

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**CITY AND COUNTY OF
SAN FRANCISCO,**

Plaintiff and Respondent,

v.

MARTIN J. COYNE et al.,

Defendants and Appellants.

A118222

**(San Francisco City and County
Super. Ct. No. CGC-04-429018)**

**ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on December 5, 2008, be modified as follows:

On page 10, the full paragraph beginning “Appellant expert,” including footnote 5 (which continues on page 11), is deleted and the following paragraph, including footnote 5, is inserted in its place:

Appellants’ expert, Amster, testified that he derived the value of lost goodwill as follows. He determined the fair market value of the business as of July 1, 2005, to be \$9,479,214 by multiplying the total square footage of the proposed residential units by a price of \$950 per square foot and the total square footage of the proposed commercial units by a price of \$620 per square foot, and deducting an expected 5 percent real estate commission. These per-square-foot sales prices were based on the professional opinion of a real estate appraiser retained by appellants, Walter Ricci, and rested on comparable condominium sales at or around the projected date of completion, March 2005. Using an “imputed annual discount rate of 20 [percent] at 322 days,” he determine the

fair market value of the business as of August 13, 2004, was \$8,070,850, stating this percentage reflected the expected rate of return that real estate developers would typically demand for an investment similar to appellants' project. He next subtracted the value of the tangible investments made by appellants, the projected costs to construct the proposed building, and the fair market value of the land. Amster used a figure of \$2,788,000 for estimated construction costs, based on construction cost budgets prepared by appellants for the project, construction cost information from one of Coyne's previous construction projects, and conversations with an insurance agent, a loan officer, and Ricci. He used a figure of \$3,150,000 for the fair market value of the land, based on Ricci's professional opinion. Amster's calculations yielded a residual rounded value of \$2,133,000, which he claimed represented the goodwill possessed by appellants' business but for condemnation. Amster also performed an alternate goodwill calculation using a figure of \$2,385,000 for the fair market value of the land, based on the professional opinion of Bohegian, a real estate appraiser retained by CCSF.⁵ Amster's alternate calculation resulted in a lost goodwill value of \$2,898,000.

⁵ Bohegian testified that both his and Ricci's opinions of the fair market value of the Property included the existence of entitlements to build on the land. Bohegian explained that their opinions of fair market value were based on sales of comparable properties, some of which included entitlements.

There is no change in the judgment.

Dated: _____, P.J.