand for exchange of expert witness information and the party upon whom the demand is made are required to comply with the statutory procedures for exchanging expert witness information. [Citation. Fn. omitted.] From this, it reasonably follows that, where no demand is made by any party, no party is required to comply with the statutory exchange requirements."].) While it may be true, as Giligia College contends, in practice a formal demand is often not served in eminent domain actions and the parties simply agree on an exchange date, such informal practices, even if they advance the goal of working cooperatively, carry the risk of foreclosing relief that adherence to the rules would provide. The trial court attempted to take into consideration the fact both parties had failed to serve expert demands by permitting each of them to present expert testimony on the reasonableness of Giligia College's relocation efforts.

Finally, Giligia College contends the matter was simply not ready for trial as demonstrated by numerous instances in which Giligia College was ambushed or unfairly surprised during trial. For example, Giligia College argues, Caltrans referred to portions of Kartounian's deposition transcript even though Giligia College had only received it to review the day before trial, and it introduced pages from Saretsky's relocation diary even though they had not been produced during discovery or identified on Caltrans's exhibit

list. Even if we were to assume the trial court's evidentiary rulings regarding these matters were erroneous, they simply were not prejudicial—whether considered individually or collectively—in light of Giligia College's complete failure to introduce evidence it had taken reasonable steps to preserve its goodwill. In sum, denial of the request for a continuance was not a prejudicial abuse of discretion.

DISPOSITION

The judgment is affirmed. Caltrans is to recover its costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.