

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COUNTY LINE/NEW BRITAIN REALTY, LP,

Appellee

v.

HARLEYSVILLE NATIONAL BANK AND
TRUST COMPANY,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1796 EDA 2012

Appeal from the Judgment Entered June 14, 2012
In the Court of Common Pleas of Bucks County
Civil Division at No(s): 2009-05345

COUNTY LINE/NEW BRITAIN REALTY, LP,

Appellant

v.

HARLEYSVILLE NATIONAL BANK AND
TRUST COMPANY,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1833 EDA 2012

Appeal from the Judgment Entered June 14, 2012
In the Court of Common Pleas of Bucks County
Civil Division at No(s): 2009-05345

BEFORE: STEVENS, P.J.*, OLSON AND STRASSBURGER,** JJ.

MEMORANDUM BY OLSON, J.:

FILED AUGUST 16, 2013

Within this cross-appeal, both Appellant, Harleysville National Bank and Trust Company ("Harleysville"), and Cross-Appellant, County Line/New

*President Judge Stevens did not participate in the consideration or decision of this case.

**Retired Senior Judge assigned to the Superior court.

Britain Realty, LP ("County Line"), appeal from the judgment entered by the trial court on June 14, 2012, following a jury's February 10, 2012 verdict in favor of County Line and against Harleysville, and the trial court's denial of post-trial motions. Specifically, Harleysville appeals the trial court's denial of its post-trial motions seeking entry of judgment notwithstanding the verdict, a new trial, or a remittitur. County Line cross-appeals the trial court's denial of its motion to mold the verdict to include prejudgment interest. For the following reasons, we affirm.

The trial court thoroughly summarized the voluminous factual and procedural history of this matter as follows.

County Line is a real estate development partnership formed by William Kahan (hereinafter "Kahan") and Marc Haber (hereinafter "Haber") in 2006. County Line was formed specifically for the purpose of pursuing a development project to be located on 18.75 acres of land on the corner of County Line Road and Route 202 in New Britain Township, Bucks County, Pennsylvania. The development project sought to purchase seven separate, contiguous parcels of land, build improvements upon the land, and lease the land to various retail and commercial business. In furtherance of the project, [County Line] undertook a number of actions throughout 2007 and into early 2009. In 2008, [County Line] entered into seven land purchase agreements with the current owners of the subject properties. The land purchase agreements required that the transactions must be completed by early July, 2009 or [County Line] would lose the right to purchase the properties. [County Line] hired numerous consultants including[] engineers to work towards obtaining zoning approval for the project and traffic consultants to assist in planning for increased traffic flow and obtaining a Highway Occupancy Permit (hereinafter "HOP") from PennDOT. Further, [County Line] had secured leases with Wawa and Firstrust Bank for two of the three retail pad sites and had an agreement with Walgreen's for the construction of a retail store on a third site.

To obtain financing for the project, [County Line] began discussions with Harleysville.... [County Line] chose to use [Harleysville] to finance the project because [Harleysville] had previously provided funding to Haber and Kahan for a different development project. After providing [Harleysville] with the land sale agreements, pre-land acquisition approvals, and the secured leases, [County Line] requisitioned an appraisal of the project from Paul Quinn of Lagreca and Quinn Real Estate Services, Inc. in January of 2009. The appraisal valued the project at \$19,200,000.[00.]

Moving forward with discussions in March of 2009, [County Line] requested a loan in the amount of \$12,540,000[.00] from [Harleysville] to finance the acquisition of the properties and the construction required for the project. On April 15, 2009, [Harleysville's] Senior Loan Committee approved [County Line] for a \$12,000,000[.00] loan and informed [County Line] of the offer with a Term Sheet. Kahan, on behalf of [County Line], negotiated with [Harleysville's] representatives, Gary Fox (hereinafter "Fox"), the commercial real estate lender handling [County Line's] project, and Craig Adams (hereinafter "Adams"), the head of the commercial lending and real estate department, to increase the amount of the loan from the April 15, 2009 approved amount. On April 20, 2009, the Senior Loan Committee revised the initial loan and approved [County Line] for an increased "Construction Loan/Permanent Mortgage" in the amount of \$12,290,000.[00.] [Harleysville] communicated the new, approved loan amount through a Revised Term Sheet, sent by email from Fox to Kahan. In addition to the loan amount, the Revised Term Sheet also set forth the essential terms of the loan, including: (1) the identity of the borrower and lender; (2) the loan and facility type; (3) the principal amount, purpose, and distribution of the loan; (4) the interest rates; (5) the term of the loan; (6) the manner of repayment of the loan (amortization); (7) the collateral for the loan; (8) the penalty and fees for the loan; (9) the collateral for the loan[sic]; and (10) the guarantors. Additionally, the Revised Term Sheet provided for [County Line] to comply with certain "Approval Conditions Precedent to Closing." The first condition precedent required "[s]atisfactory review and approval by HNB or third party acceptable to HNB of an environmental assessment to be ordered on the seven (7) parcels of land comprised of 18.75 +/- acres and located at the northwest corner of County Line Road and Butler Ave[.] (PA Route 202), New Britain Township, Bucks

County, PA.” The third condition precedent required “[s]atisfactory review and approval by HNB or third party acceptable to HNB of all specs, costs, engineer reports, government approvals and other items related to the acquisition, development and construction of the commercial/retail buildings.

On April 21, 2009, Fox contacted [County Line] by email regarding the Revised Term Sheet the previous day. Kahan accepted the Revised Term Sheet by speaking with Fox over the telephone on April 30, 2009, within ten (10) days of receiving the Revised Term Sheet, and further asked when the loan could go to closing. Kahan testified he never received a deadline by which [County Line] was required to communicate its acceptance of the terms of the Revised Term Sheet. Fox informed Cyr, [Harleysville’s] chief lending officer, and Adams, [Harleysville’s] head of the commercial lending and real estate department, of Kahan’s April 30, 2009 acceptance through email. Despite no deadline for acceptance of the loan being communicated to [County Line], [Harleysville] had decided to pull the loan offered to [County Line] in the April 20, 2009 Revised Term Sheet, essentially deciding that it no longer wished to proceed with the approved loan. On May 4, 2009, after being informed that [Harleysville] reneged on the approved loan, Kahan went to [Harleysville’s] headquarters and spoke with Adams about reinstating the loan, to no avail.

At the time [Harleysville] decided to pull [County Line’s] approved loan, [Harleysville] was undergoing serious financial difficulties. On April 30, 2009, TH Properties (hereinafter “THP”), a borrower indebted to [Harleysville] in excess of \$25,000,000, filed for bankruptcy, an event that admittedly placed [Harleysville] at risk of undercapitalization. Prior to this bankruptcy filing of an important borrower, [Harleysville] was already under strict requirements to increase capital, a mandate imposed by the Office of the Comptroller of the Currency (hereinafter “OCC”). [Harleysville’s] representatives testified at trial that reinstating [County Line’s] loan would raise serious concerns regarding [Harleysville’s] capital usage and needs at the time.

Once [Harleysville] had reneged on the approved loan, [County Line] retained counsel, David Giles, to take on [Harleysville’s] decision, including instituting the instant civil action by writ of summons on May 15, 2009. Only after [County Line] hired counsel did [Harleysville] reinstate the approved loan and

proceed to move forward toward closing. [Harleysville] sent a closing agenda to [County Line's] attorneys on June 9, 2009, which included a closing checklist of items to be completed prior to closing on the loan. Communications between the attorneys for both [Harleysville] and [County Line] indicated that the parties had initially agreed to close on the loan by June 26, 2009 and no later than the end of June 2009, so as not to interfere with the date when the land purchase agreements were set to expire.

After receiving the closing checklist, Kahan, on behalf of [County Line], delivered various documents required for closing the loan to [Harleysville] through June 22, 2009, in addition to the documents [Harleysville] already had in its possession. Documents delivered to [Harleysville] at this time included an assurance letter from PennDOT, a Phase I Environmental Report, and soil reports. Despite the continued efforts of [County Line] to provide [Harleysville] with all documents necessary to close the loan by June 26 2009, [Harleysville] continued, throughout the month of June, to express dissatisfaction and concern that closing would not be possible by the closing date. Cyr, [Harleysville's] chief lending officer, went so far as to call it "good news" that [County Line's] loan would not be able to close in time to meet the deadlines set in the land purchase agreements.

When it became evident that the loan would not go to closing by the end of June 2009, [County Line] attempted to seek extensions on the various land purchase agreements in place with the various property owners, extending the deadlines into July. However, [County Line] became increasingly frustrated with [Harleysville's] requests, requests that [County Line] either felt it had already met or requests that were, in fact, impossible to fulfill in time for a closing date in July. As such, [County Line] informed [Harleysville] that it would be proceeding with the instant civil action and filed a [c]omplaint on July 1, 2009.

In its complaint, [County Line] averred causes of action for (1) breach of contract, (2) bad faith, and (3) promissory estoppel, alleging that the April 20, 2009 Revised Term Sheet created the terms of a binding and enforceable contract between [County Line] and [Harleysville], which [Harleysville] breached by failing to close on the loan. [County Line] claimed that [Harleysville] acted in bad faith in delaying the closing of the loan and in being dissatisfied with [County Line's] performance with regard to the

first and third conditions precedent in the Revised Term Sheet. As a result of [Harleysville's] actions, [County Line] claimed it suffered damages in the form of lost profits it would have gained from the development project. In its defense, [Harleysville] claimed that the Revised Term Sheet did not create a binding and enforceable contract between the parties. Additionally, [Harleysville] claimed it did not breach any such agreement because [Harleysville] was genuinely dissatisfied with [County Line's] performance of the first and third conditions precedent to closing.

On January 30, 2012, [the] case proceeded to trial in the Bucks County Court of Common Pleas. On February 10, 2012, after ten days of trial the jury returned a verdict in favor of [County Line] for \$3,600,000[.00], finding the following: (1) the parties had a binding and enforceable contract; (2) [Harleysville] breached that contract; (3) [County Line] satisfied the first and third conditions precedent in the Revised Term Sheet; and (4) [County Line] suffered damages as a result of the breach.

On February 21, 2012, [Harleysville] filed a Motion for Post-Trial Relief. On March 6, 2012, [County Line] filed a Motion to Mold the Jury's February 10, 2012 Verdict to Include Prejudgment Interest. On March 22, 2012, [Harleysville] filed a Response to [County Line's] Motion to Mold the Jury's February 10, 2012 Verdict to Include Prejudgment Interest. On April 25, 2012, [County Line] filed a Reply to [Harleysville's] Motion for Post-Trial Relief. On May 4, 2012, [Harleysville] filed a Reply Brief in Support of its Motion for Post-Trial Relief.

Oral Argument on [Harleysville's] Motion for Post-Trial Relief was held on May 15, 2012.

On May 31, 2012, [the trial court] denied [Harleysville's] Motion for Post-Trial Relief and [County Line's] Motion to Mold the Jury's February 10, 2012 Verdict to Include Prejudgment Interest.

[On June 14, 2012, the trial court entered judgment on the February 10, 2012 jury verdict, finding in favor of County Line and against Harleysville, and awarding County Line \$3,600,000.00 in damages.]

On June 15, 2012, [Harleysville] filed a Notice of Appeal to the Pennsylvania Superior Court. On June 18, 2012, [the trial court] ordered [Harleysville] to file a Statement of Errors Complained of

on Appeal, no later than twenty-one (21) days from the date of [the] order.

On June 25, 2012, [County Line] [its] their Notice of Appeal to the Pennsylvania Superior Court. On June 27, 2012, [the trial court] ordered [County Line] to file a Statement of Errors Complained of on Appeal, no later than twenty-one (21) days from the date of [the] order.

On July 3, 2012, [Harleysville] filed a Concise Statement of Errors Complained of on Appeal. On July 16, 2012, [County Line] filed [its] Statement of Matters Complained of on Appeal.

Trial Court Opinion, 8/10/2012, at 1-8 (footnotes with citations to the record omitted, emphasis in original). On August 10, 2012, the trial court filed its opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a).

Appellant, Harleysville, presents four issues for appeal:

Did the trial court err when it: (i) failed to apply the [s]tatute of [f]rauds and (ii) held that there was sufficient evidence of an agreement to make a \$12.29 million commercial real estate loan where the only evidence of a written agreement consisted of a two page term sheet that neither party signed, that did not manifest any intention to be bound, and that lacked agreement on several essential terms including a closing date[?]

Did the trial court err when it held that the evidence supported the conclusions that Harleysville breached the alleged contract to make a commercial real estate loan where the evidence showed that (i) Harleysville had, consistent with the two page term sheet, required that County Line provide an environmental assessment and all government approvals to Harleysville's satisfaction; (ii) County Line failed to satisfy these preclosing conditions because the environmental report it provided revealed issues that needed to be addressed and County Line only provided a conditional "assurance" letter in lieu of a key permit needed from PennDOT; (iii) County Line's counsel struck material terms from the parties' (never completed or executed) draft loan agreement, and (iv) County Line walked away from the negotiating table to pursue litigation[?]

Did the trial court err when it: (i) held that two purported preclosing conditions that had to be met to Harleysville's satisfaction were ambiguous and thus permitted prejudicial evidence of industry custom and practice that the purported preclosing conditions were satisfied; (ii) permitted prejudicial evidence of Harleysville's purported motives that were irrelevant to the satisfaction of the preclosing conditions; and (iii) excluded evidence that supported Harleysville's subjective dissatisfaction with the conditional assurance letter provided by County Line, in lieu of a PennDOT permit[?]

Did the lower court err when it permitted lost profits damages based on assumed "as approved" or "as improved" values of County Line's proposed commercial real estate development project instead of the "as is" or market value as of the time of the alleged breach[?]

Harleysville's Brief at 2-3 (emphasis in original).

Cross-Appellant, County Line, presents one issue for appeal:

Whether the [t]rial [c]ourt abused its discretion in denying County Line's motion to mold the jury's verdict to include prejudgment interest when County Line diligently prosecuted the case, [Harleysville] was unjustly enriched, the award would be compensatory, and no countervailing equitable interests militated against the award.

County Line's Brief at 4-5.

Harleysville's first two issues on appeal seek a judgment notwithstanding the verdict ("JNOV"); hence, we address those issues first. Under Pennsylvania law, a JNOV is a drastic remedy that "can be entered upon two bases: (1) where the movant is entitled to judgment as a matter of law; and/or (2) the evidence was such that no two reasonable minds could disagree that the verdict should have been rendered for the movant."

Advance Telephone Systems, Inc. v. Com-Net Professional Mobile Radio, LLC, 846 A.2d 1264, 1279 (Pa. Super. 2004). In this regard, a

motion for JNOV is the equivalent of a challenge to the sufficiency of the evidence in which we will grant the JNOV only if the evidence is “insufficient to sustain the verdict.” **Hohns v. Gain**, 806 A.2d 16, 19 (Pa. Super. 2002), citing **Fanning v. Davne**, 795 A.2d 388, 393 (Pa. Super. 2002). Where conflicting evidence has been presented to a jury, a judgment notwithstanding the verdict must be denied. **Burton-Lister v. Siegel, Sivitz and Lebed Assocs.**, 798 A.2d 231, 236 (Pa. Super. 2002) (citation omitted).

Harleysville’s first basis for seeking a JNOV argues that the certified record contains insufficient evidence to support the jury’s finding that there was a binding and enforceable contract between it and County Line because, according to Harleysville, the Revised Term Sheet fails to satisfy the statute of frauds. **See** Harleysville’s Brief at 17-33. Pursuant to Pennsylvania law, the statute of frauds, set forth at 33 P.S. § 1, requires that an agreement for the sale of land, including the financing thereof, be signed and in writing. **See Bozzi v. Greater Delaware Valley Savings and Loan Ass’n**, 389 A.2d 122, 124 (Pa. Super. 1978) (*en banc*); **Hessenthaler v. Farzin**, 564 A.2d 990, 992 (Pa. Super. 1989). The written memorandum that establishes the agreement, however, may consist of more than one writing, so long as each document is signed by the party to be charged and the writings indicate that they relate to the same transaction. **Hessenthaler**, 564 A.2d at 992.

Furthermore, in **Hessenthaler** our Court explained that:

[t]he purpose of the [s]tatute [of frauds] is to prevent the possibility of enforcing unfounded, fraudulent claims by requiring that contracts pertaining to interests in real estate be supported by written evidence signed by the party creating the interest.... Pennsylvania courts have emphasized that the [s]tatute [of frauds] is **not** designed to prevent the performance or enforcement of oral contracts that in fact were made.

Id. (citations omitted, emphasis in original). Indeed, in reference to the statute of frauds, our Supreme Court has emphasized that, “we should always be satisfied with ‘some note or memorandum’ that is adequate ... to convince the court that there is no serious possibility of consummating fraud by enforcement.” **In Beeruk Estate**, 241 A.2d 755, 758 (Pa. 1968).

Within its Rule 1925(a) opinion, the trial court reasoned that the contract at issue in this matter satisfied the statute of frauds because the essential terms of the agreement between County Line and Harleysville were reduced to writing by way of the April 20, 2009 Revised Term Sheet and additional communications between the parties. **See** Trial Court Opinion, 8/10/2012, at 15. According to the trial court:

as neither party denies that negotiations for the loan occurred between the parties, nor do the parties disagree as to the accuracy of the terms of the agreement in the Revised Term Sheet, there are no indications of fraud to be prevented in the instant case. The body of writings, including the April 20, 2009 Revised Term Sheet and the email communications between [County Line] and [Harleysville] throughout May and June of 2009, sufficiently set forth the essential terms of the parties’ agreement to indicate each party’s intent to be bound. Therefore, there was sufficient evidence to support a jury finding that the statute of frauds was not violated.

Id.

Harleysville, however, challenges the jury's finding with regard to the statute of frauds, as well as the denial of its motion for JNOV, on the same basis. Specifically, Harleysville argues that the essential terms of the agreement, particularly the closing date, were not reduced to writing, and that the agreement does not reflect an intention by the parties to be legally bound. **See** Harleysville's Brief at 16-33. With regard to the essential terms, Harleysville argues that where courts have found that documents such as term sheets evidence a binding contract, they do so only where all essential terms, including the closing date, are set forth within that document. **See id.** at 25-26. Harleysville argues that the only reasonable inference from the evidence within the certified record leads to the conclusion that the closing date for the loan was a material term to which the parties never agreed. **See id.** at 27. In particular, Harleysville cites to communications between the parties wherein County Line expressed its desire to close on June 26, 2009 and Harleysville's agreement to close on that date, but only in the event that certain conditions had been met by that time. **See id.** at 27-32. Within both the cited communications and within its brief, Harleysville stressed its concern that the necessary conditions would not be met by June 26, 2009. **See id.** On that basis, Harleysville argues that it never actually agreed on June 26, 2009 as a closing date. **See id.**

The trial court, however, interpreted the evidence differently than Harleysville suggests, and reasoned that while Harleysville was never

confident that a June 26, 2009 closing would occur, the evidence demonstrates that Harleysville agreed to close on that date, if possible. **See** Trial Court Opinion, 8/10/2012, at 14. As the trial court explained,

[a]lthough an exact closing date was not included in the Revised Term Sheet, other evidence presented at trial demonstrated that the parties had agreed upon an initial closing date of June 26, 2009. Kahan testified at trial that he believed a closing date of June 26, 2009 was given to him by Fox. David Giles, [County Line's] counsel during the loan closing process, confirmed that he had discussions with [Harleysville's] counsel, Curt Heffler, during which the parties had agreed to close the loan by June 26, 2009. Further, written communication between the parties, through their attorneys, confirmed this agreed upon closing date. While in these various email communications [Harleysville's] representatives made mention of potential difficulties in closing the loan by the agreed upon date of June 26, 2009, these statements only confirm that the parties did, in fact, originally agree to close the loan on that date. In evaluating this additional evidence presented at trial, as well as the actions of both parties as they moved toward closing the loan, it can be inferred that parties did in fact agree upon and set a closing date for the loan.

Id. (footnotes with citations to the record omitted).

The trial court reasonably interpreted the evidence, particularly in light of the applicable standard of review when an appellate court considers conflicting evidence within an appeal of a denial of a motion for JNOV. We therefore see no reason to question the trial court's determination that the parties did, in fact, agree upon a closing date in this matter. **See supra.** Consequently, we hold that Harleysville's statute of frauds challenge on the basis of missing material terms lacks merit.

Harleysville also argues that the statute of frauds bars County Line's breach of contract claim because, according to Harleysville, neither the Revised Term Sheet, nor any other writing, is a binding and enforceable contract because there is no reflection of the parties' intention to be legally bound to any loan agreement. **See** Harleysville's Brief at 19-24. With regard to contractual interpretation, our Court has explained that:

[t]he goal of contractual interpretation is to ascertain the intent of parties at the time they entered the disputed agreement and to give effect to the agreement's terms. **Greene v. Oliver Realty, Inc.**, 526 A.2d 1192, 1194 (Pa. Super. 1987). We will find the parties' agreement enforceable as a contract "when the parties to it 1) reach a mutual understanding, 2) exchange consideration, and 3) delineate the terms of their bargain with sufficient clarity." **Weavertown Transport Leasing, Inc. v. Moran**, 834 A.2d 1169, 1172 (Pa. Super. 2003). An agreement is expressed with sufficient clarity "if the parties intended to make a contract and there is a reasonably certain basis upon which a court can provide an appropriate remedy." **See Greene**, 526 A.2d at 1194. Accordingly, "not every term of a contract must always be stated in complete detail[.]" **Snaith v. Snaith**, 422 A.2d 1379, 1382 (Pa. Super. 1980). If the parties have agreed on the essential terms, the contract is enforceable even though recorded only in an informal memorandum that requires future approval or negotiation of incidental terms. **See Yellow Run Coal Co. v. Alma-Elly-Yv Mines, Ltd.**, 426 A.2d 1152, 1155 (Pa. Super. 1981). In the event that an essential term is not clearly expressed in their writing but the parties' intent concerning that term is otherwise apparent, the court may infer the parties' intent from other evidence and impose a term consistent with it. **See Greene**, 526 A.2d at 1194. Indeed, terms of an agreement that appear otherwise vague may be rendered definite by subsequent performance: "One or both parties may perform in such a way as to make definite that which was previously unclear." **Greene**, 526 A.2d at 1194.

Helpin v. Trustees of Univ. of Pennsylvania, 969 A.2d 601, 610-611 (Pa. Super. 2009) (parallel citations omitted).

Harleysville challenges the contractual enforceability of the Revised Term Sheet, arguing that it does not reflect an intention to be legally bound to the contemplated loan. **See** Harleysville's Brief at 19-24. According to Harleysville, the Revised Term Sheet only refers to a **proposed** loan that contemplates eventual execution of a more definite loan agreement. **See id.** at 20-21. Therefore, Harleysville argues that, by its nature, the Revised Term Sheet was an "agreement to agree" to a loan at a later date, but not a loan agreement in-and-of-itself. **See id.** at 21. Citing Pennsylvania precedent, Harleysville argues that "agreements to agree" are not enforceable. **See id.** at 19-21. Consequently, Harleysville argues that the Revised Term Sheet in this matter fails to satisfy the statute of frauds and is therefore unenforceable. **See id.**

Within its Rule 1925(a) opinion, however, the trial court held that the Revised Term Sheet was, indeed, a binding and enforceable contract entered into between the parties. There the trial court explained:

[o]n April 20, 2009, Gary Fox, [Harleysville's] Senior Vice President for Real Estate, sent the Revised Term Sheet to [County Line] by email. This revised term sheet offered to [County Line] a "construction Loan/Permanent Mortgage" in the amount of \$12,290,000, already approved by [Harleysville's] Senior Loan Committee. The revised term sheet also set forth the essential terms of the loan, including: (1) the identity of the borrower and lender; (2) the loan and facility type; (3) the principal amount, purpose, and distribution of the loan; (4) the interest rates; (5) the term of the loan; (6) the manner of repayment of the loan (amortization); (7) the collateral for the loan; (8) the penalty and fees for the loan; and (9) the guarantors. As set forth in the Revised Term Sheet, [County Line] agreed, in exchange for the loan, to pay interest on the

principal amount, pay certain fees to [Harleysville], and put up certain collateral for the loan. On April 30, 2009, Kahan, on behalf of [County Line] accepted the terms of [Harleysville's] offer for the \$12,290,000 loan by telephone. All of this evidence supports the existence of a mutual understanding between the parties with respect to the loan agreement, as well as an intent by each party to be bound by the carefully expressed terms in the Revised Term Sheet.

Trial Court Opinion, 8/10/2012, at 13 (footnotes with citations to the record omitted).

We find no error in the trial court's interpretation and finding of a binding and enforceable contract in this matter. While we do not dispute Harleysville's assertion that the parties intended to further formalize their loan agreement through eventual execution of a note, a mortgage, and other relevant loan documents, the specific terms of the Revised Term Sheet, as set forth above, evidence a contract wherein Harleysville agreed to issue County Line the contemplated loan. Consequently, evidence supports the trial court's conclusion and the jury's verdict that the Revised Term Sheet was more than an agreement to agree, and therefore distinguishable from the precedents cited by Harleysville. The trial court did not abuse its discretion in denying Harleysville's motion for a JNOV on this basis, and Harleysville's first issue on appeal lacks merit.

Harleysville's second issue on appeal argues that the trial court abused its discretion in failing to grant its motion for JNOV because the certified record contains insufficient evidence that Harleysville breached its obligation to close upon the loan on or before June 26, 2009. **See** Harleysville's Brief

at 33-48. Specifically, Harleysville argues that the evidence produced at trial establishes that County Line failed to meet, to Harleysville's satisfaction, the first and third "Approval Conditions Precedent to Closing" set forth in page two of the Revised Term Sheet. **See id.** at 33. Consequently, Harleysville argues that the jury's finding that Harleysville breached its agreement with County Line is erroneous as a matter of law. **See id.**

The trial court properly explained Pennsylvania law with regard to conditions precedent as follows:

[a] condition precedent is defined as a condition that must occur before a duty to perform under a contract arises. An event or act enumerated in a contract will be construed as a condition precedent where it clearly appears to have been the parties' intention to create such a condition. If a contract contains a condition precedent, that condition must be met before a duty to perform under the contract arises. Thus, where a condition precedent has not been fulfilled, the duty to perform under the contract has not occurred and no damages are due for non-performance. Further, where a contract provides for performance of a condition by one party to the satisfaction of the other, the test of adequate performance is not whether the person for whom the service was rendered ought to be satisfied, but whether he is, in fact, satisfied. However, any dissatisfaction on the part of the party requiring satisfaction "must be genuine and not prompted by caprice or bad faith."

Trial Court Opinion, 8/10/2012, at 16-17 (footnotes to Pennsylvania authority omitted).

Within this matter, Harleysville challenges County Line's completion of the conditions precedent on two grounds: (1) arguing that County Line failed to complete performance of conditions; and (2) arguing that, even if County Line did complete performance of the conditions, such performance was not

to Harleysville's subjective satisfaction. **See** Harleysville's Brief at 38-48. Citing to evidence establishing its subjective dissatisfaction with County Line's performance of the conditions precedent, Harleysville argues that its duty to perform under the Revised Term Sheet never arose because, in Harleysville's subjective opinion, at least two of County Line's conditions precedent remained outstanding. **See id.** Therefore, Harleysville argues that the trial court erred in concluding that its refusal to execute the loan was a breach of the parties' agreement. **See id.**

Harleysville, however, overlooks the trial court's determination that County Line's satisfaction of the conditions placed at issue within this matter should be left to the interpretation of the jury. Furthermore, Harleysville overlooks the fact that, notwithstanding the evidence that it relies upon, after interpreting the relevant conditions, the jury concluded that County Line, in fact, fully performed the conditions within the Revised Term Sheet, and that Harleysville's rejection of County Line's performance was in bad faith. Indeed, as the trial court explained:

[t]here was sufficient evidence presented to support the jury's finding that [County Line] fulfilled the conditions precedent to closing the loan. The first condition precedent required "[s]atisfactory review and approval by [Harleysville] or third party acceptable to [Harleysville] of an environmental assessment to be ordered on the seven (7) parcels of land comprised of 18.75+/- acres and located at the northwest corner of County Line Road and Butler Avenue (PA Route 202), New Britain Township, Bucks County, PA." More specifically, the Closing Checklist for the loan sought a Phase I Environmental Report for the properties. Kahan, in fact, delivered a Phase I Report to [Harleysville] on or about June 18, 2009, as well as a soils report. Kahan testified

that [Harleysville] never informed him that there were problems with the Phase I Report before June 30, 2009, the date on which the land purchase agreements between [County Line] and the land owners expired, effectively nullifying the project. Further, there was no explicit requirement for a Phase II Environmental Report imposed by [Harleysville] in order to close the loan, nor, as the testimony at trial made clear, was a Phase II Environmental Report always required for closing. From this evidence, the jury was free to conclude that [County Line] had fulfilled the condition precedent for an "environmental assessment" of the properties.

The third condition precedent required "[s]atisfactory review and approval by [Harleysville] or third party acceptable to [Harleysville] of all specs, costs, engineer reports, government approvals and other items related to the acquisition, development and construction of the commercial/retail buildings." [Harleysville] contends that this condition required [County Line] to provide a signed Highway Occupancy Permit (hereinafter "HOP") from PennDOT before [Harleysville] was obligated to close the loan. Despite this contention, there was ample evidence presented at trial to demonstrate [County Line] fulfilled this condition. [County Line] provided an Assurance Letter from PennDOT regarding the proposed project. The Township approved the project for the development of the properties without a formal HOP in place. Patrick Morris, an expert in the banking industry for closing real estate loans, testified at trial that an assurance letter from PennDOT, such as the one provided by [County Line] to [Harleysville], would generally be sufficient to allow the parties to close on a loan. Further, Morris also opined that a HOP would not generally be an issue to hold up closing on all loan funding; more specifically, a HOP would generally be required for issuance of construction funding. In determining that [County Line] had fulfilled this condition precedent for "governmental approvals," the jury gave weight to this evidence and it is not for [the trial court] to interfere with these credibility determinations.

Trial Court Opinion, 8/10/2012, at 17-18 (footnotes to record citations omitted).

Given the trial court's finding of ambiguity,¹ coupled with the sufficient evidence cited by the trial court and relied upon by the jury, which evidence supports the jury's interpretation and application of the conditions within the Revised Term Sheet, we find no error in the trial court's denial of Harleysville's motion for JNOV on this basis. Indeed, "[i]f any basis exists upon which the jury could have properly made its award, then we must affirm the trial court's denial of the motion for JNOV." ***American Future Systems v. Better Business Bureau***, 872 A.2d 1202, 1215 (Pa. Super. 2005), quoting ***Buckley v. Exodus Transit & Storage Corp.***, 744 A.2d 298, 305 (Pa. Super. 1999).

Harleysville's next issue on appeal challenges the trial court's denial of its motion for a new trial based upon the allegedly erroneous admission and/or exclusion of certain evidence, including that of expert testimony. **See** Harleysville's Brief at 49-62.

The Superior Court's standard for reviewing the trial court's denial of a motion for a new trial is whether the trial court clearly and palpably abused its discretion or committed an error of law which affected the outcome of the case. We will reverse the trial court's denial of a new trial only where there is a clear abuse of discretion or an error of law which controlled the outcome of the case. The trial court abuses its discretion when it misapplies the law or when it reaches a manifestly unreasonable, biased or prejudiced result. Abuse of discretion may occur through an honest, but erroneous use of discretion. A new trial may not be

¹ We note that within its next issue on appeal, Harleysville challenges the trial court's determination of ambiguity. For the reasons set forth ***infra***, we affirm that determination.

granted merely because the evidence conflicts and the jury could have decided for either party. The grant of a new trial is appropriate, however, where the jury verdict may have been based on improperly admitted evidence.

Whyte v. Robinson, 617 A.2d 380, 382 (Pa. Super. 1992) (citations omitted).

Within this matter Harleysville moved for a new trial arguing that the trial court erroneously determined that the preclosing conditions precedent within the Revised Term Sheet are ambiguous, and on that basis improperly admitted parol evidence regarding industry custom and practice, course of dealing between the parties, and evidence of Harleysville's motives within the transaction. **See** Harleysville's Brief at 49-53. With regard to findings of ambiguity and the admission of parol evidence, our Supreme Court has explained:

[i]n cases of a written contract, the intent of the parties is the writing itself. If left undefined, the words of a contract are to be given their ordinary meaning. **Pines Plaza Bowling, Inc. v. Rossvie, Inc.**, 145 A.2d 672 (Pa. 1958). When the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the document itself. **Hutchison v. Sunbeam Coal Corp.**, 519 A.2d 385, 390 (Pa. 1986). When, however, an ambiguity exists, parol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances. **Steuart v. McChesney**, 444 A.2d 659, 663 (Pa. 1982); **Herr's Estate**, 161 A.2d 32, 34 (Pa. 1960). A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense. **Hutchison**, 519 A.2d at 390. While unambiguous contracts are interpreted by the court as a matter of law, ambiguous writings are interpreted by the finder of fact. **Community College v. Society of the Faculty**, 375 A.2d 1267, 1275 (Pa. 1977).

Kripp v. Kripp, 849 A.2d 1159, 1163 (Pa. 2004) (parallel citations omitted).

Harleysville's parol evidence argument challenges the trial court's determination that the preclosing conditions precedent within the Revised Term Sheet are ambiguous. **See** Harleysville's Brief at 49-53. In support thereof, Harleysville argues that by referring to the conditions precedent as "boilerplate" conditions within many commercial loan transactions, the trial court conceded that the conditions are well-defined and uniformly construed. **See id.** at 49-50. Furthermore, Harleysville cites to Pennsylvania precedent holding that the phrase "satisfactory review and approval," which is found within the conditions within the Revised Term Sheet, has a specific, unambiguous, and well-defined legal meaning. **Id.** at 50. Accordingly, Harleysville argues that the conditions precedent are not ambiguous, and that any parol evidence regarding interpretation of those conditions, particularly evidence of industry custom and practice, was improperly admitted. **See id.** at 49-51.

We disagree. Indeed, while the trial court in fact referenced the preclosing conditions as "boilerplate," we disagree with Harleysville's presumption that boilerplate clauses, simply by their frequent use, are by their nature free of ambiguity. Merely because a phrase is popular does not necessarily mean that it is not subject to more than one interpretation. Moreover, while we agree with Harleysville that the phrase "satisfactory review and approval" has a well-defined legal meaning within Pennsylvania precedent, that phrase is not the portion of the preclosing conditions that

the trial court held to be ambiguous and therefore subject to parol evidence.

Rather, as the trial court explained:

[t]he first condition precedent required “[s]atisfactory review and approval by [Harleysville] or third party acceptable to [Harleysville] of an environmental assessment to be ordered on the seven (7) parcels of land comprised of 18.75 +/- acres and located at the northwest corner of County Line Road and Butler Ave[.] (PA Route 202), New Britain Township, Bucks County, PA.” The third condition precedent required “[s]atisfactory review and approval by [Harleysville] or third party acceptable to [Harleysville] of all spec, costs, engineer reports, government approvals and other items related to the acquisition, development and construction of the commercial/retail buildings.” These boilerplate conditions, found in many commercial loan transactions, do not specify what type of approvals, permits, reports, or assessments were required to fulfill each condition precedent. Given the generic, unspecified language used in both the first and [third] conditions precedent, these requirements were “reasonably susceptible of different constructions and capable of being understood in more than one sense.”

Trial Court Opinion, 8/10/2012, at 21 (footnotes with citations to record and authority omitted).

Considering the trial court’s reasonable analysis, we find no error in its determination that the first and third preclosing conditions set forth within the Revised Term Sheet are subject to multiple interpretations and are therefore ambiguous. Furthermore, having found that the preclosing conditions were ambiguous, we find no error in the trial court’s admission of parol evidence regarding industry custom and practice to resolve that ambiguity. Harleysville’s first challenge to the trial court’s denial of its motion for a new trial is without merit.

Harleysville's next challenge to the denial of its motion for a new trial argues that the trial court erred in admitting evidence of Harleysville's alleged motives for its refusal to close on the loan. **See** Harleysville's Brief at 53-56.

"The admission or exclusion of evidence is within the sound discretion of the trial court, and in reviewing a challenge to the admissibility of evidence, we will only reverse a ruling by the trial court upon a showing that it abused its discretion or committed an error of law." **B.K. v. J.K.**, 823 A.2d 987, 991-992 (Pa. Super. 2003). "Thus our standard of review is very narrow.... To constitute reversible error, an evidentiary ruling must not only be erroneous, but also harmful or prejudicial to the complaining party." **Hawkey v. Peirsel**, 869 A.2d 983, 989 (Pa. Super. 2005) (citing **Turney Media Fuel, Inc. v. Toll Bros.**, 725 A.2d 836, 839 (Pa. Super. 1999)).

McManamon v. Washko, 906 A.2d 1259, 1268-1269 (Pa. Super. 2006).

According to Harleysville, the trial court abused its discretion when it admitted evidence regarding Harleysville's alleged motives for rejecting County Line's performance of the preclosing conditions. **See** Harleysville's Brief at 53-56. According to Harleysville, its motives are irrelevant to this case. **See id.** at 55. Rather, Harleysville argues that the only relevant issue is whether or not it was subjectively satisfied. **See id.** Harleysville asserts that any evidence regarding the nature of its motives or the sincerity of its dissatisfaction was irrelevant and prejudicial, such that it is entitled to a new trial. **See id.** at 56.

Harleysville's argument, however, overlooks the fact that the jury was entitled to determine if Harleysville's rejection of County Line's performance

of the preclosing conditions was done in bad faith, and that evidence of motive within that rejection is relevant to the question of bad faith. Indeed, as the trial court explained:

[a]s previously discussed...where a contract provides for performance by one party to the satisfaction of the other, the test of adequate performance is not whether the person for whom the service was rendered ought to be satisfied, but whether he is, in fact, satisfied. However, any dissatisfaction on the part of the party requiring satisfaction "must be genuine and not prompted by caprice or bad faith." [The trial] court found there was sufficient evidence to support the jury's finding that [County Line] in fact fulfilled the conditions precedent to the loan and that [Harleysville's] alleged dissatisfaction was not genuine and in bad faith. The evidence regarding [Harleysville's] reasons for failing to close the loan, i.e. [Harleysville's] under-capitalization requirements coming to light after offering the loan, the bankruptcy of an important client, and reviews with the OCC, was relevant to [Harleysville's] alleged dissatisfaction and, therefore, properly admitted at trial.

Trial Court Opinion, 8/10/2012, at 23 (footnotes to citations to the record and authority omitted). We agree with the trial court's reasoning and find no abuse of discretion with the trial court's admission of evidence regarding Harleysville's motives to avoid closing on the loan. Harleysville's second basis to challenge the trial court's denial of its motion for a new trial is without merit.

Harleysville's final basis to challenge the trial court's denial of its motion for a new trial argues that the trial court erred when its excluded evidence that supported Harleysville's claim that it was legitimately dissatisfied with County Line's performance of the preclosing conditions. **See** Harleysville's Brief at 57-62. Specifically, Harleysville argues that it

should have been permitted to present the expert testimony of highway engineer and former PennDOT District Permit Engineer, Harold Newton, Jr., and should have been permitted to admit a September 25, 2009 PennDOT letter rejecting County Line's reapplication for an HOP. **See id.** at 57. This evidence, Harleysville argues, was relevant to establishing

the import of the information [Harleysville] had – or did not have – as of June 30, 2009, such as the likelihood that County Line's then pending second application for an HOP would succeed and the significance (or lack thereof) of the "assurance letter" from PennDOT which County Line had submitted to [Harleysville] in lieu of an HOP, and to explain the process and timing for obtaining an HOP.

Id.

We begin with our consideration of the trial court's treatment of the September 25, 2009 PennDOT letter. While we agree with Harleysville that evidence regarding its legitimate dissatisfaction with County Line's performance of the preclosing conditions was relevant, we also agree with the trial court's reasoning that the September 25, 2009 letter was not relevant to that issue because the letter was not issued until three months **after** Harleysville rejected County Line's performance of the conditions. As the trial court ably explained:

[the trial court] properly excluded the admission of a September 25, 2009 Letter from PennDOT at trial as irrelevant because the evidence was only available three (3) months after the closing date of the loan and was not available at the time [Harleysville] was deciding whether to proceed with closing. The threshold consideration in determining the admissibility of evidence at trial is relevance. "Relevant evidence" is any evidence that has a

tendency to make the existence of any fact in issue more or less probable.

In this breach of contract action, the central issue to be decided by the jury was whether there was a binding and enforceable contract between the parties that was breached by [Harleysville] not closing on the loan by the end of June 30, 2009, the date on which [County Line's] land sale agreements expired. [Harleysville] contends that given the information it had at that time, it was genuinely dissatisfied with [County Line's] performance of the first and third conditions precedent to the agreement and, therefore, its actions in not closing the loan were not a breach of contract. Any information available to [Harleysville], and used by [Harleysville] in determining whether to go forward with closing the loan, prior to June 30, 2009 was certainly relevant and admissible at trial to determine the issue of dissatisfaction and of breach in this case. The September 25, 2009 letter from PennDOT, however, decidedly does not fall into this category of admissible evidence. The contents of this letter did not exist until three (3) months after [Harleysville] decided to not go forward with closing and, therefore, could not have played any role in [Harleysville's] decision prior to June 30, 2009. As such, this evidence had no relevance to the central issues of liability in this case and was properly excluded at trial.

Moreover, [Harleysville] was afforded ample opportunity to use the existence of the September 25, 2009 PennDOT letter to attack the credibility of [County Line's] damage evidence. [Harleysville] was permitted to address the issue with its expert, John Rush, as well as during its closing to attack the credibility of [County Line's] damages expert, Reaves Lukens. Therefore, there was no error in limiting the admission of the September 25, 2009 PennDOT letter at trial.

Trial Court Opinion, 8/10/2012, 21-22. Based upon the above thorough reasoning, we find no abuse of discretion in the trial court's limitation of Harleysville's use of the September 25, 2009 PennDOT letter.

We next address Harleysville's appeal of the trial court's exclusion of testimony from its highway engineering expert, Mr. Newton. As with the admission of documentary evidence, the admission and/or exclusion of

expert testimony is left to the sound discretion of the trial court and may only be reversed upon a showing of an abuse of discretion. **McClain ex rel Thomas v. Welker**, 761 A.2d 155, 156 (Pa. Super. 2000). Furthermore,

[t]he test to be applied when qualifying an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.

Miller v. Brass Rail Tavern, Inc., 664 A.2d 525, 528 (Pa. Super. 1995).

As set forth above, Harleysville sought to present the testimony of Mr. Newton to assist “the jury in understanding the evidence about what [Harleysville] knew, or could have known, through consultation with a traffic engineer consultant as of June 30, 2009 about the status of County Line’s application for an HOP.” Harleysville’s Brief at 57. The trial court, however, excluded Newton’s testimony, holding that it lacked the predicate factual basis because Harleysville did not present testimony that it, in fact, consulted a traffic engineer as of June 30, 2009. **See** Trial Court Opinion, 8/10/2012, at 24-25.

On appeal, Harleysville emphasizes that it presented evidence that it, at least, retained a traffic engineer consultant, forwarded that consultant relevant documents, and was concerned about the missing HOP. **See** Harleysville’s Brief at 58. Such facts, Harleysville argues, provided the basis for Newton’s expert opinion, which should have been admitted. **See id.**

Within its Rule 1925(a) opinion, the trial court reasoned that while Harleysville presented evidence that it had retained a traffic engineer

consultant, it presented no evidence that the consultant's opinions played any role, particularly as of June 30, 2009, in Harleysville's decision not to issue the loan. **Id.** Consequently, the trial court believes that it properly excluded Newton's testimony as lacking a factual foundation. **Id.**

We find no abuse of discretion in the trial court's reasoning. Indeed, we agree with the trial court that what Harleysville **could have known** is far different from what it **did know** at the time that it decided not to issue the loan. Consideration of Harleysville's decision not to issue County Line the loan may not be justified by hindsight reflections, but is limited to the parties' knowledge at the time of the breach. Harleysville presents no evidence that the information within Newton's proffered testimony was known to it at the time of the breach. Newtown's proposed testimony was therefore properly excluded at trial. Harleysville's motion for a new trial is without merit.

Harleysville's final issue on appeal seeks a remittitur of the jury's award of \$3,600,000.00 damages in favor County Line, to nominal damages of \$1.00 in favor of County Line. **See** Harleysville's Brief at 62-68. Within ***Delahanty v. First Pennsylvania Bank, N.A.***, 464 A.2d 1243 (Pa. Super. 1983), our Court addressed motions for remittitur, explaining that:

[t]he determination of damages is a factual question to be decided by the fact-finder. This duty of assessing damages is within the province of the fact-finder and should not be interfered with unless it clearly appears that the amount awarded resulted from partiality, caprice, prejudice, corruption or some other improper influence. The fact-finder must assess the worth of the testimony, by weighing the evidence and

determining its credibility, and by accepting or rejecting the estimates of the damages given by the witnesses. In reviewing the award of damages, the appellate courts should give deference to the decisions of the trier of fact who is usually in a superior position to appraise and weigh the evidence.

The standard in Pennsylvania civil cases for determining future damages is that the plaintiff bears the burden of proof by a "preponderance of the evidence." Under this criterion, the plaintiff is required to furnish only a reasonable quantity of information from which the fact-finder may fairly estimate the amount of damages. Though justice and public policy require that the wrongdoer bear the risk of uncertainty which his own wrong has created and which prevents the precise computation of damages, the fact-finder still may not render a verdict based on speculation or guesswork. Yet, the fact-finder may make a just and reasonable estimate of the damage based on relevant data, and in such circumstances may act on probable and inferential, as well as upon direct and positive[,] proof. Thus, the law does not demand that the estimation of damages be completely free of all elements of speculation. While the trier of fact may not use sheer conjecture as a basis for arriving at a verdict, it may use a measure of speculation in aiming at a verdict or an award of damages, and an even greater degree of flexibility is granted in regard to testimony concerning prospective or future damages, which are at best, not always easy or certain of ascertainment and are to a large extent based on probabilities and uncertainties. So then, mere uncertainty as to the amount of damages will not bar recovery where it is clear that the damages were the certain result of the defendant's conduct.

Id. at 1257-1258 (citations omitted).

Harleysville's appeal of the amount of the jury's award challenges the basis upon which the jury awarded County Line expectation damages in the form of lost profits. **See** Harleysville's Brief at 63. According to Harleysville, County Line's evidence of damages does not substantiate their dollar amount claim with any reasonable certainty. **See *id.*** Harleysville argues that there

are too many “unknown factors,” “too many uncertainties, to make recovery of lost profits from completion of County Line’s proposed Project anything but speculative.” ***Id.*** at 65. Emphasizing a litany of uncertainties, Harleysville argues that the jury’s award was wholly unreasonable or speculative, and should be reduced to \$1.00. ***See id.*** 68.

Harleysville’s argument, however, challenges the credibility of the evidence with regard to damages, not its existence. Indeed, Harleysville does not deny that County Line presented evidence that it had obtained three long-term leases from well-established retailers for the project. Additionally, County Line’s expert, a real estate valuator and appraiser, testified, with reasonable certainty, to a range of profits County Line could have expected to earn from the project, including an overall estimate of \$6,590,798.00 in lost profits. The jury’s verdict of \$3,600,000.00, was therefore supported by the evidence presented at trial. Acceptance of the credibility of the evidence presented at trial was within the discretion of the jury and will not be disturbed on appeal. Harleysville’s appeal of the trial court’s denial of its motion for remittitur lacks merit.

Finally, we address County Line’s cross-appeal, wherein County Line appeals the trial court’s denial of its motion to mold the jury’s verdict to

include prejudgment interest. **See** County Line’s Brief at 43-47.² “Our review of an award of pre-judgment interest is for abuse of discretion.” **Cresci Const. Services, Inc. v. Martin**, 64 A.3d 254, 258 (Pa. Super. 2013), quoting **Kaiser v. Old Republic Ins. Co.**, 741 A.2d 748, 755 (Pa. Super. 1999) (citation omitted).

Pursuant to Pennsylvania law, prejudgment interest is a recognized form of damages in breach of contract actions. **See id.** at 260. Where the contract at issue sets forth a liquidated sum, prejudgment interest is awarded as a matter of right. **See id.** Where, however, the breach of contract damages are unliquidated, an award of prejudgment interest is left to the discretion of the trial court, in light of all the circumstances. **See id.** at 264; **Frank B. Bozzo, Inc. v. Electric Weld Div. of Fort Pitt Div. of Spang Indus., Inc.**, 498 A.2d 895, 901 (Pa. Super. 1985). Within the exercise of such discretion, trial courts are guided by the premise for

² Initially, we note that Harleysville opposes County Line’s cross-appeal, arguing that County Line’s motion to mold the verdict was untimely filed. **See** Harleysville’s Reply Brief at 6 & 43-45. While we agree that County Line’s motion for post-trial relief was untimely, we note that Pennsylvania courts have consistently held that trial court judges have wide latitude in considering whether to address the merits of post-trial motions that are filed outside the 10-day period required by Rule 227.1. **See e.g. Kurtas v. Kurtas**, 555 A.2d 804, 806 (Pa. 1989) (holding that trial courts have the discretion to entertain untimely motions for post-trial relief because the 10-day time period under Rule 227.1 is not a jurisdictional requirement, but merely a procedural rule). Within this matter, the trial court chose to disregard the untimely nature of County Line’s post-trial motion, and addressed the merits raised therein. We therefore do the same.

awarding prejudgment interest in breach of contract actions, which relies upon “the fact that the breaching party has deprived the injured party of using interest accrued on money which was rightfully due and owing to the injured party.” ***Somerset Community Hospital v. Allen B. Mitchell & Assocs., Inc.***, 685 A.2d 141, 148 (Pa. Super. 1996).

Within this matter, County Line acknowledges that the breach of contract damages the jury awarded to it are unliquidated, and therefore any award of prejudgment interest is left to the discretion of the trial court. **See** County Line’s Brief at 43. County Line nevertheless argues that the trial court abused that discretion in denying its motion for prejudgment interest. **See id.** at 43-47. According to County Line, equitable considerations - including the fact that it diligently prosecuted the case, that Harleysville was able to keep the loan proceeds that it promised to County Line, and that, as a result of Harleysville’s breach, County Line was deprived of lost profits - favor an award of prejudgment interest. **See id.** at 44. Accordingly, County Line believes that the trial court abused its discretion in denying its motion to mold the verdict. **See id.** at 46.

Within its Rule 1925(a) opinion, however, the trial court explained that it was

[w]ell within its discretion in denying [County Line’s] request for prejudgment interest. The measure of [County Line’s] damages in this case was their estimated lost profits from [Harleysville’s] failure to close on the loan. As [County Line’s] lost profits resulting from [Harleysville’s] failure to close on the loan were neither liquidated nor certain, [County Line] was not entitled to

prejudgment interest as of right. Acting within its discretion, [the trial court] determined that there could be no unjust enrichment to [Harleysville] as a result of its failure to close on the loan because [Harleysville] did not, and could not have, deprive[d] [County Line] from "using interest accrued on [the loan amount] which was rightfully due and owing to [County Line]." In fact, had [Harleysville] closed on the loan, [County Line] would have immediately begun to owe interest to [Harleysville]. Thus [the trial court] properly denied [County Line's] request for prejudgment interest.

Trial Court Opinion, 8/10/2012, at 29-30 (footnotes with citations to authority omitted).

Based upon the above, we find no abuse of discretion within the trial court's analysis. The trial court properly exercised its discretion, and determined that the equities did not call for such an award in this matter. County Line points to no miscarriage of justice (*i.e.* abuse of discretion) within the trial court's analysis and holding. Therefore, County Line's appeal of the trial court's denial of its motion to mold the verdict is without merit.

Judgment affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Sambitt", written over a horizontal line.

Prothonotary

Date: 8/16/2013

