



built. DeKalb sought damages from defendant on the grounds of promissory estoppel and negligent misrepresentation.

During the seven-day trial, both parties presented evidence about the negotiations and exchanges between the parties during the period between late 2001 and September, 2003. Sterling and DeKalb had agreed on a number of points involving the construction of an auto collision center. The discussions contemplated that DeKalb would build the facility to Sterling's specifications. The amount of rent and the length of a long-term lease had been settled. The parties contemplated that Allstate, Sterling's parent company, would sign some form of financial guaranty for the lease, although its terms were never resolved. DeKalb presented evidence that it expended \$1.4 million in developing the property in reliance on Sterling's promises to lease it. Among other things, DeKalb demolished the two existing houses on the property and ordered custom built steel and HVAC systems designed for Sterling's building specifications.

On September 17, 2003, defendants communicated to DeKalb their decision not to sign the lease. Two of the significant issues that were never resolved were: (1) a deed restriction that prohibited the property's use as a "public garage"; and (2) an unplotted easement in favor of the Philadelphia Suburban Water Company. That easement allowed the water company the right to move about the property to access an adjoining water-filled quarry. Joanne Keating, counsel for Sterling, testified at trial that Sterling made the decision that

it could not execute the lease because the public garage restriction and unplotted easement posed serious threats to Sterling's anticipated use of the property.

The jury, through answers to special interrogatories, returned a verdict for defendants on DeKalb's claims for promissory estoppel and negligent misrepresentation.

## II.

Rule 59(a) provides in pertinent part:

A new trial may be granted to all or any of the parties and on all or part of the issues (1) 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 actions at law in the courts of the United States ...

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

A new trial should be granted to prevent a miscarriage of justice when the jury's "verdict is contrary to the great weight of the evidence," Roebuck v. Drexel Univ., 852 F.2d 715, 736 (3d Cir. 1988), or when the court commits an error of law which prejudices a substantial right of a party. See Maylie v. Nat'l R.R. Passenger Corp., 791 F. Supp. 477, 480 (E.D. Pa.), aff'd, 983 F.2d 1051 (3d Cir. 1992). In all cases, the authority of a trial court to grant a motion for a new trial "is confided almost entirely to the exercise of [its] discretion." American Bearing Co. v. Litton Indus., Inc., 729 F.2d 943, 948 (3d Cir. 1984) (quoting Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 36 (1980)).

III.

DeKalb first contends that a new trial is warranted because we erred in our instructions to the jury concerning the statute of frauds.

During trial, defendants introduced evidence concerning the statute of frauds in response to DeKalb's promissory estoppel claim. Under Pennsylvania law, the statute of frauds requires that any lease of real property for a period of more than three years be put into writing. 33 PA. CONS. STAT. § 1 (1772). The lease contemplated here was for at least fifteen years. It is undisputed that the parties never entered a written agreement.

We gave the following instruction regarding the statute of frauds as it relates to DeKalb's promissory estoppel claim:

During the trial, you have heard references to the statute of frauds. Under Pennsylvania law, the statute of frauds requires certain transfers of real estate or interest in real estate such as leases for more than three years and easements to be in writing and signed by parties involved in the transfer. As noted above, plaintiff is not prohibited from recovery because no written lease or easement was signed. On the other hand, you must consider the reasonableness of DeKalb's reliance on any promise of defendant to lease the property in light of the statute of frauds and DeKalb's knowledge of it, if any.

DeKalb argues that our instruction on the statute of frauds, along with the allegedly improper questioning of witnesses on this subject, created prejudicial error. According to DeKalb, the jury should have been instructed that the statute

of frauds "has no effect on any claim in this case, and is not a defense to any claim raised in this case."

For a party to prevail on its promissory estoppel claim, it must prove that it acted in reliance on a definite and specific promise and that its reliance was reasonable. See Josephs v. Pizza Hut of America, Inc., 733 F. Supp. 222, 226 (W.D. Pa. 1989). In determining the reasonableness of DeKalb's reliance, the jury could consider the totality of circumstances, including whether DeKalb was a sophisticated party or had knowledge of what was required to create an enforceable contract. See e.g., Greenberg v. Tomlin, 816 F. Supp. 1039, 1056-57 (E.D. Pa. 1993). "Although there are no hard and fast definitions of what constitutes reasonable reliance, the degree of sophistication of the parties and the history, if any, behind the negotiation process are relevant factors in ascertaining reasonableness." Id. at 1056. The court's jury instruction was in accord with Pennsylvania law in this regard:

In order to prevail on its claim for promissory estoppel, DeKalb must prove by clear and convincing evidence that:

- (1) defendants made a clear and reasonably certain promise to the plaintiff, whether orally or in writing. Plaintiff does not have to prove that there was a signed lease to succeed in a claim for promissory estoppel;
- (2) defendants made the promise with knowledge that DeKalb was likely to act or refrain from acting in reliance on the promise;
- (3) DeKalb suffered damages as a result of its reliance on the promise;

(4) it was reasonable for DeKalb to rely upon the promise **under the circumstances in which it was made**; and  
(5) injustice can be avoided only by enforcing the promise.

(emphasis added).

We agree that the statute of frauds does not bar a claim for promissory estoppel, and we never charged the jury that such a bar existed. Nonetheless, in considering the reasonableness of DeKalb's reliance on defendants' promises, the jury was entitled to consider all the circumstances surrounding the negotiations. Thus, we advised the jury to consider DeKalb's knowledge, "if any," of the statute of frauds on the question of the reasonableness of DeKalb's reliance on any promises made by defendants. DeKalb engaged in lease negotiations with the help of real estate broker Chuck Shields and attorney Robert Kelly. At trial, Shields testified that he knew that a real estate lease must be in writing and signed before it is enforceable. One could also reasonably infer that Kelly, an experienced attorney, was aware of the requirements of the statute of frauds. Because Shields and Kelly represented DeKalb in the lease negotiations, the jury was entitled to impute their knowledge of the statute of frauds to DeKalb. There was simply no basis to exclude the statute of frauds as a factor in the jury's deliberations in deciding whether "it was reasonable for DeKalb to rely upon the promise [made by defendants] under the circumstances in which it was made." Id.

We properly allowed testimony concerning the statute of frauds and properly instructed the jury to consider DeKalb's knowledge, if any, of the statute of frauds when it considered DeKalb's promissory estoppel claim.

IV.

Next, DeKalb contends that we improperly excluded evidence showing that: (1) the defendants unilaterally decided on September 17, 2003 to ask DeKalb to calculate its losses because it was the "business thing to do;" (2) on September 18, 2003, defendants' business persons called Chuck Shields, the real estate broker, and told him of their decision not to sign the lease and asked him to have DeKalb calculate its losses; and (3) on September 22, 2003, defendants told DeKalb the same decisions disclosed to Shields on September 18, 2003.

DeKalb claims that the evidence we excluded is admissible as relevant to show defendants' business decisions.<sup>1</sup> We are not persuaded. Uncontested testimony was offered by both sides to show that Sterling was the party which decided not to go forward with the lease. In addition, after extensive questioning of Mike Ruser, who represented DeKalb in lease negotiations and handled DeKalb's bookkeeping, we admitted DeKalb's damage evidence which included the same expenses calculated by DeKalb at

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1. We granted defendants' motion in limine to exclude defendants' request that DeKalb calculate expenses and defendants' purported offer to reimburse DeKalb for out-of-pocket expenses. We did so because such evidence involved settlement negotiations of a disputed claim. See Fed. R. Evid. 408.

defendants' request. We even allowed into evidence the chart of damages which DeKalb had provided to Sterling in September, 2003. We simply deleted the language, "for settlement purposes only." The only purpose for which DeKalb could possibly have introduced the excluded evidence was to reveal the parties' attempts to settle the dispute prior to litigation.

Rule 408 of the Federal Rules of Evidence provides:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

Fed. R. Evid. 408. "The policy behind Rule 408 is to encourage freedom of discussion with regard to compromise." Affiliated Mfrs., Inc. v. Aluminum Co. of Am., 56 F.3d 521, 526 (3d Cir. 1995) (citations omitted). The Rule 408 prohibition against evidence relating to compromises of a disputed claim does not require that an actual lawsuit exist at the time the alleged compromise was made. See Affiliated Mfrs., Inc., 56 F.3d at 526. Instead, there must be "at least an apparent difference of view between the parties concerning the validity or amount of a claim." Id. (citing Weinstein's Federal Evidence § 408.06, at 408-23 (rev. 1998)).

At the time defendants chose not to go forward with the lease negotiations, they knew DeKalb had incurred expenses to

prepare the property for defendants' auto collision center. Defendants purportedly made an offer to purchase the customized steel and HVAC system. Thereafter, the parties met and exchanged letters in an attempt to resolve their differences. While these discussions preceded the litigation, it is clear from the testimony presented at trial that a dispute existed between the parties in September, 2003 when defendants requested expenses from DeKalb and allegedly offered to reimburse DeKalb for these costs.

The fact that DeKalb characterizes evidence related to the parties' efforts to resolve their dispute prior to litigation as evidence of DeKalb's "business decisions" does not allow us to circumvent Rule 408. Moreover, DeKalb was not prejudiced. It was allowed to introduce evidence that Sterling terminated the negotiations. It was also allowed to introduce evidence of its damages.

V.

The motion of DeKalb for a new trial will be denied.

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

DEKALB PIKE REAL ESTATE	:	CIVIL ACTION
ASSOCIATES, LP	:	
	:	
v.	:	
	:	
THE ALLSTATE CORP., et al.	:	NO. 03-6771

ORDER

AND NOW, this 13th day of December, 2004, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion by plaintiff DeKalb Pike Real Estate Associates, LP for a new trial is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.