NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ANTHONY BELSER	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
AMAZON.COM.DEDC LLC. AND WILLIAM D. STAFFIERI	:	
APPEAL OF: AMAZON.COM.DEDC LLC.	:	No. 2131 EDA 2018

Appeal from the Judgment Entered June 27, 2018
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): October Term, 2016 No. 2834

BEFORE: BENDER, P.J.E., GANTMAN, P.J.E., and COLINS*, J.

MEMORANDUM BY GANTMAN, P.J.E.: **FILED AUGUST 19, 2019**

Appellant, Amazon.Com.DEDC LLC, appeals from the judgment entered in the Philadelphia County Court of Common Pleas, in favor of Appellee, Anthony Belser, in this premises liability action against Appellant and William D. Staffieri.[1] We affirm.

In its opinion, the trial court sets forth the relevant facts and procedural history of this case. Therefore, we have no need to restate them. We add that, during trial, the court heard testimony from, *inter alia*: Appellee; William Lewis, the operations manager of the sortation facility on the day of the incident; Edward Price, an employee of a third-party delivery service working in the facility on the day of the incident; and Michael Goldberg, a certified

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[1] Mr. Staffieri is not a party to this appeal.

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* Retired Senior Judge assigned to the Superior Court.

industrial hygienist. Additionally, Mr. Staffieri made an oral motion for compulsory non-suit during trial on March 2, 2018; the court granted Mr. Staffieri's motion that same day.

Appellant raises two issues for our review:

> [APPELLEE]'S INITIAL THEORY AT TRIAL WAS THAT HE TRIPPED OVER A CONVEYOR POWER CORD THAT [APPELLANT] HAD PLUGGED INTO AN OUTLET ON A NEARBY PILLAR. WHEN [APPELLEE] REALIZED THAT THIS THEORY WAS IMPOSSIBLE BECAUSE THE PLUGS AND OUTLETS ARE INCOMPATIBLE, HE CHANGED HIS THEORY TO TRIPPING OVER A CORD PRESENT IN AN AISLE—AN AISLE WHERE HE HAD PREVIOUSLY WALKED ABOUT ONE HUNDRED TIMES THAT MORNING BUT OFFERED NO EVIDENCE THAT [APPELLANT] HAD NOTICE OF SUCH A CORD. THE FIRST QUESTION ON APPEAL IS WHETHER THE TRIAL COURT ERRED IN DENYING [APPELLANT] JUDGMENT NOTWITHSTANDING THE VERDICT BECAUSE NO REASONABLE JURY COULD FIND THAT [APPELLANT] CREATED A HAZARDOUS CONDITION BY PLUGGING A CONVEYOR CORD INTO A PILLAR OUTLET, AND [APPELLEE] PRESENTED NO EVIDENCE THAT [APPELLANT] HAD NOTICE OF ANY CORD IN THE AISLE[?]
>
> [APPELLANT]'S POST-TRIAL MOTION AND BRIEF SOUGHT JUDGMENT NOTWITHSTANDING THE VERDICT BASED ON [APPELLEE]'S FAILURE TO OFFER PROOF THAT [APPELLANT] HAD NOTICE OF THE HAZARDOUS CONDITION THAT HE CLAIMED CAUSED INJURY. NOTWITHSTANDING THESE ARGUMENTS, THE TRIAL COURT RULED THAT [APPELLANT] WAIVED THE NOTICE ISSUE. THE SECOND QUESTION ON APPEAL IS WHETHER THE TRIAL COURT ERRED IN HOLDING THAT [APPELLANT] WAIVED THE ISSUE WHETHER [APPELLEE] PROVED THAT [APPELLANT] HAD NOTICE OF A HAZARDOUS CONDITION THAT CAUSED HIM INJURY[?]

(Appellant's Brief at 4).

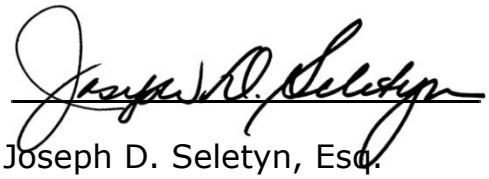
After a thorough review of the record, the briefs of the parties, the

applicable law, and the well-reasoned opinion of the Honorable Marlene Lachman, we conclude Appellant's issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (***See*** Trial Court Opinion, filed December 7, 2018) (finding: **(1)** jury had right to believe Appellee and disbelieve Appellant's evidence; Appellee testified he tripped over cord on floor; Appellee did not testify cord was plugged into outlet on nearby pillar; testimony of Appellant's witnesses that it would have been impossible to plug cord into outlet on pillar does not contradict Appellee's testimony; jury was not left to speculate on which cord Appellee tripped over, because Appellee identified "subject cord" as one attached to conveyor belt in photograph marked "Plaintiff's Ex. 8"; jury determined Appellee tripped over "subject cord" and not phantom "other cord"; to extent Appellant asserts opinion of Appellee's expert Michael Goldberg disagreed with Appellee or was factually incorrect, jury was free to believe Appellee and disbelieve Mr. Goldberg; jury did not require expert testimony to determine whether leaving cord on heavily trafficked part of floor constituted negligence on Appellant's behalf; Appellee's testimony alone was sufficient to support jury's verdict; to extent Appellant argues it is entitled to judgment notwithstanding verdict ("JNOV"), because trial court should have stricken Mr. Goldberg's opinion testimony as lacking factual basis, Appellant raised claim for first time in post-verdict brief in support of JNOV motion; Appellant did not assert in post-verdict motion it was entitled to JNOV because

court should have stricken Mr. Goldberg's testimony or because court should have granted Appellant non-suit; therefore, those claims are waived; **(2)** in its post-verdict motion for JNOV, Appellant raised issue of whether Appellee had proven Appellant had notice only as to "other cord," not as to "subject cord" over which Appellee alleged he tripped; for first time in its Rule 1925(b) statement, Appellant extends notice argument to actual or "subject cord" over which Appellee tripped; therefore, Appellant's claims regarding notice of actual or "subject cord" are waived). The record supports the trial court's rationale. Accordingly, we affirm based on the trial court opinion.

Judgment affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/19/19

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ANTHONY BELSER	:	**OCTOBER TERM, 2016**
	:	
v.	:	**No. 2834**
	:	
AMAZON.COM.DEDC LLC	:	**Control No. 18032441**
and	:	
WILLIAM D. STAFFIERI	:	

OPINION PER Pa.R.A.P. 1925(b)

Lachman, J. **December 7, 2018**

I. Introduction, Factual Background, and Procedural History

Defendant/Appellant Amazon.com.dedc, LLC ("Amazon") asserts that the trial court erred in failing to grant Amazon's post-trial motion for a judgment notwithstanding the verdict ("JNOV"), because Plaintiff/Appellee Anthony Belser's ("Mr. Belser") theory of the case "was contradicted by undisputed evidence." Post-Trial Motion ¶ 3. The Superior Court should affirm the entry of judgment in favor of Mr. Belser because "[a] jury is entitled to believe all, part or none of the evidence presented.... A jury can believe any part of a witness' testimony that they choose, and may disregard any portion of the testimony that they disbelieve." ***Estate of Hicks v. Dana Companies., LLC,*** 984 A.2d 943, 961 (Pa. Super. 2009), *quoting* ***Martin v. Evans,*** 551 Pa. 496, 505, 711 A.2d 458, 463 (1998). Mr. Belser presented sufficient evidence that was believed by the jury to establish that he tripped on a cord that Amazon negligently permitted to be on the floor.

Mr. Belser was a delivery associate employed by Mutschler Logistics, a company which had been hired by Amazon. Amazon conceded that Mr. Belser was a business

invitee at the Amazon facility at all times relevant to this litigation. Amazon's Post-Trial Brief at p. 29.

On June 6, 2016, while at work in the Amazon facility in the aisle near the conveyor, Mr. Belser tripped over a cord in the aisle which should not have been there. Mr. Belser testified that he was carrying packages in between two "baker's racks" and tripped when his feet became entangled in a cord on the floor. NT 3/1/18 pp. 76, 126, 145. "The cord was what caused me to go down. I was entangled in the cord." Id. p. 77.

He said it was connected to the conveyor belt at one end and then went across the aisle and under some racks. NT 3/1/18 p. 145. He did not know what the other end of the cord was connected to and never examined it. Id. pp. 145-146.

It was a black cord and was dirty. NT 3/1/18 p. 147. It was not taped down and was able to move freely. Id. Mr. Belser did not see the cord before he fell and had walked in that area numerous times and had not seen the cord. Id. p. 76. He identified the cord he fell over in the photograph marked Plaintiff's Exhibit 8. Id. pp. 77-78, 159, 147. The parties post-trial submissions referred to the cord Plaintiff testified he tripped on, as "the subject cord."

Amazon presented witnesses that disputed Mr. Belser's version of events. For example, they claimed that the cords for the machines came down from the ceiling and were not on the floor, and that the socket could not accommodate the plug for the cord he said he tripped over.

After hearing four days of testimony, the jury credited Mr. Belser's evidence and his version of how the accident occurred. The jury found Amazon negligent and awarded Mr. Belser $180,965.18 in damages.

Amazon filed a timely post-trial motion seeking a JNOV,[1] and Mr. Belser filed a timely motion for Pa.R.C.P. 238 damages for delay. On June 27, 2018, the court denied

[1] Amazon's post-trial motion stated, in part:

> 2. Judgment n.o.v. is required because the jury's verdict was not supported by sufficient evidence for the following reasons:
>
> a. Plaintiff failed to adduce sufficient evidence to establish a prima facie case of negligence against Amazon;
>
> b. Plaintiff failed to adduce sufficient evidence to demonstrate that Amazon's alleged negligence was a legal cause of Plaintiff's harm;
>
> c. Since the jury's verdict was not supported by sufficient evidence, no two reasonable persons could disagree that a verdict should have been rendered for Amazon.
>
> 3. Judgment n.o.v. is required because Plaintiff failed to adduce sufficient evidence, or indeed any evidence, that Amazon was negligent or otherwise did anything wrong. Rather, Plaintiff merely established, at best, an accident and an injury, which is insufficient to justify a finding of negligence. To the extent that Plaintiff even proffered a discernible theory of negligence, that theory was contradicted by undisputed evidence. In particular, Plaintiff's industrial hygiene expert, Michael Goldberg, CIH, theorized that Plaintiff tripped over an electrical cord that was being used to power a conveyor and was plugged into an outlet on a nearby pillar. However, the undisputed evidence established that the pillar contained only a standard 110-volt outlet. It was further undisputed that the connector on the end of the cord allegedly connecting the conveyor to the pillar would not fit into the pillar's standard 110-volt outlet. Thus, Plaintiff's theory of liability was refuted by undisputed evidence. For this reason, Amazon moved to strike Mr. Goldberg's testimony and further moved for a nonsuit, which was denied. Moreover, *because the subject cord could not have been used as theorized by Plaintiff and Mr. Goldberg, the jury must have speculated that Plaintiff tripped over some other cord, despite the complete absence of any evidence establishing the existence of such other cord, how it got there, how long it had been there, or that Amazon knew or should have known of it.* Because Plaintiff failed to establish that Amazon was negligent, and because undisputed evidence refuted Plaintiff's theory of liability, no two reasonable minds could disagree that the verdict should have been

Amazon's motion and awarded Mr. Belser delay damages in the amount of $3,236.31. Judgment was entered on the molded total verdict of $184,201.49 that same day.

Amazon filed a timely notice of appeal on July 17, 2018. Amazon filed a timely Pa.R.A.P. 1925(b) Concise Statement on August 6, 2018, after being ordered by the court to file such a Statement. The Statement states in relevant part:

> 3. Because the Court provided no rationale for its June 27, 2018 Order that denied Amazon's Motion for Judgment N.O.V. (non obstante veredicto), the rationale is not apparent from the record, and Amazon may only speculate as to the Court's rationale, Amazon asserts that:
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> a.) the Court abused its discretion and committed an error of law when it denied Amazon's Motion for Judgment N.O.V.;
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> b.) the Court erred when it denied Amazon's Motion for Judgment N.O.V., as, in reviewing the trial record, even with all factual inferences decided adverse to Amazon, the law nonetheless required a verdict in Amazon's favor; and/or,
>
> c.) the Court erred when it denied Amazon's Motion for Judgment N.O.V., in that the evidence at trial was such that a verdict for Amazon was beyond peradventure.
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> 4. The Court also erred when, through its June 27, 2018 Order, it failed to grant Amazon's Motion for Judgment N.O.V. and failed to conclude that Amazon was entitled to judgment as a matter of law, as:
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> a.) Belser's trial theory of negligence was demonstrably impossible and no reasonable jury could have adopted Belser's trial theory that the alleged conveyor cord that he allegedly tripped over was plugged into a pillar outlet at the Amazon facility because the alleged cord was physically incompatible with the pillar outlets and the amperage or current at the pillars could not run the conveyors;

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rendered for Amazon. Because the jury found for Plaintiff, judgment n.o.v. is required. [Emphasis added.]

The post-trial motion also asked the court "to allow an additional thirty (30) days upon receipt of the complete and official trial transcript to review the transcript and supplement the foregoing reasons for post-trial relief." Amazon never supplemented its port-trial motion.

b.) none of Belser's witnesses, including his expert, disputed any of the foregoing, and Belser's expert's testimony was premised on the foregoing, factually unsupported and impossible theory – consequently, it should have been stricken, which would have left Belser with literally no evidence that Amazon breached any duty;

c.) the only explanation for the jury's verdict is that it believed Belser tripped over something, but that is not legally sufficient for a finding of negligence because Amazon could not be strictly liable under Pennsylvania law for falls within its facilities -- *the jury plainly speculated that Belser tripped over some unknown cord or object, and Belser presented no evidence from which a reasonable jury could find that Amazon had notice or constructive notice of that phantom hazard such that failing to address it breached a duty,* resulting in a verdict that had no basis in fact, and that essentially held Amazon strictly liable for Belser's alleged fall, which the law does not permit;

d.) Belser failed to establish negligence because he presented no competent evidence on *what he actually tripped over (if he did), how it got there, how long it was there, and, most importantly, how Amazon could have reasonably been on notice of that unidentified hazard such that failing to correct it breached a duty;*

e.) The Court erred when it failed to grant Amazon's motion for judgment n.o.v. and failed to conclude that Amazon was entitled to judgment as a matter of law, as Belser not only provided an impossible theory, but the trial record shows that he gave several contradictory versions of his fall, which contradictions rendered his testimony regarding the cause of the accident inherently unreliable, and required the jury to speculate how his alleged injury occurred; and

f.) the evidence at trial did not satisfy Belser's burden to prove that, on the day in question, June 6, 2016, Amazon created the condition that caused his or her fall, *or that Amazon should have noticed and rectified that condition before his fall.* [Emphasis added.]

Amazon's 1925(b) Statement impermissibly adds issues which were not contained in Amazon's post-trial motion. The issues of actual or constructive notice alleged in paragraphs 4(d) and (f) of the 1925(b) Statement were not included in Amazon's post-trial motion. Those issues are waived.

The only issue regarding notice raised in Amazon's post-trial motion was about a phantom or supposed "other cord" invented by Amazon's counsel, and did not relate to the "subject cord" Plaintiff actually tripped over:

> Moreover, because the ***subject cord*** could not have been used as theorized by Plaintiff and Mr. Goldberg, the jury must have speculated that Plaintiff tripped over ***some other cord***, despite the complete absence of any evidence establishing the existence ***of such other cord, how it*** got there, ***how long it*** had been there, *or that Amazon knew or should have known of* ***it.*** [Post-Trial Motion ¶ 3, emphasis added.]

Paragraph 4(c) of the 1925(b) Statement preserves that argument: "Belser presented no evidence from which a reasonable jury could find that Amazon had notice or constructive notice of that ***phantom hazard***." (Emphasis added.)

In paragraph 3 of the post-trial motion and in paragraph 4(c) of the 1925(b) Statement, Amazon's *only* argument was that it did not have notice of the "other cord" or of the "phantom hazard" its counsel had invented. Those paragraphs did *not* argue that Amazon lacked notice of the "subject cord" – which was the cord that Plaintiff testified he tripped on and identified in the photograph marked Plaintiff's Exhibit 8. NT 3/1/18 pp. 77-78, 159, 147.

Paragraphs 4(d) and (f) of the 1925(b) Statement, however, extend the notice argument to the actual or "subject cord" over which Mr. Belser tripped. Those assertions are waived because Amazon's post-trial motion never stated that Amazon lacked notice of the "subject cord."[2]

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[2] Amazon did not dispute that the cord shown in Plaintiff's Exhibit 8 was a cord owned or used by Amazon as part of its warehouse operations. It has long been the law in this Commonwealth that "where one creates a dangerous condition by his own antecedent active conduct, it is unnecessary to prove that he had notice of such

"[O]nly claims properly presented before the trial court are preserved for appeal. ... 'A theory of error different from that presented to the trial jurist is waived on appeal, even if both theories support the same basic allegation of error which gives rise to the claim for relief.'" ***Tong-Summerford v Abington Mem. Hosp.,*** 190 A.3d 631, 649 (Pa. Super. 2018), *quoting* ***Commonwealth v. Ryan***, 909 A.2d 839, 845 (Pa. Super. 2006) (citation omitted). See also, ***Phillips v. Lock***, 2014 PA Super 38, 86 A.3d 906, 921 (Pa. Super. 2014) (arguments not raised in a post-trial motion are waived on appeal).

> "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). Raising the issue in her 1925(b) statement does not cure that defect. "A party cannot rectify the failure to preserve an issue by proffering it in response to a Rule 1925(b) order. A Rule 1925(b) statement of matters complained of on appeal is not a vehicle in which issues not previously asserted may be raised for the first time."

Hinkal v. Pardoe, 133 A.3d 738, 746 (Pa. Super. 2016) (*en banc*) (case citation omitted).

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condition." ***Finney v. G. C. Murphy Co.,*** 406 Pa. 555, 561, 178 A.2d 719, 722 (1962). "Pennsylvania courts have uniformly held that if the harmful transitory condition is traceable to the possessor or his agent's acts, (that is, a condition created by the possessor or those under his authority), then the plaintiff need not prove any notice in order to hold the possessor accountable for the resulting harm." ***Moultrey v. Great A & P Tea Co.,*** 281 Pa. Super. 525, 530, 422 A.2d 593, 596 (1980).

Thus, when plaintiffs seek "to recover damages for personal injuries caused by [the] negligence [of the defendant itself] in creating and maintaining a dangerous condition, they are not required to prove the exact manner in which the condition developed; nor is it necessary to prove notice where the condition has been created by defendant's own antecedent active conduct." ***Penn v. Isaly Dairy Co.,*** 413 Pa. 548, 551, 198 A.2d 322, 324 (1964).

II. Discussion

A. Standard and Scope of Review

"The entry of judgment notwithstanding the verdict ... is a drastic remedy. A court cannot lightly ignore the findings of a duly selected jury." ***Burton-Lister v. Siegel, Sivitz and Lebed Associates***, 798 A.2d 231, 236 (Pa. Super. 2002).

> The propriety of a JNOV is a question of law, and therefore, our scope of review is plenary. When the denial of JNOV is challenged on the basis that the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant, as here, this Court reviews the evidentiary record and must conclude "that the evidence was such that a verdict for the movant was beyond peradventure." Moreover,
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> > In reviewing a trial court's decision whether or not to grant judgment in favor of one of the parties, we must consider the evidence, together with all favorable inferences drawn therefrom, in a light most favorable to the verdict winner. Our standards of review when considering motions for a directed verdict and judgment notwithstanding the verdict are identical. We will reverse a trial court's grant or denial of a [JNOV] only when we find an abuse of discretion or an error of law that controlled the outcome of the case. Further, the standard of review for an appellate court is the same as that for a trial court.
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> ***Corvin v. Tihansky,*** 184 A.3d 986, 990 (Pa. Super. 2018) (citations omitted)
>
> > JNOV is the proper remedy in a civil case where the evidence presented at trial was insufficient to sustain the verdict. Nonetheless, JNOV is an extreme remedy which is properly entered by the trial court only in a case where, after viewing the evidence in the light most favorable to the verdict winner, the facts are so clear that no two reasonable minds could fail to agree that the verdict, as rendered by the jury, was improper. JNOV, however, may ***not*** be employed to invade the province of the jury.
> >
> > Thus, ***when there is a question of fact to be resolved, it is within the sole purview of the jury. JNOV should not be entered where evidence is conflicting upon a material fact. Thus, where***

the jury has been presented with conflicting evidence, a motion for JNOV should be denied.

Renninger v. A & R Mach. Shop, 163 A.3d 988, 995 (Pa. Super. 2017) (emphasis added, citation omitted).

The reviewing court must read "the record in the light most favorable to the verdict winner and granting the benefit of every favorable inference .... Any conflict in the evidence must be resolved in the verdict winners' favor." ***James v. Albert Einstein Med. Ctr.,*** 170 A.3d 1156, 1165 (Pa. Super. 2017) (citations omitted).

"If there is any basis upon which the jury could have properly made its award, the denial of the motion for judgment n.o.v. must be affirmed." ***Braun v. Wal-Mart Stores, Inc.,*** 24 A.3d 875, 891 (Pa. Super. 2011), ***affirmed,*** 630 Pa. 292, 106 A.3d 656 (2014).

B. The jury had the right to disbelieve Amazon's witnesses and to believe Mr. Belser's version of how and why he fell.

Amazon's entire appeal is based on its view that the jury came to an erroneous conclusion because it ignored the "uncontroverted" testimony of Amazon's witnesses. Amazon argued that Mr. Belser's version of his fall was completely impossible because it was contradicted by the testimony of Amazon's witnesses. The jury, however, had the right to believe Mr. Belser and to disbelieve Amazon's witnesses.

"The factfinder is not bound to accept the testimony of a witness, even where that witness' testimony stands uncontradicted. Credibility of oral testimony is peculiarly for the jury to determine." ***Wright v. Eastman,*** 63 A.3d 281, 291 (Pa. Super. 2013) (citations omitted). "In short, it is a 'jury's prerogative to disbelieve a witness' testimony,' even when unrebutted, and a party is entitled to have a jury do so." Id. (citation omitted).

The Plaintiff testified that he tripped over a cord on the floor. One end was connected to the conveyor belt and he did not know where the other end went. He did not testify that it was plugged into an outlet on a nearby pillar. The testimony of Amazon's witnesses that it would have been impossible to plug the cord into such an outlet does not contradict Mr. Belser's testimony.

The jury was not left to speculate as to which cord Plaintiff tripped over, because he identified "the subject cord" as the one attached to the conveyor belt in the photograph marked Plaintiff's Ex. 8. As stated above, Amazon raised the issue of notice only regarding this supposed "other cord," and not the one Plaintiff actually tripped over ("the subject cord"):

> Moreover, because the ***subject cord*** could not have been used as theorized by Plaintiff and Mr. Goldberg, the jury must have speculated that Plaintiff tripped over ***some other cord***, despite the complete absence of any evidence establishing the existence ***of such other cord, how it*** got there, ***how long it*** had been there, or that *Amazon knew or should have known of* ***it.*** [Post-Trial Motion ¶ 3, emphasis added.]

The jury clearly determined that Mr. Belser tripped over the "subject cord" he identified in the photograph, and not the phantom "other cord" postulated by Amazon.

"A jury is entitled to believe all, part, or none of the evidence presented. A jury can believe any part of a witness' testimony that they choose, and may disregard any portion of the testimony that they disbelieve. Credibility determinations are for the jury." ***Randt v. Abex Corp.,*** 671 A.2d 228, 234 (Pa. Super. 1996) (citations omitted).

The jury, not Amazon, had the right to determine the weight and credibility of Mr. Belser's evidence and to resolve any conflicts with the evidence presented by Amazon. ***Braun v. Wal-Mart Stores, Inc.,*** 24 A.3d 875, 891 (Pa. Super. 2011) ("'Questions of credibility and conflicts in the evidence are for the [fact-finder] to resolve and the reviewing

court should not reweigh the evidence." (Citation omitted)), ***affirmed,*** 630 Pa. 292, 106 A.3d 656 (2014).

To the extent that the opinion testimony of Mr. Belser's expert Michael Goldberg disagreed with Mr. Belser or was factually incorrect as alleged by Amazon, the jury was free to believe Mr. Belser and disbelieve Mr. Goldberg. Plaintiff correctly pointed out that the issue of whether it was negligence for Amazon to leave a cord on a heavily trafficked part of the floor, did not require expert testimony. The Plaintiff's testimony alone was sufficient to support the jury's verdict.[3]

"The weight to be given the testimony of an expert witness is for the jury, and it has a right to believe all, some, or none of the expert's testimony. Even the uncontradicted opinion of an expert is not conclusive and the jury need not accept it." ***Martin v. Soblotney,*** 296 Pa.Super. 145, 169, 442 A.2d 700, 712, *rev'd on other grounds*, 502 Pa. 418, 466 A.2d 1022 (1982). *Accord,* ***Moriens v. Albert Einstein Hospital,*** 526 A.2d 1203, 1205 (Pa. Super. 1987) (same); ***Brown v. Trinidad,*** 111 A.3d 765, 771-772 (Pa. Super. 2015) ("It is beyond argument that the fact-finder is free to accept or reject the credibility of both expert and lay witnesses, and to believe all, part or none of the evidence.").

Amazon's Post-Trial brief added a new issue that was not in the Post-Trial Motion itself – that a JNOV should be entered because Mr. Goldberg's opinion testimony should

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[3] Expert testimony was not required because "the matter under investigation is so simple, and the lack of skill or want of care so obvious, as to be within the range of the ordinary experience and comprehension of even nonprofessional persons." ***Matthews v. Clarion Hosp.,*** 742 A.2d 1111, 1112 (Pa. Super. 1999) (citations and quotations omitted).

have been stricken as lacking any factual basis. Amazon's Brief p. 24. Paragraph 3 of the Post-Trial Motion mentions that "Amazon moved to strike Mr. Goldberg's testimony and further moved for a nonsuit, which was denied." The motion did not assign as a reason for a JNOV the court's denial of Amazon's motion to strike, or the denial of its nonsuit motion on the issue of Mr. Goldberg's testimony. Therefore, that issue was waived.

"If an issue has not been raised in a post-trial motion, it is waived for appeal purposes." ***Sovereign Bank v. Valentino,*** 914 A.2d 415, 426 (Pa. Super. 2006), *quoting* ***Diamond Reo Truck Co. v. Mid-Pacific Industries, Inc.,*** 806 A.2d 423, 428 (Pa. Super. 2002). "Issues raised in briefs supporting post-trial motions but not in the post-trial motion are waived." ***Siculiento v. K & B Amusements Corp.,*** 915 A.2d 130, 132 n.2. (Pa. Super. 2006).

III. Conclusion

What the Superior Court said in ***James v. Albert Einstein Med. Ctr.,*** is equally apt in the present case:

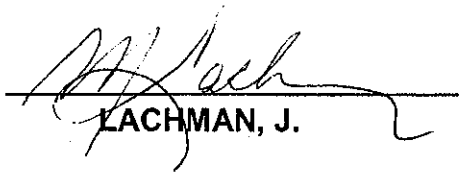
> Appellant maintains that because of the "overwhelming amount of evidence" in support of her claims, no two reasonable minds could disagree that the jury rendered an incorrect verdict. It bears noting that Appellant uses this unwarranted assumption as a springboard to reargue virtually the entire case.
>
> Appellant's reargument misapprehends the purpose of appellate review. This is an error correcting Court. We do not sit to re-weigh the evidence and, if so inclined, overturn the jury's verdict. Instead, to prevail on appeal, it was Appellant's burden to prove an error of law, or that no two reasonable minds could disagree that the verdict was in error.
>
> Under our standard of review, our role is to read the record in the light most favorable to the verdict winners and, granting the verdict winners the benefit of every favorable inference, to determine if there is sufficient competent evidence to support the verdict. Mindful of that standard, we

conclude that there is. For Appellant to prevail on a claim for JNOV ***it is not enough for Appellant's argument merely to recite a self-serving version of the facts and to frame the conclusion in the language of the standard.*** Appellant's claim for JNOV would fail under our standard of review.

170 A.3d at 1165 (emphasis added, case citations and citations to the briefs omitted).

For the foregoing reasons, the Superior Court should affirm the judgment entered on the jury's verdict in favor of Plaintiff/Appellant Anthony Belser and against Amazon.com.dedc, LLC.

BY THE COURT:



LACHMAN, J.