

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY S. KEEGAN, : CIVIL ACTION
ADMINISTRATRIX OF THE ESTATE :
OF GERALD J. KEEGAN, DECEASED :
 :
v. :
 :
FAHNESTOCK & CO., INC. : NO. 95-5998

MEMORANDUM AND ORDER

HUTTON, J.

June 24, 1997

Presently before this Court is the Plaintiff's Post-Trial Motion for a New Trial pursuant to Rule 59(a) of the Federal Rules of Civil Procedure, and the Defendant's response thereto.

I. BACKGROUND

In this action, plaintiff, Marylou Keegan, as Administratrix of the Estate of her deceased husband, Gerald J. Keegan, seeks to recover money damages arising out of an alleged breach of an employment contract between Gerald J. Keegan ("Jerry Keegan") and defendant, Fahnestock & Co., Inc. and its division, W.H. Newbold's Son & Co. ("Fahnestock").

After filing the complaint, the plaintiff filed a Motion for Summary Judgment and a Motion in Limine. On September 16, 1996, this Court granted the plaintiff's Motion In Limine. In granting the Motion In Limine, this Court found that due to the death of Jerry Keegan, Pennsylvania Dead Man's Act prevented testimony regarding negotiations between Jerry Keegan and representatives of Fahnestock leading up to the signed letter

agreement of April 16, 1993. In denying the summary judgment motion, this Court found that the letter agreement dated April 16, 1993 was ambiguous because it was susceptible to more than one meaning.

The trial of this case commenced before a jury on January 14, 1997. In her memorandum in support of her motion for a new trial, the plaintiff states that her evidence included her testimony identifying six exhibits, including Plaintiff's Exhibit P-1, the letter dated April 16, 1993, signed by Michael P. Judge, Senior Vice President of Fahnestock, and Jerry Keegan; Exhibit P-4, "Draft #1" of a letter dated March 19, 1993; and Exhibit P-5, a Memorandum of Understanding dated April 15, 1993, which states that it is from "w.h. Newbold's Son & Co." to Gerald J. Keegan. The plaintiff points out that the defendant's evidence included the testimony of Dawn DeAngelo, an administrative and sales assistant for Fahnestock in its Philadelphia branch office; Richard Wohlman, Controller of Fahnestock; Russell Pollack, Director of Benefits for Fahnestock; Jeanine Maniscola, Benefits Assistant for Fahnestock; and a number of exhibits, some of which were the same or similar to the plaintiff's trial exhibits.

Upon the conclusion of the plaintiff's case, the defendant moved for judgment as a matter of law on all of the plaintiff's claims pursuant to Rule 50(a) of the Federal Rules of Civil Procedure. The Court denied the motion on all claims, except for the claim for damages based on the intentional infliction of emotional distress, which was dismissed. On January 15, 1997,

after the Court charged the jury on the law, the jury returned a verdict of no liability on the remaining claims of the complaint.

The plaintiff now submits that the jury's verdict is erroneous as a matter of fact and law and that a new trial should be granted on the grounds that: (1) the Court failed to instruct the jury on the Pennsylvania rule of contract construction that requires an ambiguous contract term or provision to be construed against the drafter; (2) the Court erroneously instructed the jury to interpret all writings together that are part of the same transaction when Exhibit P-1 is the contract and the other documents were admitted as extrinsic evidence to explain allegedly ambiguous language; (3) the Court, over Plaintiff's objection, erroneously permitted Dawn DeAngelo to testify and give lay opinion which speculated about the author of Exhibit P-5; and (4) the jury verdict is against the weight of the evidence because it contradicts the very words used in the letter agreement dated April 16, 1993, signed by both Fahnestock and Jerry Keegan which, by its terms, contains an offer of employment by Fahnestock and acceptance of the terms and conditions of employment set out in the letter by Jerry Keegan.

II. DISCUSSION

A. Standard for New Trial

A court may grant a new trial on the grounds of: (1) improper admission or exclusion of evidence; (2) improper instructions to the jury; (3) misconduct of counsel; (4) newly

discovered evidence; or (5) a finding that the jury's verdict is against the weight of the evidence. Griffiths v. Cigna Corp., 857 F. Supp. 399, 410-11 (E.D. Pa. 1994). The decision to grant or deny a new trial under Fed. R. Civ. P. 59(a)¹ rests almost entirely in the sound discretion of the trial court. Shanno v. Magee Indus. Enters., 856 F.2d 562, 567 (3d Cir. 1988). The Court finds that the plaintiff has not established a sufficient basis on any of these grounds to justify a new trial. Accordingly, plaintiff's motion will be denied.

B. Failure to Give Requested Charge

The plaintiff states that in her original Proposed Points for Charge (¶ 3) and in her Supplemental Points for Charge (¶ 6A), she requested that the Court instruct the jury that "where there is an ambiguity in a contract's terms, the ambiguous or unclear language must be interpreted most strongly against the drafter of the written contract." Specifically, the plaintiff sought to have this instruction charged as it relates to the April 16, 1993 letter of employment

At the trial, due to the invocation of the Pennsylvania's Dead Man's Act, no testimony regarding the drafter of the April 16,

¹ Rule 59 states in pertinent part as follows:

A new trial may be granted to all or any of the parties and on all or part of the issues . . . in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in action at law in the courts of the United States . . .

Fed. R. Civ. P. 59(a).

1993 letter was admissible. Consequently, neither party introduced any evidence with respect to that question. This Court stated in the Charge Conference, "The Dead Man's Rule keeps us from knowing anything about this case." (Trial Transcript, Jan. 15, 1997, at 92, lines 8-9.) Furthermore, this Court noted "I don't know who drafted the document. You don't know who drafted the document." (Trial Transcript, Jan. 15, 1997, at 92, lines 22-23.) Because no evidentiary basis existed to determine against whom the interpretation should run, this Court chose not to include the plaintiff's proposed instruction to avoid possibly confusing the jury. Therefore, the motion for a new trial on grounds the Court chose not to give the above instruction to the jury is denied.

C. Interpreting All Writings as a Whole

The plaintiff next objects to the Court's jury instruction that "a writing is interpreted as a whole and all writings that are part of the same transaction are interpreted together" when the jury determines the meaning of ambiguous terms. Specifically, the plaintiff contends that this instruction may have influenced the jury to consider other documents, including the letter designated "Draft #1" dated March 19, 1993, and the "Memorandum of Understanding" dated April 15, 1993, in making their findings. The pertinent portion of the jury charge provides as follows:

Terms are ambiguous where they are reasonably susceptible to different constructions, appear to be possibly understood in more than one sense, or obscure or indefinite in meaning.

It's my role to decide whether written contract terms are clear or ambiguous, since the determination is a matter of law. In this case, I have determined that the terms are ambiguous. Therefore it is your job as jurors to decide the meaning of the terms. A writing is interpreted as a whole and all writings that are part of the same transaction are interpreted together.

(Trial Transcript, Jan. 15, 1997, at 161-62, lines 20-5.)

This Court finds that the last sentence of the above portion of the jury instruction constitutes a proper charge to the jury. Under Pennsylvania law, where the Court has determined that a writing is ambiguous, all relevant extrinsic evidence may be used by the factfinder to determine the parties' mutual intent. Duquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604, 613 (3d Cir. 1995); Allegheny Int'l, Inc. v. Allegheny Ludlum Steel Corp., 40 F.3d 1416, 1424 (3d Cir. 1994). In fact "[e]vidence of prior and contemporaneous negotiations and understandings between the parties is admissible to prove their interpretation." Northbrook Ins. Co. v. Kuljian Corp., 690 F.2d 368, 372 (3d Cir. 1982). Because Pennsylvania law allows the consideration of extrinsic evidence for purposes of construing the meaning of an ambiguous contract, a jury charge instructing the jury that "a writing is interpreted as a whole and all writings that are part of the same transaction are interpreted together," is not in error. Accordingly, the plaintiff's motion for a new trial on this basis is denied.

D. Calling of Dawn DeAngelo as a Witness

The plaintiff next objects to the calling of Dawn DeAngelo as a witness at trial. Ms. DeAngelo was a sales and administrative assistant to the manager of the Newbold Philadelphia office. The defendant stated that she was called to testify as to her knowledge of Newbold documents generally, her familiarity with Newbold memoranda, her unfamiliarity with any of the facts of this case, but her belief based on the appearance of the documents, that Exhibit P-5, the "Memorandum of Understanding", does not appear to have been prepared by Newbold.

The plaintiff contends that Ms. DeAngelo's testimony constituted irrelevant information as well as improper lay opinion. In its response to the plaintiff's objection, the Court stated:

I think it's quite relevant. I don't think there's any surprise by reason of the fact that this witness would be offered, there's no prejudice whatsoever. This is a witness who's going to testify as to the normal course of practice with the company, and whether or not this particular document in any way, shape or form represents any type of document that would normally would be generated by the department.

(Trial Transcript, Jan. 15, 1997, at 4, lines 7-14.) Rule 402 of the Federal Rules of Evidence states that "[A]ll relevant evidence is admissible . . ." "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

The claim in this case is whether the defendant is obligated to pay certain sums of money the defendant purportedly

promised to pay in an employment contract. As this Court determined that the language of the employment contract was ambiguous, the meaning of the terms must be determined by the jury. To this end, the jury may consider extrinsic evidence. Certainly, whether the defendant wrote this contract is relevant in the interpretation of the contract. As such, this Court finds that Ms. DeAngelo's testimony is relevant to the plaintiff's claim.

The plaintiff also objects to Ms. DeAngelo's opinion on whether Exhibit P-5, the "Memorandum of Understanding", constitutes a normal memoranda document prepared by the defendant. Rule 701 states as follows:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Fed. R. Evid. 701. In the instant matter, Ms. DeAngelo testified that as the administrative and sales assistant to Fahnestock's branch manager and vice president in Philadelphia, she handles all documents that go to employees and to the headquarters in New York and to other branches. Also, Ms. DeAngelo looked at Exhibit P-5 and compared it to other documents prepared by Newbold and, based on her experience, stated that Exhibit P-5 did not look like a document that would be prepared by Newbold. This Court finds that this opinion is "rationally based" on Ms. DeAngelo's perception and assists the jury in the clear understanding of her testimony.

Accordingly, the plaintiff's motion for a new trial based on objection to Ms. DeAngelo's testimony is denied.

E. Jury Verdict Not Against Weight of the Evidence

The plaintiff contends that, notwithstanding the other purported errors at trial, she is entitled to a new trial because the jury's verdict is contrary to the weight of the evidence on the insurance claim. The plaintiff argues that the jury's verdict was contrary to the express written agreement between the plaintiff's husband and the defendant. In making this argument, the plaintiff essentially states that a rational jury could have only arrived at one conclusion. In the plaintiff's motion for summary judgment, this Court held that the language in the contract concerning the insurance provision is "reasonably or fairly susceptible of different constructions . . . or has a double meaning." By arguing that the jury could only come to one conclusion, the plaintiff is basically stating that the language of the contract was not ambiguous. This is inconsistent with the Court's finding in the plaintiff's motion for summary judgment. Accordingly, this Court finds that the jury's verdict is not contrary to the weight of the evidence, and denies the plaintiff's motion for summary judgment based on this argument.

An appropriate Order follows.

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FAHNESTOCK & CO., INC.	:	NO. 95-5998

O R D E R

AND NOW, this 24th day of June, 1997, upon consideration of the Plaintiff's Post Trial Motion for a New Trial pursuant to Rule 59(a) of the Federal Rules of Civil Procedure, and the Defendant's Response thereto, IT IS HEREBY ORDERED that the Plaintiff's Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.