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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION  
AUTHORITY,

Plaintiff and Respondent,

v.

KBG I ASSOCIATES, LLC,

Defendant and Appellant.

B258544

(Los Angeles County  
Super. Ct. No. BC456764)

APPEAL from orders of the Superior Court of the County of Los Angeles, Ruth Ann Kwan, Judge. Affirmed.

Dolle & Dolle, Hodge L. Dolle, Jr., Thomas M. Garcin for Defendant and Appellant.

Mark J. Saladino, County Counsel, Robert C. Cartwright, Assistant County Counsel, Adrienne M. Byers, Principal Deputy County Counsel; Nossaman LLP, Bradford B. Kuhn and David Graeler for Plaintiff and Respondent.

## **INTRODUCTION**

Defendant and appellant KBG I Associates, LLC (KBG) appeals from the trial court's orders excluding the property valuation reports prepared by KBG's expert in this eminent domain action. According to KBG, the orders deprived it of its constitutional right to have a jury determine the issue of just compensation. KBG contends that the trial court erred when it ruled that KBG's appraiser could not consider the loss of direct access to its property caused by the construction of a public works project and the revocation by plaintiff and respondent Los Angeles County Metropolitan Transportation Authority (MTA) of a revocable license providing access to the property. KBG also contends that the trial court erred when it excluded from KBG's property valuation other evidence of impaired access caused by the project.

We hold that the termination of a revocable license concerning access to a property, work on a public street, and nonsubstantial changes in access to the property are not compensable. Thus, we conclude that the trial court's orders prohibiting KBG's expert from considering evidence of the loss of direct access and other impairments of access to KBG's property were correct. We therefore affirm those orders.

## **FACTUAL BACKGROUND**

### **A. The Property**

KBG owned a 3.8 acre parcel of commercial property near the southeast corner of the intersection of Jefferson and La Cienega Boulevards in the City of Los Angeles (the property). The property included an easement interest in a driveway that provided direct access to the property from La Cienega (La Cienega driveway). No part of the property bordered Jefferson because a 100-foot wide railroad right-of-way separated the property from Jefferson. Direct access to the property from Jefferson was over a private access road that crossed the railroad right-of-way (Jefferson private access road).

## **B. License Agreement**

In 1983, KBG's predecessor, a partnership, entered into a private roadway license agreement (license agreement) with Southern Pacific Transportation Company (Southern Pacific) to permit the predecessor to construct and use the Jefferson private access road over Southern Pacific's railroad right-of-way to access the property from Jefferson. The license agreement provided: "This agreement is effective as of the date first herein written and may be terminated by either party hereto by giving thirty (30) days' notice to that effect to the other party." The license agreement also provided that KBG's predecessor, as licensee, agreed "to release and indemnify [Southern Pacific] from and against all liability, costs and expenses for loss of or damage to property of either party hereto . . . caused by or arising out of . . . [the] removal of said roadway . . . ." In 1991, MTA acquired from Southern Pacific the railroad right-of-way adjacent to Jefferson and thereby succeeded to the rights of Southern Pacific under the license agreement.

## **C. MTA's Railway Project**

In connection with the construction of the Expo Line project—a light rail line designed to run from downtown Los Angeles to Santa Monica—MTA began work on the first phase that would run from the downtown 7th/Metro Station to Culver City. One of the first phase stations—the La Cienega Station—was designed as an aerial station on a bridge that would cross over La Cienega. On the southeast corner of the intersection of La Cienega and Jefferson, just west of the property, MTA planned to build a parking garage next to the station.

Construction of the bridge over La Cienega began in 2009, including construction within the railroad right-of-way adjacent to the property. Nevertheless, the Jefferson private access road remained open throughout 2009. But eventually the new elevated tracks for the Expo Line project were built over the Jefferson private access road necessitating its closure and removal in April 2010.

## PROCEDURAL BACKGROUND

### A. MTA's Eminent Domain Complaint

In March 2011, MTA filed a complaint in eminent domain against KBG. In the complaint, MTA by condemnation acquired a nonexclusive easement over the La Cienega driveway to provide public access to the new multi-story parking garage MTA was constructing on the southeast corner of La Cienega and Jefferson. The issue of compensation was litigated.

### B. The Appraisals

During the course of the litigation, the parties designated their respective appraisers. Each appraiser prepared an opinion of the value of the property in the “before condition,” i.e., the condition of the property prior to the taking for the construction of the Expo Line project. MTA’s appraiser opined that the value of the property in the before condition was \$11,400,000. KBG’s appraiser valued the property at \$14,600,000.

In reaching his valuation, KBG’s appraiser concluded that a reasonable buyer would have determined that Southern Pacific had abandoned the rail line in the railroad right-of-way; that neighboring properties had acquired easements over the Southern Pacific railroad right-of-way to ensure access to their properties from Jefferson; and that it was reasonably probable that, but for the project, a buyer could have converted the license agreement to an easement. Accordingly, he considered the loss of direct access from Jefferson in his valuation of the property in the after condition, and he valued the severance damages<sup>1</sup> caused by the Expo Line project at \$2,240,000.

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<sup>1</sup> “When ‘the property acquired [by eminent domain] is part of a larger parcel,’ in addition to compensation for the property actually taken, the property owner must be compensated for the injury, if any, to the land that he retains. ([Code Civ. Proc.], § 1263.410.) Once it is determined that the owner is entitled to *severance damages*, they, too, normally are measured by comparing the fair market value of the remainder before and after the taking. (*Sacramento etc. R.R. Co. v. Heilbron* (1909) 156 Cal. 408, 414 [104 P. 979]; *County of Santa Clara v. Curtner* (1966) 245 Cal.App.2d 730, 743 [54

MTA's appraiser did not consider whether the loss of direct access over the Jefferson private access road caused any severance damages. During his deposition, he explained that MTA's attorney advised him not to consider the loss of direct access to the property from Jefferson in his valuation of the property.

### **C. MTA's Motion for Determination of Disputed Issues**

In December 2011, MTA filed a motion seeking a determination that KBG had no right to compensation in eminent domain for the closure of the Jefferson private access road that had been constructed pursuant to the license agreement. The motion was made on the grounds that KBG's rights under that agreement amounted to no more than a revocable license that did not create a property interest compensable in eminent domain and that KBG released in the license agreement any claim for damages based on termination of the license.

Following a hearing, the trial court granted the motion, explaining its ruling as follows: "The evidence submitted by MTA shows that KBG's rights under the [license agreement] amounted to no more than a revocable license, which does not create a compensable legal interest in eminent domain. *See People ex rel. Department of Public Works v. Lundy* (1965) 238 Cal.App.2d 354 [(*Lundy*)]. 'A prerequisite to compensation is that a claimant must prove his ownership of an estate or interest in the land being condemned.' *Id.* at 357. There is nothing before the Court to suggest KBG was given an easement. Rather, the evidence submitted by MTA shows KBG was given no more than a revocable license, which does not create a property interest. *Id.* at 358. 'Licenses, or privileges, which are unenforceable against the fee owner, are not proper subjects of condemnation.' *Id.* Further, the 'fundamental rule in proving damage for the taking of specific land is the difference between reasonable market value before and after the taking. . . . Any increase in the personal difficulties of a landowner, or his lessee, as

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Cal.Rptr. 257]; see 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 1027, p. 593.)" (*City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 745, italics added, fn. omitted.)

such, by reason of the taking, apart from the market value, is not a proper test of damages; the difference in the amounts of money which an individual would be willing to pay for a lease, or for title, before and after the taking, as distinguished from what the general public would pay as reasonable market value, is immaterial.’ *Id.* at 359.” (Fn. omitted.)

**D. MTA’s Motion in Limine to Exclude Improper Items of Severance Damage**

Following an exchange of expert reports, MTA filed a motion in limine to exclude evidence on two issues: (i) the likelihood that the license could be converted into a permanent easement; and (ii) the damages caused by the alleged impairment of access to the property. MTA contended that the license agreement was not a compensable property interest and therefore KBG was not entitled to compensation for an interest that it never owned. MTA also contended that the new access road<sup>2</sup> that it had constructed to provide alternative access to the property from Jefferson was a benefit to the property, and that any alleged impaired access was not substantial enough to warrant compensation.

Following the hearing on the motion in limine, the trial court issued a ruling in which it concluded that KBG’s appraisal was based on improper considerations. Among other things, the trial court determined that: “MTA moves to preclude KBG[’s] appraiser . . . from basing severance damages on the assumption that there was a ‘reasonable probability’ that the license agreement which provided a crossing over the right-of-way to Jefferson Blvd. could be converted into a property interest such as an easement. The motion is GRANTED. Further, plaintiff has stipulated that it will not present testimony concerning the reasonable probability of KBG convert[ing] a license into an easement. The Court reaffirms its January 24, 2012, ruling that the license agreement is not a

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<sup>2</sup> As part of the Expo Line project, MTA constructed a new access road that ran parallel to Jefferson, south of the new elevated tracks, and allowed access to the property from Jefferson at Hauser Avenue about 1,100 feet east of the Jefferson private access road.

compensable property interest in eminent domain. . . . MTA moves to preclude KBG's appraiser . . . from basing severance damages on an alleged impairment of access. The motion is GRANTED. KBG has presented no evidence that a substantial impairment of access to the property has been caused by MTA's project. Specifically, the fact that vehicles visiting the KBG property now must travel approximately 1,100 feet down the new access road constructed by MTA does not constitute a substantial impairment of access. Similarly, the fact that MTA has taken a non-exclusive easement over 161 feet of the [La Cienega] driveway . . . does not substantially impair access to or from the public streets. To the extent that KBG proves the design of the new access road increases the likelihood of traffic accidents or other occurrences which may cause damage to KBG's property, then severance damages may be awarded for the increased risk. . . . The motion is GRANTED in part and denied in part. The fact that traffic rules were changed to preclude left turns into or out of the La Cienega driveway is not a legally permissible basis for eminent domain severance damages. . . . [¶] As noted, the Court reaffirms its January 24, 2012, ruling that the license agreement is not a compensable property interest in eminent domain. Evidence Code section 822, subd. (a)(5) provides that in eminent domain cases the following is not admissible in evidence: 'The influence upon the value of the property or property in interest being valued of any noncompensable items of value, damage, or injury.' Therefore, because the value of KBG's property could not include value ascribed to the license agreement, and *because the license agreement itself released MTA from any liability associated with its termination, in this proceeding the appraiser may not place any value on the existence or termination of the agreement. . . .*' (Italics added.) The trial court granted the parties 90 days to submit amended appraisal reports in conformance with the court's rulings.

**E. KBG’s Amended Appraisal Report and MTA’s Renewed Motion in Limine**

Following the ruling on MTA’s motion in limine, KBG lodged an amended appraisal report<sup>3</sup> and MTA deposed the KBG’s appraiser based on that report. During his deposition, the KBG’s appraiser explained that his severance damage analysis was based, in part, on the different quality of access to the property caused by the Expo Line project. In response to the amended report, KBG filed another motion in limine, arguing that the appraiser’s reliance on the “different quality of access” was the same as his previous reliance on the substantial impairment of access that the trial court had found improper.

At the hearing on MTA’s renewed motion in limine, the trial court granted the motion. The trial court also ordered KBG’s appraiser to amend his report to comply with the court’s previous ruling.

**F. KBG’s Refusal to Amend its Appraisal Report and Stipulated Judgment**

Instead of amending its appraisal report, KBG filed a motion for clarification of the trial court’s prior rulings. At the hearing on that motion, the trial court determined that no clarification of its rulings was needed, but again offered KBG leave to amend its appraisal report. When KBG advised the trial court that it would not amend its report, the trial court issued an order and an amended order excluding KBG’s original and amended appraisal reports. Because the trial court excluded KBG’s appraisal reports, it concluded that the only issue remaining for trial was the value of the nonexclusive easement that MTA sought over the La Cienega driveway.

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<sup>3</sup> In KBG’s amended appraisal report, the appraiser valued the property in the before condition at \$14,000,000 and in the after condition at \$12,200,000. His amended opinion was that severance damages were \$1,550,000, instead of the \$2,240,000 he had originally calculated. The reduction in the amount of severance damages resulted from the appraiser not including any value based on the probability that the license could be converted to an easement.

Based on the trial court's rulings, the parties reached an agreement on the value of the nonexclusive easement and stipulated to the entry of a judgment in that amount. The stipulated judgment provided that KBG reserved its right to appeal from the trial court's orders concerning severance damages. Following entry of the stipulated judgment, KBG filed a notice of appeal from the June 26, 2014, stipulated judgment, the June 26, 2014, judgment in condemnation, January 24, 2012, order determining disputed issues, the March 5, 2014, order re admissibility of severance damages opinion, and the June 26, 2014, amended order re admissibility of severance damages opinion.

## DISCUSSION

### A. Standard of Review

Notwithstanding that a trial court's rulings on the admission and exclusion of evidence are generally reviewed for abuse of discretion (see *Ghadrdan v. Gorabi* (2010) 182 Cal.App.4th 416, 420-421), the parties agree that the trial court's rulings on the disputed legal issues and on MTA's motions in limine should be reviewed de novo, citing *City of Livermore v. Baca* (2012) 205 Cal.App.4th 1460. As the court explained in that case, "When, as in the present case, the court's order excludes all evidence on a particular claim and, as a result, operates as a motion for nonsuit, we review the court's order de novo, examining the record in the light most favorable to the party offering the evidence. (*Dillingham-Ray Wilson v. City of Los Angeles* (2010) 182 Cal.App.4th 1396, 1403 [106 Cal Rptr.3d 691].) In such cases, 'all inferences and conflicts in the evidence must be viewed most favorably to the nonmoving party.' (*Amtower v. Photon Dynamics, Inc.* [(2008)] 158 Cal.App.4th [1582,] 1595.)" (*Id.* at p. 1465.)

Because the trial court's various rulings on the admissibility of the severance damage opinions had the effect of eliminating that claim from the action without trial, they operated as a motion for nonsuit. We therefore review those rulings de novo.

## **B. Compensation Principles in Eminent Domain Proceedings**

The *City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668 at pages 679 to 680 summarized compensation principles in eminent domain proceedings as follows: “Article I, section 19, of the California Constitution requires that the owner whose private property is taken or damaged for a public use be paid just compensation. The federal Constitution similarly provides that private property not be taken for public use without just compensation.’ (*City of San Diego v. Neumann*[, *supra*,] 6 Cal.4th [at p.] 743.) Our Legislature provides that the measure of compensation for property taken under the government’s powers of eminent domain is its ‘fair market value.’ (*Ibid.*; Code Civ. Proc., § 1263.310; *San Diego Metropolitan Transit Development Bd. v. Cushman* (1997) 53 Cal.App.4th 918, 925 [62 Cal.Rptr.2d 121] (*Cushman*)). It defines fair market value as ‘the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.’ (Code Civ. Proc., § 1263.320, subd. (a); see *Cushman*, at p. 925.) [¶] . . . [¶] ‘When property acquired by eminent domain is part of a larger parcel, in addition to compensation for the property actually taken, the property owner must be compensated for the injury or damage, if any, to the land that he retains, reduced by the amount of benefit to the remainder.’ (*City of Carlsbad v. Rudvalis* (2003) 109 Cal.App.4th 667, 678-679 [135 Cal.Rptr.2d 194], citing Code Civ. Proc., § 1263.410 and *City of San Diego v. Neumann*, *supra*, 6 Cal.4th at p. 744.) Such ‘severance damages’ are typically measured by comparing the fair market value of the remainder before and after the taking. (*City of Carlsbad v. Rudvalis*, at p. 679; *City of San Diego v. Neumann*, at p. 744.) ‘In other words, “The value of the remaining property taken as a part of the whole, described as the ‘before condition,’ must be compared with the value that portion has as a result of the take and the construction of the improvement in the manner proposed, described as the ‘after condition’’. Damages are computed simply by subtracting the

market value of the remainder in its after condition from the market value of the remainder in its before condition.” (Cushman, supra, 53 Cal.App.4th at p. 926, quoting 1 Condemnation Practice in Cal. (Cont.Ed.Bar 1995) Severance Damages, § 5.9, p. 198.)”

The court in the *City of San Diego v. Neumann*, supra, 6 Cal.4th at page 745 set forth additional principles as follows: “Because severance damages are intended to compensate the property owner for the destruction of the integrity of his land (see *Sharp v. United States* [(1903)] 191 U.S. [341,] 354), the property owner must be able to demonstrate both how his property functions as an integrated unit and how the value of what remains has been injured by the taking of a part. In the case of a single parcel of property devoted to a unitary use, the impairment is usually self-evident: in the case of a dairy farm, for example, if all the pasturage is condemned, the value of what remains may be significantly impaired.”

The Supreme Court in discussing eminent domain principles stated, “The procedures governing eminent domain actions differ in some respects from those governing other actions. For example, ‘all issues except the sole issue relating to compensation . . . are to be tried by the court.’ (*People v. Ricciardi* (1943) 23 Cal.2d 390, 402 [144 P.2d 799].) The defendant (i.e., the property owner) shall present evidence on the issue of compensation first and shall commence and conclude the argument. ([Code Civ. Proc.] § 1260.210, subd. (a).) And, ‘[e]xcept as otherwise provided by statute, neither the plaintiff nor the defendant has the burden of proof on the issue of compensation.’ ([Code Civ. Proc.] § 1260.210, subd. (b).) In this respect, California law differs from that of most other states. (See 5 Nichols on Eminent Domain (3d ed. 2006) § 18.02[3], pp. 18-12.1 to 18-20, fn. 8.)” (*Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954, 965-966.)

Also relevant to this case is the following statement from *City of San Diego v. Barratt American, Inc.* (2005) 128 Cal.App.4th 917, 934, “Although a property owner is entitled to receive the fair market value of the property condemned, the owner is not entitled to more. (*City of Carlsbad v. Rudvalis* (2003) 109 Cal.App.4th 667, 678 [135

Cal.Rptr.2d 194].) Accordingly, when assessing fair market value (including its highest and best use and the reasonable probability of a zoning change), any increase or decrease in the property's value *caused by the project for which the property is condemned* may not be considered. Thus, to the extent the fair market value of the property condemned increases or decreases because of the project for which it is condemned, or the eminent domain proceeding in which the property is taken, or any preliminary actions of the condemnor relating to the taking of the property, such project-caused increases or decreases must be excluded from the just compensation calculus. ([Code Civ. Proc.], § 1263.330.)” This formulation is sometimes referred to as the “project influence” rule.

### C. Analysis

#### 1. Severance Damages for Loss of Direct Access

In its January 2012 order on MTA's motion to determine disputed issues and its March 19, 2013, order granting MTA's first motion in limine—the orders upon which the trial court's subsequent orders excluding the opinions of KBG's appraiser were based—the trial court ruled, *inter alia*, that because KBG's rights under the license agreement amounted to no more than a revocable license, the termination of the direct access provided under that agreement was not a compensable real property interest in eminent domain. The trial court relied on *Lundy, supra*, 238 Cal.App.2d 354<sup>4</sup> and Evidence Code section 822<sup>5</sup> in reaching its conclusion and ultimately excluded the reports of KBG's

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<sup>4</sup> The court in *Lundy, supra*, 238 Cal.App.2d 354, held that “under the law and facts, the defendants merely had a revocable license to cross the railroad property at the two points involved; they did not own easements but only had licenses to cross the right of way; there was, therefore, nothing to condemn, and the case was improperly tried both because of the assumption that there were property rights in the two crossings and because of the consideration of the loss of these two alleged rights by the jury in ascertaining the damage to the remaining property.” (*Id.* p. 357.)

<sup>5</sup> Evidence Code section 822, subdivision (a)(5) provides: “(a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections

appraiser to the extent they based the severance damage calculations on the value attributable to the license agreement.

KBG contends that the trial court’s rulings excluding its appraiser’s reports violated its constitutional right to a trial by jury. According to KBG, under the so-called “project influence” rule—Code of Civil Procedure section 1263.330<sup>6</sup>—and section 1263.420,<sup>7</sup> its appraiser was required to ignore the impacts of the Expo Line project on the value of the property when calculating its fair market value, including the impact of the termination of the license agreement caused by the project, because the license was an attribute of the property in the before condition that a reasonable buyer would have considered in purchasing the property. Based on the mandates of the project influence rule, KBG argues that the trial court’s reliance on *Lundy, supra*, 238 Cal.App.2d 354 was misplaced and that its appraiser should have been allowed to base its severance damage calculation, in part, on the loss of the direct access to the property from Jefferson caused by the termination of the license agreement.

We do not need to reach KBG’s contentions based on the project influence rule, Code of Civil Procedure section 1263.420, or KBG’s arguments distinguishing *Lundy, supra*, 238 Cal.App.2d 354. Even assuming those contentions and arguments are correct,

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814 to 821, inclusive, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property: [¶] . . . [¶] (5) The influence upon the value of the property or property interest being valued of any noncompensable items of value, damage, or injury.”

<sup>6</sup> See page 12 *ante* for a description of the project influence rule. Code of Civil Procedure section 1263.330 provides: “The fair market value of the property taken shall not include any increase or decrease in the value of the property that is attributable to any of the following: [¶] (a) The project for which the property is taken. [¶] (b) The eminent domain proceeding in which the property is taken. [¶] (c) Any preliminary actions of the plaintiff relating to the taking of the property.”

<sup>7</sup> Code of Civil Procedure section 1263.420 provides: “Damage to the remainder is the damage, if any, caused to the remainder by either or both of the following: [¶] (a) The severance of the remainder from the part taken. [¶] (b) The construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the damage is caused by a portion of the project located on the part taken.”

KBG expressly waived any severance damages relating to the loss of direct access to Jefferson that would otherwise have been recoverable pursuant to KBG's valuation of the property.

In the license agreement, KBG agreed "to release . . . [MTA] from . . . all liability . . . for loss of or damage to property of either party hereto . . . caused by or arising from . . . the removal of [the Jefferson private access road] . . . ." Such express waivers of damages have been routinely upheld in the context of eminent domain proceedings. (See, e.g., *Galardi Group Franchise & Leasing, LLC v. City of El Cajon* (2011) 196 Cal.App.4th 280, 287 ["We conclude that the parties intended the waiver clause [in their lease agreement] to define their respective rights to goodwill damages vis-à-vis one another"]; *Redevelopment Agency of San Diego v. Attisha* (2005) 128 Cal.App.4th 357, 366-367 [a lessee may waive a right in a condemnation damage award or to assign such award to lessor]; *Chhour v. Community Redevelopment Agency* (1996) 46 Cal.App.4th 273, 283 ["a tenant and landlord may apportion a condemnation award any way they see fit . . . and a tenant may assign his rights in such a condemnation award"]; *People ex rel. Dept. of Pub. Wks. v. Amsden Corp.* (1973) 33 Cal.App.3d 83, 87-88 [a party to a lease may contractually waive right to compensation from a condemnation award].) KBG expressly released in the license agreement any right to seek damages from the MTA based on the termination of that agreement.

KBG asserts that because the project influence rule requires that the termination of the license be disregarded, there is no need to consider the waiver language. But in essence, KBG is seeking greater compensation or damages based on the value of the property before condemnation as compared with the value of the property with no such license due to the termination. In effect, KBG is seeking damages due to the termination of the license agreement despite the waiver. Therefore, the trial court did not err by excluding evidence of such damages from KBG's appraisal reports.

## 2. Severance Damages for Impairment of Access

In addition to ruling that “the license agreement was not a compensable property interest in eminent domain,” the trial court also ruled that KBG had “presented no evidence that a substantial impairment of access to the property [had] been caused by MTA’s project.” The trial court determined that the new road built by MTA to provide access to the property at Hauser, the easement MTA acquired over the driveway leading to La Cienega, and the traffic-rule change preventing left turns into or out of the La Cienega driveway, as a matter of law, did not constitute substantial impairments of access to the property, a determination to be made by the trial court. (*Metropolitan Water District of So. California v. Campus Crusade for Christ, Inc.*, *supra*, 41 Cal.4th at p. 968.)

KBG argues that because it never asserted a substantial impairment of access claim, the trial court erred by treating MTA’s claim as if it included a substantial impairment claim. According to KBG, its appraiser should have been allowed to consider various factors that showed a difference in the quality of the access to the property caused by MTA’s project, regardless of whether those factors constituted a substantial impairment of access to the property.

Even if KBG is correct and his appraiser should have been allowed to consider factors showing a different quality of access to the property in calculating severance damages, any such damages based on the termination of the Jefferson private access road had been waived in the license agreement. Thus, the trial court correctly concluded that KBG’s appraiser could not include in his severance damage calculation any alleged damage based on the difference in access from Jefferson caused by the closure of the Jefferson private access road and the construction of the new access road providing alternative access to Jefferson at Hauser.

And, any damages based on the increased traffic on the La Cienega driveway due to MTA’s nonexclusive easement or the new left hand turn prohibitions imposed on that driveway were not compensable in eminent domain. It is well established that not all changes in access to a property caused by a public works project are compensable in

eminent domain. (*People v. Ayon* (1960) 54 Cal.2d 217, 223-224 [“The property owner has no constitutional right to compensation simply because the streets upon which his property abuts are improved so as to affect the traffic flow on such streets. If loss of business or of value of the property results, that is noncompensable. It is simply a risk the property owner assumes when he lives in modern society under modern traffic conditions”].) Changes in access are compensable only “if there is a ‘substantial impairment’ of access to the abutting street and from there to the general system of public streets.” (*San Diego Metropolitan Transit Development Bd. v. Price Co.* (1995) 37 Cal.App.4th 1541, 1547.) Thus, changes in access, such as traffic rerouting, a less convenient means of access, and prohibitions against left-hand turns have not been found to be substantial impairments of access. (*People v. Ayon, supra*, 54 Cal.2d at p. 224 [traffic rerouting]; *Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th 1538, 1557-1558 [less convenient methods of access]; and *Holman v. State of California* (1950) 97 Cal.App.2d 237, 242-243 [loss of left-turn access]; and *People ex rel. Department of Public Works v. Russell* (1957) 48 Cal.2d 189, 197 [same].)

Moreover, because the threshold determination of substantial impairment is made by the trial court, not the jury (*Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc., supra*, 41 Cal.4th at p. 968), the trial court’s determination of that issue did not deprive KBG of its constitutional right to trial by jury on the issue of just compensation. As noted, KBG does not contend that the changes in access upon which its appraiser relied constituted a substantial impairment of access. Thus, the trial court did not err by excluding evidence of differences in access to the property that did not substantially impair access because such items are noncompensable in eminent domain and therefore inadmissible under Evidence Code section 822, subdivision (a)(5).

## **DISPOSITION**

The judgment and pretrial orders from which KBG appeals are affirmed. MTA is awarded costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

MOSK, Acting P. J.

We concur:

KRIEGLER, J.

BAKER, J.