

SAUL EWING LLP

By: George E. Rahn, Jr./ 19566
Mary Elizabeth Schluckebier/ 320782
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186
Telephone: 215-972-7165
Facsimile: 215-972-1855
Email: nrahn@saul.com
Email: mschluckebier@saul.com

*Attorneys for Centro Incorporated,
d/b/a Philadelphia Catholic Worker*

THE PUBLIC INTEREST LAW CENTER

By: Mary M. McKenzie /47434
1709 Ben Franklin Parkway, Second Floor
Philadelphia, PA 19103
Telephone: 267-546-1319
Facsimile: 215-627-3183
Email: mmckenzie@pubintlaw.org

CENTRO INCORPORATED, d/b/a
PHILADELPHIA CATHOLIC WORKER.

Plaintiff:

v.

MAYRONE, LLC, et al.,

Defendants.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

MARCH TERM, 2016
NO. 001647

MAYRONE, LLC

Plaintiff.

V.

CENTRO INCORPORATED,

Defendant.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

MAY TERM, 2016
NO. 00174

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT
MAYRONE LLC'S MOTION IN LIMINE**

I. MATTER BEFORE THIS COURT

The motion *in limine* of defendant Mayrone LLC (“Mayrone”) to preclude the expert report and testimony of Nina Segrè and the response of plaintiff Centro Incorporated, d/b/a Philadelphia Catholic Worker in opposition to Mayrone’s motion.

II. STATEMENT OF QUESTION INVOLVED

Should this Court allow plaintiff Centro Incorporated d/b/a/ Philadelphia Catholic Worker (“Philadelphia Catholic Worker”) to offer testimony at trial from Nina Segrè regarding real estate conveyances and matters relating to title to real estate where her testimony and expert opinion will aid the trier of fact in understanding the evidence concerning the underlying real estate transaction and chain of title in this case?

Suggested Answer: Yes.

III. PERTINENT FACTS AND BACKGROUND

Since 1988, Philadelphia Catholic Worker has cultivated and maintained a year-round community garden on a once abandoned, vacant lot located at 428-438 West Master Street, Philadelphia Pennsylvania 19122 (the “Property”). Exhibit F, paragraphs 1, 11-26. In March 2016, Philadelphia Catholic Worker filed an action to quiet title on the Property based on its actual, continuous, exclusive, visible, open, notorious, distinct and hostile possession of the Property for more than twenty-one years. *See* Exhibit C. In response, Mayrone filed an action in ejectment in trespass against Philadelphia Catholic Worker seeking to remove Philadelphia Catholic Worker and its community garden from the Property.¹ *See* Exhibit D, paragraphs 17-

¹ Mayrone has also filed a counterclaim in Philadelphia Catholic Worker’s quiet title action alleging causes of action for ejectment and trespass. Mayrone seeks damages for trespass. *See* Ejectment Complaint, Exhibit D, paragraphs 21-24 and Answer and counterclaim, Exhibit E, paragraphs 53-56. While actions for quiet title and ejectment are usually non-jury actions, Philadelphia Catholic Worker is entitled to a jury trial on Mayrone’s claim for damages for trespass. Catholic Worker has timely filed jury demands, in both the ejectment and quiet title actions.

24. Mayrone asserts that it purchased the Property in January 2016 from Pyramid Tire & Rubber Co., a corporation that has been inactive since 1956 but which is listed as the previous record owner of the Property. *See Exhibit D*, paragraphs 5, 8; *Exhibit F*, paragraph 10.

A plaintiff such as Mayrone can bring an ejectment action only if it has the “right to immediate possession with the concomitant right to demand that the defendant vacate the land.” *Vandelay Holdings, LLC v. Jackson*, No. 02656, 2013 WL 10215762, at *5 (Pa. D. & C.5th Aug. 2, 2013), *aff’d*, 2014 WL 10936746 (Pa. Super. Ct. Apr. 15, 2014) (quoting *Plauchak v. Boling*, 653 A.2d 671, 675 (Pa. Super. Ct. 1995)). The right to possession is the central element in an ejectment action. *Olexa v. DeSales Univ.*, 78 Pa. D. & C.5th 171, 193 (2005). Proving fee ownership is one way of proving right to possession. *Soffer v. Beech*, 409 A.2d 337, 341 (Pa. 1979). Moreover, a plaintiff in an ejectment action can recover, if at all, “only on the strength of his own title, not because of weakness or deficiency of title in the defendant.” *Hallman v. Turns*, 482 A.2d 1284, 1287 (Pa. Super. Ct. 1984).²

Accordingly, whether Mayrone can establish that it holds a fee ownership or valid title on the Property will be a critical issue for the trier of fact. During discovery, Philadelphia Catholic Worker identified Nina Segré as an expert in real estate conveyances and title to real estate and produced her expert report. Ms. Segrè is a bona fide expert with valuable, specialized knowledge in real estate transactions. Throughout her more than thirty-five years of experience as a transactional lawyer, Ms. Segrè has served as counsel to banks, lending institutions, and

² Similarly, to maintain an action in trespass plaintiff must have “either actual possession or the right to immediate possession flowing from the right of property; and he must have been deprived of it by the tortious act of another.” *Florig v. Estate of O’Hara*, 912 A.2d 318, 327 n.13 (Pa. Super Ct. 2006) (quoting *Roncace v. Welsh*, 14 A.2d 616, 617 (Pa. Super. Ct. 1940)). To prevail, plaintiff must show “a clear right to the property in question” and cannot rely on the alleged tortfeasor’s weakness of asserted right to the property to prove a claim of trespass. *White v. Foley*, 54 Pa. D. & C.4th 145, 148–49 (2001), *aff’d*, 804 A.2d 71 (Pa. Super. Ct. 2002).

investors; taught real estate transactions at multiple law schools; and chaired the executive board of the Real Estate Section of the Philadelphia Bar Association. *See Exhibit B.*

The matters surrounding Mayrone's claim to ownership of the Property involve issues of real property, corporate structure and trust and estate practice. The Report of Nina Segrè sets forth the full factual background. Briefly, Pyramid is a Pennsylvania corporation and was listed in the Philadelphia Recorder's office as owner of the Property. Pyramid has never been dissolved and therefore continues as an existing corporation. Pyramid, therefore, is the entity that would be required to transfer title if there were a sale to Mayrone or any third party.

Exhibit A, pages 4-9.

The deed on which Mayrone relies for its claim of ownership was executed by two individuals, Elliott Fields and Arlene Zitin. Neither Fields nor Zitin claim to be officers or shareholders of Pyramid, nor do they allege that they were authorized by the corporation to act on its behalf. Instead Fields and Zitin executed the deed as alleged "co-executors of the Estate of Emma Fields last surviving beneficial owner of Pyramid." Exhibit A, pages 4-9.

Corporations are owned by shareholders. There is no evidence as to who owned the stock of Pyramid at any time. Elliott Fields and Arlene Zitin are apparently the children of Frank Fields and Emma Fields. Emma Fields was the wife and later widow of Frank Fields. Frank Fields apparently had some connection with Pyramid, and was listed as one of the directors of Pyramid in a 1956 document. Frank Fields died in 1990 or 1991. There is no will for Frank L. Fields in the record of this case nor has one been produced by Mayrone. There is no evidence as to what property, if any, Frank Fields may have owned at his death or how this property may have been distributed. Emma Fields died in 1992. A copy of a will for Emma Fields has been produced in this case. According to her will, Emma Fields' assets, whatever they may have

been, did not pass through her estate, but were given instead to a trust. The trust document is not part of the record in the case. There is no evidence of what assets may have been included in the trust. Elliott Fields and Arlene Zitin each personally received \$15,000 from the purported transaction. Exhibit A, pages 2-9.

In summary, there is no deed from Pyramid, the record owner of the property to Mayrone; there is no corporate resolution supporting a transfer of the Property from Pyramid to Mayrone, there is no evidence of the current ownership of Pyramid, or indeed of the ownership of the corporation at any time. There is no evidence regarding Frank Fields' will or the distribution of his assets, whatever they may have been. There is no evidence that Emma Fields ever owned any shares of stock of Pyramid. There is no evidence, if she did own any stock, that the stock was ever part of Emma Fields' estate; and there is no evidence that Elliott Fields or Arlene Zitin had legal authority to execute a deed as executors for the estate and alleged "beneficial owner" of Pyramid. Exhibit A, pages 2-9.

In her report, Nina Segrè reviews the documents and deposition testimony regarding ownership of the Property. Exhibit A, pages 2-3. Ms. Segrè also points out, based on her experience and expertise, what records she would expect to see in a transaction conveying real property from a corporation such as Pyramid to Mayrone, and the holes in Mayrone's chain of title to the Property. Ms. Segrè also offers the opinion, based on her experience, that beneficial ownership is not a recognized concept for corporate ownership of a corporation, and that a claimed designation of beneficial ownership does not grant legal authority to transfer title. Exhibit A, pages 4-9.

In summary, Ms. Segré's report and testimony is based on her specialized knowledge of real estate conveyances and will aid the trier of fact in understanding the evidence concerning the

purported real estate transaction between Mayrone and Pyramid and Mayrone's chain of title.

Ms. Segré will opine on the types of records provided in ordinary real estate transactions to convey good title to property and the types of records that are absent in the conveyance to Mayrone. She will testify as to documents one would expect to see regarding the ownership and control of Pyramid as well as Pyramid's continuing interest in the Property. See Segré Expert Report, Exhibit A.

IV. ARGUMENT

Mayrone's Motion *in Limine* should be denied, and Ms. Segré should be permitted to testify at trial. Pursuant to Pa.R.E. 702, which governs admission of expert testimony, an expert witness may testify if "(a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson; (b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and (c) the expert's methodology is generally accepted in the relevant field." Pa.R.E. 702. Moreover, trial courts have broad discretion over the admissibility of expert testimony. *See Commonwealth v. Gonzalez*, 546 A.2d 26, 31 (Pa. 1988) ("In Pennsylvania, a liberal standard for the qualification of an expert prevails."). The purpose of admitting expert witnesses is to assist the trier of fact in understanding issues involving technical knowledge, skill, training, or experience that the ordinary person would not understand. *Hayes Creek Country Club, Inc. v. Cent. Penn Quarry Stripping & Const. Co.*, 181 A.2d 301, 308 (Pa. 1962).

Ms. Segré's wealth of experience, professional expertise, thorough analysis, and clear report more than satisfy Pa.R.E. 702. Moreover, Ms. Segré's testimony is not a legal opinion, as Mayrone asserts, but rather assists the trier of fact in understanding the complexities surrounding real estate transactions and the chain of title involved in this case. In addition, even if Ms.

Segré's testimony were considered to be an opinion on a legal matter, Pennsylvania law does not prohibit her testimony, and the Court has broad discretion to allow Ms. Segré to testify at trial.

A. Ms. Segrè's testimony concerning practices and standards in real estate transactions and chain of title is admissible.

Ms. Segrè's testimony will concern the types of documents provided in ordinary real estate transactions to convey good title to property and the types of documents that are absent in the transaction that took place between Pyramid and Mayrone. She will opine on the records regarding the ownership and control of Pyramid, its continuing interest in the Property, the effectiveness of the conveyance to Mayrone, and her opinion that Mayrone cannot establish fee ownership based upon the documents underlying the alleged Pyramid-Mayrone transaction. Exhibit A, pages 2-9. All of this testimony aids the trier of fact in determining ownership which is an issue of fact, not of law. *See Commonwealth, Dep't of Transp. V. UTP Corp.*, 847 A.2d 801,806 (Pa. Commw. Ct. 2004) (denying motion of summary judgment because two conflicting expert opinions on who owned real property presented a genuine issue of material fact).³ *See also Raida v. Kusner*, No. 390 WDA 2013, 2014 WL 10919601, at *7 (Pa. Super. Ct. May 13, 2014) (indicating that ambiguity in a property's conveyance would create a factual question of ownership); *Bethea v. Pennsylvania Fin. Responsibility Assigned Claims Plan*, 595 A.2d 122 (Pa. Super. Ct. 1991) (determining property ownership through analyzing facts, such as regularity of usage and possession of keys); *Williams v. Roberts*, No. 93-6919, 1997 WL 11098352, at *13 (Pa. D. & C.4th 1997) (declining to reverse a judgment on the ground that the jury decided the issue of ownership).

³ In that case, the Pennsylvania Department of Transportation brought suit against several putative landowners alleging that the landowners' failure to maintain a tunnel under the property cause the subsidence of a state highway. The parties relied on several expert witnesses, including a real estate attorney, to explain the chain of title to the involved property. The experts described the chain of title and opined on where title stood based on the facts of the case. *Commonwealth Dep't of Transp. V. UTP Corp.*, 847 A.2d at 806. While the court did not directly address the admissibility of the expert testimony, the court relied on the conflicting expert testimonies as the deciding factor in denying the Department's motion for summary judgment.

Like expert testimony on industry standards and practice, Ms. Segré's testimony regarding real estate conveyances and title matters is admissible in Pennsylvania. *See Commonwealth, Dep't of Pub. Welfare v. Eiseman*, 125 A.3d 19, 22 (Pa. 2015) (remarking that testimony from healthcare providers about trade-secrets and confidential-proprietary-information exemptions was heard at trial); *Koken v. Fid. Mut. Life Ins. Co.*, 803 A.2d 807, 826 (Pa. Commw. Ct. 2002) (noting expert testimony about industry standards for audit opinions was heard at trial); *Chisom v. United Nat'l Ins. Co.*, 38 Pa. D. & C.2d 642, 644 (1966) (allowing two lawyers to testify that it is common practice for insurers to request medical examinations of the insured through his or her lawyers).⁴ Expert testimony on industry standards can be especially valuable when evaluating complex or specialized legal issues. *See Mohney v. Am. Gen. Life Ins. Co.*, 116 A.3d 1123, 1137, *reargument denied* (June 30, 2015), *appeal denied*, 130 A.3d 1291 (Pa. Super. Ct. 2015) (holding that a trial court abused its discretion in excluding an insurance expert's testimony on training legal professionals regarding interpretation of insurance policies). In particular, expert testimony is valuable because it allows the trier of fact to better evaluate the facts and come to a decision. *Commonwealth v. Walker*, 92 A.3d 766, 784 (Pa. 2014) (noting that an expert testifying about factors that impact eyewitness identification provides the jury with information with which it can make a “more informed decision” about credibility).

Here, Ms. Segré's testimony will provide the context of real estate practice and standards to the trier of fact in order to evaluate the facts in this case. *See Exhibit A.* Ms. Segrè's report highlights which parts of the documents and depositions are important for making an ownership determination, as well as how these provisions compare to industry standards. *Exhibit A*, pages

⁴ Similarly, in *United States v. Leo*, a case relied on by Mayrone in its motion, the court held that the trial court did *not* abuse its discretion in admitting expert testimony, noting “[w]hile it is not permissible for a witness to testify as to the governing law since it is the district court's duty to explain the law to the jury, our Court has allowed expert testimony concerning business customs and practices.” *United States v. Leo*, 941 F.2d 181, 196 (3d Cir. 1991).

2-3. For example, as noted above, Ms. Segré identifies unusual language in the January 2016 Deed from Pyramid to Mayrone whereby the Deed was executed by the “Co-Executors of the . . . Last Surviving Beneficial Owner of Pyramid.” According to Ms. Segré the term “beneficial owner” has no industry-recognized meaning. Ex. A, at 5. Ms. Segrè’s opinion gives the trier of fact a valuable framework through which it can make a determination about whether Mayrone has established ownership of the property on its ejectment and trespass claims.

In sum, Ms. Segré will not be opining on whether Mayrone had fee ownership or title in the Property, but rather the acts, circumstances and records that are consistent with title or fee ownership and how the facts in this case fit within that framework and practice. Accordingly, Ms. Segré’s testimony is admissible and the Motion *in Limine* should be denied.

B. Even if the Court considers Ms. Segré’s testimony to be a legal opinion, her testimony is still admissible.

Mayrone argues that this Court should exclude Ms. Segrè’s expert report because her opinion that Mayrone has not produced sufficient documentation to establish ownership of the Property is a legal determination. However, Pennsylvania state law mandates no such exclusion; expert witnesses may present testimony including a legal opinion. For example, in legal malpractice cases, Pennsylvania courts have allowed attorneys to testify noting that “[t]he standard of care in a legal malpractice case is whether the attorney has exercised ordinary skill and knowledge related to common professional practice. . . By its very nature, the specific standard of care attributed to legal practitioners [sic] necessitates an expert witness’ explanation where a jury sits as the fact finder. . . Expert testimony becomes necessary when the subject matter of the inquiry is one involving special skills and training not common to the ordinary lay person.” *Storm v. Golden*, 538 A.2d 61, 64 (Pa. Super. Ct. 1988) (citations omitted). *See also Bey v. Sacks*, 789 A.2d 232, 238 (Pa. Super. Ct. 2001) (holding a dental expert may opine about

whether a risk is significant or material enough to be legally required for informed consent); *In re Paul S.*, 552 A.2d 288 (Pa. Super. Ct. 1988) (permitting a social worker's expert testimony as to who should have legal custody of a child). Specifically, legal experts, such as lawyers, may testify as experts on legal issues. *Fiorentino v. Rapoport*, 693 A.2d 208, 213–14 (Pa. Super. Ct. 1997) (holding a legal malpractice plaintiff's lawyer expert could testify that defendant law firm could not fulfill its fiduciary duties to both of its clients, lacked “basic forms of protection” against bias, and noted that documents were “slanted” in another client’s favor); *Commonwealth, Dep’t of Transp. v. UTP Corp.*, 847 A.2d 801, 806 (Pa. Commw. Ct. 2004) (relying on expert real estate lawyers’ testimony about whether defendants had an ownership interest in real property at issue); *see also Luzerne Cty. Flood Prot. Auth. v. Reilly*, 825 A.2d 779, 785 (Pa. Commw. Ct. 2003) (finding a non-lawyer expert could not testify to his legal opinion on marketability of title because he lacked legal expertise and experience on the matter).⁵

The cases relied upon by Mayrone in support of its conclusion that experts may not present legal opinions are distinguishable. Those cases involved legal experts testifying on ultimate legal issues such as the interpretation of a statute. Def.’s Mot. *in Lim.* 4-5; Def.’s Mem. in Supp. of its Mot. *in Lim.* 4-5; *see Waters v. State Emps.’ Ret. Bd.*, 955 A.2d 466, 470 (Pa. Commw. Ct. 2008) (holding a worker should not have been allowed to present an expert in statutory construction to testify at her State Employees’ Retirement Board hearing that she is entitled to receive at least seventy percent of her final average salary for life based on his interpretation of 71 Pa.C.S. § 5704); *Browne v. Commonwealth*, 843 A.2d 429, 433-34 (Pa.

⁵ Mayrone cites *Browne*, for the proposition that “legal opinion testimony is not admissible.” Def.’s Mot. *in Lim.* 4-5; Def.’s Mem. in Supp. of its Mot. *in Lim.* 4-5. However, the Pennsylvania Superior Court clarified the court’s holding in *Browne* stating that “[*Browne*] more accurately held that an investigating police officer who did not witness an accident may not give his opinion as to causation of the accident at issue in a negligence action at trial unless he has been qualified as an expert.” *Commonwealth v. Thomas*, No. 1238 WDA 2013, 2014 WL 10936772, at *10 (Pa. Super. Ct. May 30, 2014).

Commw. Ct. 2004) (holding expert testimony that a contractor violated a construction ordinance was properly excluded, but noting the expert could read from the ordinance to the jury and opine as to how the construction should have been completed); *Kosey v. City of Washington Police Pension Bd.*, 459 A.2d 432, 434 (Pa. Commw. Ct. 1983) (holding expert testimony about whether vacation pay should be included under 53 P.S. § 39301, an ordinance detailing the police pension fund, was properly excluded). In contrast to these cases, Ms. Segré will be explaining a specialized area of real estate law to assist the trier of fact in understanding the significance or insignificance of certain language and the presence or absence of certain records in the transaction between Pyramid and Mayrone and in the chain of title.

Mayrone asserts there is a rigid prohibition against the admission of opinions involving legal issues, but in fact, admission of expert testimony is discretionary. Furthermore, the plain text of the Pennsylvania Rules of Evidence and Pennsylvania law support admission of Ms. Segrè's expert report. Indeed, Ms. Segrè's expert testimony is a valuable and permissible tool for the trier of fact to use to better understand the evidence and to determine ownership. Thus, this Court should deny Mayrone's motion *in limine* and allow Ms. Segrè to testify as an expert at trial.

V. CONCLUSION AND RELIEF SOUGHT

Mayrone's motion *in limine* misinterprets the nature of Ms. Segre's expert opinion and is also not supported by the law. The motion should be denied and Philadelphia Catholic Worker should be permitted to offer Ms Segre's testimony at trial.

Respectfully submitted,

/s/George E. Rahn, Jr.
George E. Rahn, Jr.
Mary Elizabeth Schluckebier
Attorneys for Plaintiff
Centro Incorporated, d/b/a
Philadelphia Catholic Worker

Mary M. McKenzie
Co-Counsel for Plaintiff
Centro Incorporated, d/b/a
Philadelphia Catholic Worker

June 26, 2017