

GOOD WILL HUNTING CLUB, INC.,

Plaintiff,

v.

JAMES R. SHIPMAN,

Defendant.

NO. CV - 16 - 0819

*Motion for
Post-Trial Relief*

OPINION & ORDER

This matter concerns a boundary line dispute which proceeded to a bench trial before this Court on February 14 and 15, and March 1, 2018. The parties were granted leave to file post-trial findings of fact and conclusions of law by March 8, 2018. On June 13, 2018, this Court issued a Memorandum Opinion.¹ The Court found Plaintiff's expert surveyor and his report more credible, and in accordance with Pennsylvania law. The Court declared the line marked on Plaintiff's expert report to be a "historic poster line" and, thus, the boundary between the parties' properties. This line superseded the conflicting deed descriptions and surveys. On June 25, 2018, Defendant filed the instant *Motion for Post-Trial Relief*, requesting the Court reverse course on its findings or order a new trial.² On September 13, Defendant filed his *Brief in Support of Motion for Post-Trial Relief*. Plaintiff filed its *Brief in Opposition to Defendant's Motion for Post-Trial Relief* on September 24, 2018. On September 28, 2018, the Court held a hearing and reserved decision. This is the Court's Opinion and Order on Defendant's motion.

¹ Counsel agreed on the record that this case was sufficiently complex as to require a lengthier time for the rendering of a decision. See Pa.R.C.P. No. 1038 ("The trial judge shall render a decision within seven days after the conclusion of the [bench] trial except in protracted cases or cases of extraordinary complexity.").

² Defendant's Motion for Post-Trial Relief (June 25, 2018) (hereinafter "Defendant's Motion"); see Pa.R.C.P. No. 227.1 ("Post-Trial Relief"), see also *Brednick v. Marino*, 644 A.2d 199, 200 (Pa. Super. Ct. 1994) ("Therefore, we held that the ten day period during which counsel must file post-trial motions begins on the date that copies of the court's order are sent to counsel.").

After an exhaustive review of the transcript and briefing in this case, the Court is not persuaded that it made factual or legal errors sufficient to warrant altering its opinion or ordering a new trial. Regarding conclusions of law, a majority of the post-trial petition concerns Defendant's disagreement with the Court in light of his litigious interests. Defendant's advocacy is appropriate and commendable; however, the Court is not persuaded that it misunderstood the legal nuance of the contestable line theory or surveying standards.³ Similarly, the Court is not persuaded that it committed error in its evidentiary rulings.

"The venerable purpose of the post-trial motion procedure is to permit the trial court to correct its own errors before appellate review is commenced."⁴ As Defendant noted in his briefing,⁵ appropriate review views the evidence "in the light most favorable to the victorious party below and all evidence and proper inferences favorable to that party must be taken as true and all unfavorable inferences rejected."⁶ When a new trial is requested, the "judge must [first] decide if a mistake was made at trial as to a factual, legal or discretionary matter. Second, the judge, in his discretion, must consider, under the circumstances of the case, whether the mistake was sufficient to warrant granting a new trial."⁷ Regarding Defendant's post-trial evidentiary objections, the Pennsylvania

³ See *Long Run Timber Co. v. Dep't of Conserv. & Nat'l Res.*, 145 A.3d 1217, 1228 (Pa. Commw. Ct. 2016) (discussing surveyor location priority); see also *Pencil v. Buchart*, 551 A.2d 302, 306-07 (Pa. Super. Ct. 1988) (discussing monument placement).

⁴ *Motorists Mut. Ins. Co. v. Pinkerton*, 830 A.2d 958, 964 (Pa. 2003).

⁵ Defendant's Brief In Support of Motion for Post-Trial Relief at 7 (Sept. 13, 2018) (hereinafter "Defendant's Brief").

⁶ *Piston v. Hughes*, 62 A.3d 440, 443 (Pa. Super. Ct. 2013) (quoting *Shaffer v. O'Toole*, 964 A.2d 420, 422 (Pa. Super. Ct. 2009)).

⁷ *Riccio v. Am. Republic Ins. Co.*, 705 A.2d 422, 426 (Pa. 1997).

Supreme Court has “repeatedly stated that the admission or exclusion of evidence lies within the discretion of the trial court.”⁸

Preliminarily, the Court notes that Defendant withdrew his evidentiary objections relating to the January 5, 2013 settlement letter, Mr. Shine Dauber's testimony, and Mr. Bill Dauber's testimony. Thus, the only evidentiary objections remaining concern Mr. Maneval. Regarding Mr. Maneval, Defendant objects to the Court's exclusion of Mr. Maneval's surveying report, which was enclosed with an offer to settle that was dated August 28, 2013 and exchanged by counsel.⁹ Defendant asserts that Mr. Maneval's surveying report is admissible since it did not contain the offer itself or, in the alternative, is admissible as contradictory evidence to Plaintiff's expert.¹⁰ This matter was previously decided by The Honorable Dudley N. Anderson in his October 9, 2017 Order. Judge Anderson found that the “drawing prepared by Mr. Maneval is clearly an offer to settle and thus precluded by Pa.R.E. 408(a).”¹¹ This Court is bound by Judge Anderson's clear decision pursuant to the law of the case doctrine's coordinate jurisdiction rule.¹²

Further, even if this Court were to find the law of the case doctrine inapplicable, this Court agrees that the foundational basis of the offer to settle was the proposed drawing provided by Mr. Maneval. In fact, the letter's subject matter is the attached drawing.¹³ Thus, the letter is analogous to a cover letter. In other words, the drawing is

⁸ *Morrison v. Commonwealth*, 646 A.2d 565, 572 (Pa. 1994).

⁹ Defendant's Brief at 17.

¹⁰ *Id.*

¹¹ *Good Will Hunting Club, Inc. v. James R. Shipman*, No. 16-0819, Order: Motion in Limine (Lyco. Com. Pl. Oct. 9, 2017).

¹² *See Zane v. Friends Hosp.*, 836 A.2d 25, 29 (Pa. 2003).

¹³ *Plaintiff's Motion in Limine to Preclude Introduction of Certain Exhibits and Testimony*, Ex. 2 (Aug. 9, 2017) (hereinafter “Plaintiff's Motion”).

not—as Defendant desires to characterize it—an attached exhibit unrelated to the primary document, but is itself the primary document. Therefore, this Court agrees with Judge Anderson’s decision. The Court did not err.

Ancillary to Defendant’s first argument, he also argues that the Court incorrectly precluded Mr. Maneval from testifying as a witness.¹⁴ It is unclear when this preclusion occurred, as Judge Anderson’s order does not expressly preclude Mr. Maneval from testifying.¹⁵ Nevertheless, both parties appear to agree that Mr. Maneval was disqualified from testifying, as Plaintiff now argues that Pennsylvania Rule of Civil Procedure 4003.5 rightfully disqualified Mr. Maneval because he was hired for purposes of settlement negotiations.¹⁶ Relying on Plaintiff’s board meeting minutes and testimony from board members, Defendant alleges that Mr. Maneval was not hired solely for the purpose of settlement negotiations as he has been Plaintiff’s surveyor for nearly two decades.¹⁷

However, Defendant did not properly preserve this ancillary issue for appeal.

Pennsylvania Rule of Civil Procedure 227.1 states:

(b) Except as otherwise provided by Pa.R.E. 103(a), post-trial relief may not be granted unless the grounds therefor,

¹⁴ Defendant’s Brief at 18-19.

¹⁵ While Judge Anderson granted Plaintiff’s motion in limine, which broadly sought to preclude Mr. Maneval from testifying concerning any facts or opinions he held, the order was specifically limited to the drawing’s admissibility. Plaintiff’s counsel argued at trial that any testimony concerning Mr. Maneval and his surveying or opinions regarding this dispute was inadmissible and the preclusion “was discussed specifically with Judge Gray.” See N.T. at 43 (Feb. 14, 2018). Defendant listed Mr. Maneval as an expert witness in his Civil Pre-Trial Statement, see Plaintiff’s Motion, Ex. 4; however, Judge Gray’s January 4, 2018 Pre-Trial Conference Order does not address Mr. Maneval’s testimony and the Pre-trial conference itself was not on the record.

¹⁶ Pa.R.C.P. 4003.5(a)(3) (“A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. . . .”).

¹⁷ See Plaintiff’s Motion, ¶¶12-22.

(1) if then available, were raised in pre-trial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof or other appropriate method at trial; and

(2) are specified in the motion. The motion shall state how the grounds were asserted in pre-trial proceedings or at trial. Grounds not specified are deemed waived unless leave is granted upon cause shown to specify additional grounds.¹⁸

In reference to preserving a claim of error for the exclusion of evidence, Pennsylvania Rule of Evidence 103(a) only allows preservation if the "party informs the court of its substance by an offer of proof, unless the substance was apparent from the context."¹⁹

While Plaintiff raised the pre-trial issue of Mr. Maneval's testimony in its motion in limine, Defendant did not file its own motion in limine or otherwise preserve the issue in Defendant's post-trial findings of fact and conclusions of law. In addition, Plaintiff counsel's objections at trial and Defense counsel's disagreement with Plaintiff's counsel did not concern Mr. Maneval *himself* testifying as a witness. Plaintiff's objections at trial concerned: (1) whether Plaintiff's expert, Mr. Trowbridge, could testify concerning a surveying report that Mr. Maneval allegedly created in November 2001,²⁰ (2) whether Good Will Hunting Club member Mr. Banzhaf could testify as to Mr. Maneval's historic relationship with Plaintiff based on Plaintiff's meeting minutes,²¹ (3) whether Good Will

¹⁸ Pa.R.C.P. No. 227.1(b).

¹⁹ Pa.R.E. Rule 103(a) (Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only: (1) if the ruling admits evidence, a party, on the record: (A) makes a timely objection, motion to strike, or motion *in limine*; and (B) states the specific ground, unless it was apparent from the context; or (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

²⁰ See N.T. at 91 (Feb. 14 & 15, 2018). Plaintiff's counsel objected to this line of questioning. *Id.* ("Objection to any questions or reference to the Maneval survey. The Court has previously issued a ruling on our Motion in Limine concerning any reference to Maneval. Maneval was in consideration of settlement negotiations, and we have this Court's prior order precluding any reference."). The Court requested that Defense counsel first inquire whether Mr. Trowbridge could identify the alleged survey report before proceeding with his line of questioning. *Id.* at 93. When Mr. Trowbridge testified that he did not recognize the report, Defense counsel dispensed with that line of questioning. *Id.*

²¹ See N.T. at 41-48, 58, 60 (Feb. 14, 2018). Plaintiff's counsel objected to Defense counsel asking about Mr. Maneval's work in connection with the current dispute. *Id.* at 42 ("Objection, Your Honor. We have an

Hunting Club member Mr. Williamson could testify as to Mr. Maneval's historic relationship with Plaintiff based on Plaintiff's meeting minutes,²² (4) whether Good Will Hunting Club member Mr. Fritz could testify as to Mr. Maneval's relationship with Plaintiff since 2013,²³ and (5) whether Mr. Shipman could testify regarding Mr. Maneval's surveying efforts in 2012 or 2013.²⁴

Specifically, Mr. Banzhaf testified on cross-examination that Mr. Maneval had "done numerous surveys on Good Will's property" and that Mr. Banzhaf personally only knew of two "projects" that Mr. Maneval had performed on Plaintiff's land.²⁵ When

order signed by Judge Anderson precluding any testimony concerning Mr. Maneval's work in connection with an offer to settle the case. That's exactly what it was. It was a proposal by the club in settlement, and that's why the judge granted the Motion in Limine.") Defense counsel was allowed to approach the Court with Judge Anderson's actual order, characterizing it as only pertaining to Mr. Maneval's drawing. *Id.* ("The order says simply we cannot use Mr. Maneval's written proposal. It doesn't say that there is a preclusion as to mentioning that Mr. Maneval exists. If permitted to testify, this witness, as well as Mr. Williamson, will testify in accordance with the minutes of the hunting club, which I got last week, indicating that Mr. Maneval has been doing work for this hunting club for decades and was hired to do work on this project and was fired and replaced by Mr. Trowbridge because I believe it was Mr. Williamson who said that he found his testimony wishy-washy."). Plaintiff's counsel noted that his objection only sought to preclude "anything Mr. Maneval did in connection with this dispute," and that he did not object to "[a]ny questioning concerning Mr. Maneval's prior relationship with the club." *Id.* at 43. Counsel then debated whether questions concerning why Mr. Maneval was replaced by Plaintiff were prohibited by Judge Anderson's Order. *Id.* at 44-46. Plaintiff's counsel clarified its position at trial that Mr. Maneval's work in connection with this dispute was inadmissible because he was hired for purposes of settlement negotiations. *Id.* at 46. Defense counsel disagreed, arguing that Mr. Maneval had been Plaintiff's surveyor for two decades. *Id.* The Court decided to allow the questioning and defer ruling until it could render an informed determination on the issue. *Id.* ("This is what I'm going to do because I am not remotely comfortable making a decision on this issue, which is clearly important to both sides, on the fly. So I'm going to allow the questioning, and I will research the issue and make a determination. And if I determine that it's not appropriate, I will disregard it.").

²² *Id.* at 96-98, 105-10, 112, 115-17. Plaintiff's counsel did not object during this line of questioning.

²³ See N.T. at 27-28 (Feb. 15, 2018). At this time, Plaintiff's counsel placed a "continuing objection on the record to any reference to Mr. Maneval and regarding any work he did in connection with this case or preparation of any settlement proposal." *Id.* at 27. Nevertheless, Mr. Fritz testified that he was not aware of Mr. Maneval performing any work for Plaintiff after 2013—that is, since the settlement proposal. *Id.* at 28. The Court notes that in 2013 all work is in connection with this litigation, which the Court finds began in June 2012 when Defendant blocked the Road Across Fisher.

²⁴ *Id.* at 94, 106, 128-29. Mr. Shipman could not remember exactly when he had encounter Mr. Maneval performing surveying work alongside Mr. Hinkelman and Mr. Williamson. *Id.* at 106. Defense counsel failed to establish that Mr. Shipman's testimony concerned pre-litigation matters. Later during Mr. Shipman's testimony, Plaintiff's counsel noted his continuing objection "to the Maneval survey" when Mr. Shipman was explaining what areas of his land his pictorial exhibits detailed. *Id.* at 129. The Court acknowledged the continuing objection and Defense counsel resumed his line of questioning. *Id.*

²⁵ See N.T. at 41-42 (Feb. 14, 2018).

asked if Mr. Maneval performed work in connection with this dispute, Mr. Banzhaf testified that Mr. Maneval “was there,” but Mr. Banzhaf does not know how many times Mr. Maneval visited Plaintiff’s property.²⁶ When asked if Mr. Maneval did some work on the area after the dispute, Mr. Banzhaf testified that he did not know.²⁷ Mr. Banzhaf was also asked how much Mr. Maneval was paid compared to Mr. Trowbridge and Mr. Banzhaf stated that he was not aware of any bill from Mr. Maneval.²⁸ Defense counsel then asked if Mr. Trowbridge was testifying for Plaintiff instead of Mr. Maneval because Plaintiff “did not like what Mr. Maneval had to say.”²⁹ Mr. Banzhaf disagreed with Defense counsel’s characterization, but did not elaborate.³⁰

Mr. Banzhaf was later asked if Plaintiff’s October 14, 2000 meeting minutes jogged his memory regarding Mr. Maneval performing surveying work with Cornwall Hunting Club.³¹ Mr. Banzhaf testified that it sounded “vaguely” familiar and he recalled a survey being done, but he did not “recall ever seeing” a “full-blown survey.”³² When Defense counsel pressed Mr. Banzhaf on the context of this survey, Mr. Banzhaf stated that the survey was “nowhere near where we’re talking about” so Defense counsel dispensed with his questions in relation to that survey.³³

Regarding Mr. Williamson’s specific testimony, Defense counsel asked Mr. Williamson about Plaintiff’s 2013 meeting minutes and a notation that Mr. Maneval determine the acres in the Siegel tract.³⁴ Mr. Williamson noted that the acreage of the

²⁶ *Id.* at 47.

²⁷ *Id.*

²⁸ *Id.* at 48.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 60.

³² *Id.* at 60-61.

³³ *Id.* at 61.

³⁴ *Id.* at 96.

Siegel tract was a slight obsession of another Good Will Hunting Club member and only the tract's eastern line was relevant to the current dispute.³⁵ When pressed regarding the survey's applicability, Mr. Williamson noted that the survey did not occur because the members did not see the need for such a survey.³⁶ Defense counsel then asked Mr. Williamson about Plaintiff's November 5, 1995 meeting minutes, which stated that Mr. Maneval performed a survey in 1995.³⁷ Mr. Williamson testified that he was aware of Mr. Maneval running a line to the thirty-six inch birch tree, but that he was not present and does not believe that line was related to the dispute.³⁸ Further, Mr. Williamson testified that he was not aware whether that information was provided to Mr. Trowbridge.³⁹

Mr. Williamson also reiterated that the Maneval surveying work with Cornwall Hunting Club was not relevant to the current dispute.⁴⁰ Defense counsel then proceeded to ask Mr. Williamson about Plaintiff's May 10, 2012 meeting minutes which noted that Mr. Maneval would "locate the property line at the land in question."⁴¹ Mr. Williamson testified that the survey was never performed.⁴² During later cross-examination, Mr. Williamson testified that he wanted a second opinion regarding the boundary lines of the land in dispute because Mr. Maneval's explanations were difficult to follow and "too wishy-washy."⁴³

³⁵ *Id.* at 97-98.

³⁶ *Id.* at 98.

³⁷ *Id.* at 105.

³⁸ *Id.* at 105-108.

³⁹ *Id.* at 108.

⁴⁰ *Id.* at 111.

⁴¹ *Id.* at 112.

⁴² *Id.* at 112-13.

⁴³ *Id.* at 116.

The aforementioned testimony does not concern Mr. Maneval testifying as a witness. However, even if the Court were to find that Defendant raised the issue of Mr. Maneval testifying at the pretrial conference, satisfying Rule 227.1(b)(1), Defendant did not specify in his motion if the pretrial conference is where he raised this issue.⁴⁴ Therefore, the evidentiary objection has been waived.⁴⁵

Granted, the procedure of the Post-trial phase is perhaps hyper-technical. Yet, the technicality is necessary to prevent the Court from engaging in pure speculation. For example, under different circumstances in this case, an error may have existed if Mr. Maneval was precluded as a testamentary witness on the grounds that he was only hired in anticipation of litigation. Presumably, Mr. Maneval could have been called to testify regarding facts beyond the drawing he prepared for settlement negotiations, or to relevant work he completed not directly connected to this litigation. However, the Court would be purely speculating, as Defendant failed to call Mr. Maneval to testify to facts beyond the drawing he prepared for settlement and failed to proffer what Mr. Maneval's testimony would consist of at trial had he been so called. Without such a proffer, the Court is left to guess whether the Defendant was harmed by Mr. Maneval's failure to testify. Indeed, the question of an appropriate remedy cannot be addressed since Defendant has failed to present an alternative course of testimony.⁴⁶


⁴⁴ Pa.R.C.P. No. 227.1(b)(2) ("The motion shall state how the grounds were asserted in pre-trial proceedings or at trial. Grounds not specified are deemed waived unless leave is granted upon cause shown to specify additional grounds.").

⁴⁵ See *Hinkson v. Com., Dep't of Transp.*, 871 A.2d 301, 304 (Pa. Commw. Ct. 2005).

⁴⁶ Pa.R.E. 103(a)(2) ("if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context").

Therefore, for the foregoing reasons, the Plaintiff's Post-Trial Motion is **DENIED**.
IT IS SO ORDERED this 20th day of November 2018.

BY THE COURT,



Eric R. Linhardt, Judge

cc: Thomas Marshall, Esq. (for Plaintiff)
Bret Southard, Esq. (for Defendant)
Marc Drier, Esq. (for Defendant)
Gary Weber, Esq. (Lycoming Reporter)