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POST-TRIAL MOTION REQUIREMENTS – THE SAGA CONTINUES

By Debra P. Furlas

In past newsletters, we have discussed the question of when a post-trial motion is required in a state court civil case. This remains a murky area, and one fraught with pitfalls even for experienced appellate advocates, as a recent appellant decision demonstrates.

Newman Development Group of Pottstown, Inc. v. Genuardi's Family Market, Inc. began its litigation life as a commercial lease dispute, but the procedural controversy it engendered has far more significant legal ramifications than the factual decision on the merits. After a bench trial, followed by post-trial motions, the parties filed cross-appeals. The Superior Court affirmed in part, but vacated and remanded the damage award against Genuardi's as inconsistent with the provisions of the parties' lease. On remand, the trial court recalculated the damage award based on briefing and argument, without any new evidentiary proceeding. Genuardi's still disagreed with the damage calculation.

The Note to Pa. R.C.P. 227.1(c) suggests that a post-trial motion is not permitted following any "proceedings that do not constitute a trial." Because there had been no new trial on remand, Genuardi's logically concluded that a post-trial motion was not permitted. Instead, it filed a motion for

reconsideration, which was denied, and then filed a direct appeal.

Newman Development Group contended that Genuardi's had waived its issues on appeal by failing to file a post-trial motion after the damages decision on remand. The Superior Court agreed and quashed the appeal.

The Superior Court pointed to the original bench trial that had preceded the first appeal and the remand, and held that the character of *that* proceeding mandated filing of a post-trial motion after the remand decision. The court found that Genuardi's had mistakenly viewed the case in "a bifurcated manner" by relying on the character of the proceeding from which the second appeal arose. The Superior Court further observed that the appeal sought correction of alleged errors in a damage award and that Rule 227.1(a)(4) gives trial courts authority to make such corrections. The Superior Court reasoned that skipping the post-trial motion improperly denied the trial court an opportunity to correct its alleged error prior to appeal and thereby subverted the purpose of Rule 227.1.

Unfortunately, instead of helping to clarify Rule 227.1, the Superior Court's decision has only added to the uncertainty

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surrounding the rule's application. It is counterintuitive for the post-trial motion requirement to depend on the nature of some prior proceeding rather than on the proceeding that gave rise to the error at issue. The Superior Court's reasoning also appears to rely unduly on the need to give the trial court a chance to correct its own error, where the remand process itself (not to mention the motion for reconsideration) has seemingly afforded that chance.

On November 1, 2011, the Pennsylvania Supreme Court granted a further appeal, limited to the issue of whether the Superior Court erred in quashing Genuardi's appeal for failure to file a post-trial motion, where the appeal was from the recalculation of damages on remand, with no new evidence received. The Court's disposition of the

case may provide some much-needed clarification of the post-trial practice rule. Meanwhile, however, Rule 227.1 remains a potential trap, and not just for the unwary. As a result, the appellate practitioner may feel compelled to file both a post-trial motion and a notice of appeal in any case where there is the least doubt about how to proceed. Such a course of action hardly fosters the efficient use of judicial resources that Rule 227.1 is supposed to promote. ■



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