

No Time Machine Needed: Experts May Testify About Conditions In The Past That They Did Not Personally Observe

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Maryland Rule 5-702 requires an expert to have a sufficient factual basis to support his or her testimony. In a recent decision, the Court of Special Appeals of Maryland held that the premises of fact on which an expert opinion is based need not have been derived from personal observation. *See Basso v. Campos*, 233 Md.App. 461 (2017).

In *Basso*, plaintiff purchased a single-family home in Hyattsville, Maryland on October 2, 2011. In the Disclosure/Disclaimer Statement, the sellers represented that they had owned the property for 3 months and had no “actual knowledge” of any “leaks or evidence of moisture” in the basement. After suffering continued water intrusion in his basement, plaintiff filed suit on November 13, 2014 alleging that when the sellers signed the Disclosure/Disclaimer Statement, they had actual knowledge that the basement had flooded and that they had attempted to conceal this defect.

Plaintiff retained Larry Hammond, a certified home inspector, as an expert in the case. Mr. Hammond inspected the property in July 2013 and reviewed certified records from the Storm Events Database for the National Climatic Data Center covering storm events in Prince George’s County and surrounding areas between July 1, 2011 and December 31, 2011. These records reflected multiple storm events involving significant rainfall during this period.

During the jury trial, Mr. Hammond was prevented from offering an opinion about whether the property would have flooding issues prior to plaintiff’s purchase, and more specifically during the period that the sellers owned it. The trial court believed that Mr. Hammond lacked a sufficient factual basis and his testimony was “absolute

speculation” because he had no objective data as to what occurred approximately 2 years before his inspection. Without this testimony, the trial court held that plaintiff failed to meet his burden to show that sellers had knowledge of water or flooding conditions or a wet basement during the time in which they held title to the property and entered judgment against plaintiff.

In reversing the trial court’s decision, the Court of Special Appeals noted that in Mr. Hammond’s view, grading was the major factor contributing to flooding at the property. Also, there was no evidence that plaintiff had ever altered the grading of the property prior to Mr. Hammond’s inspection and the storm event data showed major rainfall during the time period the property was owned by sellers. Based on these facts, the Court of Special Appeals held that Mr. Hammond had a sufficient factual basis to offer an opinion about whether a house with grading problems similar to those he observed in 2013 likely would have flooded during a major storm. “The fact that Hammond had not personally observed the condition of the property in October 2011 went to the weight, not the admissibility of his testimony.” *Id.* at 478.

The *Basso* case is a reminder that although practitioners have the ability to attempt to reach back in time and prove by circumstantial evidence that a defendant had actual knowledge of an allegedly unaltered defective condition, there is no guaranty that this evidence will carry the day. Ultimately, the finder of fact (judge or jury) will determine the appropriate weight to give the evidence. As a result, each side must be prepared to bolster or reduce the impact of any circumstantial evidence.