

IPSE DIXIT!



COUNSEL'S CORNER

DZM, Inc. leased retail space in a shopping mall to a tenant, to operate a poker room and social club. The tenant paid DZM rent from August 2005 to October 2005, but did not pay rental in November. So DZM changed the door locks.

Richie Garren asserted that he leased poker tables, chairs, poker supplies, electronics, decorations and other items to the social-club tenant for \$1,000 per month. And that DZM effectively converted Garren's property by changing door locks and refusing to return the items to Garren.

So Garren sued DZM. The jury determined that DZM had indeed converted Garren's property, and awarded \$12,500 in damages.

DZM appealed, not really to protest the issue of conversion, but instead to assert that the evidence was insufficient to prove an exact damages amount.

The appellate court found a recent Supreme Court case allowing a property owner to testify to its value. The owner in this unique situation doesn't have to be a qualified expert to furnish an opinion. But rather the theory is that no one would know value better than the owner whose property was just wrongfully taken.

However, the owner's testimony is judged by the same standards as expert testimony. States the court: ". . . an owner's property valuation may not be based solely on the owner's **ipse dixit** [emphasis in the original case opinion]."

Ipse dixit. Yes the court wrote that. You can't make that up. My assumption is that all my loyal readers know the meaning. Well, for the one new reader who doesn't (and yes I had to look it up too), I won't keep you waiting: "*he, himself, said it.*"

That strikes yours truly as a rather arbitrary, dogmatic statement. Much like "well that's just the way it has been so that's the way it will be." Sorta.

Anyway, back to the case. A property owner must provide the factual basis on which her / his opinion rests. It is not enough to simply claim “that’s what my stuff is worth because I just told you that’s why my stuff is worth.”

Garren submitted some invoices and purchase receipts as indicia of fair market value. But this property was hardly new; it had been used by the poker room for some period of time. Evidently depreciation was not a factor, at least not to Garren anyway.

Because Garren was unable to furnish legally sufficient evidence that the property had any fair market value at the time of the conversion, the Judgment of the trial court was reversed. DZM, Inc. (real property landlord) wins; Richie Garren (personal property lessor) loses.

See *DZM, Inc. v. Richie Garren*; Cause No. 14-14-00040-CV; Texas Court of Appeals, 14th District - Houston; June 25, 2015.

Lessons learned:

1. I offer much free advise at www.avvo.com. It’s my pro bono efforts. There are questions almost daily about property conversion. For those who have similar issues, this is an important case to understand that property valuations offered by the owner can be challenged.
2. The NTCAR Expo is September 2 this year. I plan to make a new sign. Look for me there under the banner “**IPSE DIXIT.**”
3. Practice Point: When you go home tonight, tell your spouse / significant other / dog **IPSE DIXIT.** Then send me an email and let me know how that went for you. I’m going to try it too. If there’s another Counsel Corner from me next month, I either lived or someone is ghost-writing.
4. Bonus Lesson: ~ 10 years to litigate a case with a value of \$12,500? Really?

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