

## Major U.S. Court of Appeals Decision in a Case for Which RCLCO Provided Expert Testimony

### **Beyond Valuation, What Makes RCLCO a Valued Strategic Advisor in Real Estate Litigation Matters**

**By: Leonard Bogorad, Managing Director**

Over the past five years, RCLCO has become increasingly active in providing consulting and litigation support services regarding real estate issues, including serving as expert witnesses as required. One very prominent case for which RCLCO provided extensive litigation support and expert testimony was an out-growth of the bankruptcy of TOUSA, Inc., once the 13th largest homebuilder in the country. The case was originally decided by a U.S. Bankruptcy Court judge in favor of RCLCO's client. This finding was based in large part on RCLCO's valuation analysis and expert testimony.

The Bankruptcy Court judge's decision was subsequently overturned on grounds unrelated to RCLCO's testimony. A few weeks ago, the 11th Circuit Court of Appeals overturned the District Court's decision and affirmed the original Bankruptcy Court decision that favored RCLCO's client.

Since the original TOUSA case, RCLCO has provided litigation support on a wide range of cases involving complex real estate issues. For example, RCLCO has:

- Determined whether the unprecedented nature of the recent real estate market downturn was the proximate cause of the losses incurred by a mortgage lender.
- Determined the market value of a portfolio of master-planned communities (MPCs), an office building, and several shopping centers as of a specific date in 2009, as input into an appraisal rights dispute.
- Determined the market value of an agriculturally themed MPC whose viability and marketability were destroyed by an oil spill adjacent to the site.
- Estimated the loss in value of a golf-oriented resort MPC should the community cease all club/amenity, sales, and other administrative operations due to lack of funding as part of a bankruptcy.
- Analyzed the market value of a portfolio of luxury second home/resort MPCs as of a specific date in 2006.
- Evaluated the impact of high voltage transmission lines on real estate marketability and value.

RCLCO has typically been retained to opine on specific real estate issues, but the legal team frequently realizes that we can also be helpful in identifying and analyzing critical documents, evaluating the expert reports submitted by other experts and preparing rebuttal reports, and helping counsel prepare questions relating to real estate for depositions and cross examination of other witnesses. We have been asked to serve as experts for various types of clients, including secured and unsecured lenders, developers, home

builders, public utilities, and public agencies. We are always careful to evaluate each specific case and whether or not we concur with the position of a potential client before agreeing to serve as an expert witness.

In the context of these cases, we have had the privilege of working with many of the leading corporate and boutique litigation law firms in the country. We took the occasion of the recent favorable decision in the TOUSA case to ask some of the attorneys we have worked with what makes for exceptional litigation support services and expert testimony. The following characteristics were mentioned most frequently:

- Specialized real estate expertise, including real-world experience
- Smart and creative
- Attention to detail, timely and hard working
- Strategic, understanding the key issues in the case
- Ability to understand the implications of key documents and to identify “hot documents”
- Strong analytic skills that hold up to scrutiny from attorneys and other expert witnesses
- Ability to identify critical flaws in reports and testimony of other witnesses
- Nice people who will be a pleasure to work with for the hundreds of hours required for a large case
- Impressive and nimble when testifying or in depositions
- Ability to explain complex real estate issues to judges and juries in ways that are understandable to those without expertise in real estate—essentially to be a good teacher
- Maintaining a pleasant demeanor and remaining unflustered when subjected to cross examination

These are strengths that we bring to the table as part of every one of our litigation support engagements, and we are gratified that attorneys frequently commend us for them and recommend us to other lawyers. For example, Michael Waldman, a partner at Robbins Russell, the preeminent boutique litigation firm that retained RCLCO to work on the TOUSA case, told us that “RCLCO is very knowledgeable and able to convey often complicated real estate concepts in simple, understandable terms.”

If you are involved in a bankruptcy, workout, or litigation matter that involves real estate, please contact:



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