

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOSEPH STACKHOUSE and LORI	:	NO. CV-21-00967
STACKHOUSE, Husband and Wife,	:	
Plaintiffs,	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ROSE GOUGH and BRIAN GOUGH,	:	
individually and d/b/a BRG ENTERPRISES:	:	
Defendants.	:	Motion in <i>limine</i>

ORDER ON MOTION IN LIMINE REGARDING CERTAIN FACT WITNESSES

Background:

This matter came before the Court on June 24, 2024, for oral argument on Plaintiff's Motion in *limine*, filed June 14, 2024, seeking to preclude Defendants from introducing the testimony of certain fact witnesses, including Thomas A. Shannon, Sally Brodie, Peter Brodie, Jane Barth, Gail Meyer, Edwina Vauclain, Anne E. Bickford, and Allen Marshall (hereinafter collective the "Fact Witnesses"). At oral argument on the Motion, Defense counsel conceded that the Fact Witnesses have no personal knowledge of the contract performance, which is the subject matter of the Complaint. Rather, they are familiar with the Defendants, and thus can offer testimony regarding their favorable opinion of other work performed by the Defendants, and their favorable opinion about the Defendants' reputation for being truthful persons.

The Court explained to counsel for both parties that it is impossible for the Court to predict the testimony that may be introduced in the Plaintiffs' case in chief, and thus impossible for the Court to rule on whether any of the Fact Witnesses might be in a position to offer relevant rebuttal testimony. The Court's consideration of Plaintiff's Motion in *limine* will be confined to the questions of whether the Defendants can introduce testimony from the Fact Witnesses in their case in chief, regarding their favorable opinion of other work performed by the Defendants, and testimony regarding their favorable opinion about the Defendants' reputation for truth.

Questions Presented:

- A. Whether Defendants will be permitted to introduce testimony in their case in chief from the Fact Witnesses, regarding their favorable opinion of the Defendants' reputation for performing good construction work.
- B. Whether Defendants will be permitted to introduce testimony in their case in chief from the Fact Witnesses, regarding their favorable opinion of the reputation of the Defendants for being truthful persons.

Brief Answer:

- A. Defendants will not be permitted to introduce testimony in their case in chief from the Fact Witnesses, regarding their favorable opinion of the Defendants' reputation for performing good construction work, unless that testimony becomes relevant in rebuttal.
- B. Defendants will not be permitted to introduce testimony in their case in chief from the Fact Witnesses, regarding their favorable opinion of the reputation of the Defendants for being truthful persons, unless that testimony becomes relevant in rebuttal.

Discussion:

- A. Defendants will not be permitted to introduce testimony in their case in chief from the Fact Witnesses, regarding their favorable opinion of the Defendants' reputation for performing good construction work, unless that testimony becomes relevant in rebuttal.

Rule 404(a)(1) of the Pennsylvania Rules of Evidence (hereinafter "Pa.R.E.") provides that "[e]vidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." Pa.R.E. Rule 405 provides that, except in limited circumstances, "[s]pecific instances of conduct are not admissible to prove character or a trait of character."

In the matter of *Commonwealth v. Radecki*, 180 A.3d 441, 453-454 (Pa. Super. Ct. 2018), the Court held that the trial court properly excluded testimony from a psychiatrist that the defendant was a competent psychiatrist. *See, e.g.*,

Schroeder v. Jaquiss, 54 D. & C. 4th 184, 192, 2001 WL 1842493 (Allegheny Cnty. 2001), *rev'd on other grounds*, 861 A.2d 885 (Pa. 2004)(holding that the court had properly excluded testimony that the defendant was a competent surgeon, since the defendant's character was not at issue); *cf. Matusak v. Kulczewski*, 145 A. 94, 95 (Pa. 1928)(holding that, when the characters of parties affect the grounds for recovery in a claim, "[g]ood character is presumed to exist...and evidence need not be offered to show it unless it is attacked.").

Here, Defendants seek to introduce testimony from the Fact Witnesses to show that the Defendants did good construction work on other unrelated projects, and/or that the Defendants have a reputation for doing good construction work. Since the reputation of the Defendants is not an issue in this matter, that testimony is inadmissible character evidence. *The Court expresses no opinion on whether the Plaintiffs might introduce testimony in their case in chief, which might invite rebuttal testimony from one or more of the Fact Witnesses.*

- B. Defendants will not be permitted to introduce testimony in their case in chief from the Fact Witnesses, regarding their favorable opinion of the reputation of the Defendants for being truthful persons, unless that testimony becomes relevant in rebuttal.

Pa.R.E. Rule 608 provides that "[a] witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness. But evidence of truthful character is admissible *only* after the witness's character for truthfulness has been attacked. Opinion testimony about the witness's character for truthfulness or untruthfulness is not admissible." (emphasis added).

Testimony in a civil case that any of the parties are honest and truthful persons is irrelevant, unless those traits are an issue in the case. If one of the parties testifies, their credibility becomes an issue. They cannot bolster their own credibility through witnesses as to their reputation for the character of honesty, however, until "after the witness's character for truthfulness has been attacked." Pa.R.E. Rule 608; *Commonwealth v. Fisher*, 764 A.2d 82, 86 (Pa. Super. Ct.

2000)(“bolstering evidence...is not admissible unless the character of the witness has first been attacked, and even then, only at the court's discretion.”)(citing *Commonwealth v. Boyd*, 672 A.2d 810, 812 (Pa. Super. Ct. 1996), quoting *Commonwealth v. Smith*, 567 A.2d 1080, 1082 (Pa. Super. Ct. 1989)).

Here, Defendants seek to introduce testimony from the Fact Witnesses that the Defendants have a good reputation for honesty and truthfulness. Since the reputation of the Defendants is not an issue in this matter, that testimony is inadmissible character evidence. *The Court expresses no opinion on whether the Plaintiffs might introduce testimony in their case in chief, which might invite rebuttal testimony from one or more of the Fact Witnesses.*

AND NOW, this 28th day of June, 2024, for the reasons more fully set forth above, it is hereby Ordered and directed as follows:

- A. Defendants will be not permitted to introduce testimony in their case in chief from Thomas A. Shannon, Sally Brodie, Peter Brodie, Jane Barth, Gail Meyer, Edwina Vauclain, Anne E. Bickford, or Allen Marshall regarding construction work performed by the Defendants unrelated to the project, which is the subject matter of the Complaint, unless that testimony becomes relevant in rebuttal of Plaintiff's evidence at trial.
- B. Defendants will be not permitted to introduce testimony in their case in chief from Thomas A. Shannon, Sally Brodie, Peter Brodie, Jane Barth, Gail Meyer, Edwina Vauclain, Anne E. Bickford, or Allen Marshall regarding the Defendants' reputation for performing good construction work, unless that testimony becomes relevant in rebuttal of Plaintiff's evidence at trial.
- C. Defendants will not be permitted to introduce testimony in their case in chief from Thomas A. Shannon, Sally Brodie, Peter Brodie, Jane Barth, Gail Meyer, Edwina Vauclain, Anne E. Bickford, or Allen Marshall regarding their favorable opinion of the reputation of the Defendants for being truthful persons, unless that testimony becomes relevant in rebuttal of Plaintiff's evidence at trial.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Christopher Kenyon, Esquire
Scott A. Williams, Esquire