

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GEORGE X,	)	
Plaintiff,	)	
v.	)	C.A. No.: N24C-10-237 FJJ
	)	
THOMAS PARAG,	)	
Defendant	)	
	)	
v.	)	
	)	
ZEP TEPI INSTITUTE, INC.,	)	
Third-Party Defendant.	)	

Submitted: July 22, 2026

Decided: July 27, 2026

OPINION AND ORDER

On the Parties' Motions in Limine

This lawsuit involves a claim asserted by the Plaintiff, George X (“Mr. X”), that a detached garage, as well as a basketball pole, backboard, rim and net (collectively referred to as “hoop”) are encroaching on property to which Plaintiff has access to by virtue of a right of way, thereby causing a diminution in value to his property. Plaintiff has sued a number of people. At this point in the litigation, the only defendant that remains is Thomas Parag.¹ This Court has granted partial summary judgment in favor of Plaintiff as to his trespass claim against Parag.² A jury trial is scheduled to begin on August 10, 2026, involving the issues of causation

¹ See Docket Item (“D.I.”) 450.

² D.I. 258, at 9.

of any damage to Plaintiff and the amount, if any, of Plaintiff's damages. The parties have filed various motions in limine.³ This is the Court's decision on those motions.

DEFENDANT'S MOTION TO EXCLUDE TESTIMONY AS TO DAMAGES

Plaintiff has moved this Court to allow him to introduce into evidence an August 8, 2023 letter signed by him and sent to the Delaware City Mayor on the letter head of Residential Community Monitor Advocates.⁴ In that letter,⁵ Plaintiff put Delaware City on notice that the commercial loading dock utilized by Clean and Fresh Environmental Services, Inc. ("CFES") located at 301 Bayard Street, Delaware City, has been materially altered and structurally compromised as a result of Parag pouring and spreading a concrete mixture across the surface of the loading dock. According to the letter, this event "altered the load-bearing characteristics of an active commercial work platform integral to regulated operations."⁶ Plaintiff asserts he is offering the letter not as an expert structural engineering testimony, but to show the timing, notice, Plaintiff's response and the reason for suspending CFES's access/loading area use.⁷

Defendant has moved to preclude the admission of this letter and any testimony relating in any way to the contents of the letter.⁸ Defendant seeks to bar

³ D.I. 525, 528, 531, 534, 537, 540, 543, 546, 547.

⁴ D.I. 534.

⁵ D.I. 546, Ex. G.

⁶ D.I. 546, Ex. G., at 1.

⁷ D.I. 534.

⁸ D.I. 546, at 17-21.

Plaintiff from presenting any testimony, however limited, that any pouring of concrete and any other mixture had any effect on the ability of the area to be used for a loading dock.⁹ Defendant argues that any such testimony must, as a prerequisite, be supported by expert testimony.¹⁰ Absent such expert testimony, any reference to the loading dock being compromised is mere speculation.

“It is settled Delaware law that, if a claim requires proof of facts that are ‘not within the common knowledge of laymen,’ those facts must be presented through competent expert testimony.”¹¹ Whether the ground has been compromised so as to prevent a loading dock from being operated on that ground clearly requires the proof of facts that are not within the common knowledge of laymen. Any argument in this case that the ground has been compromised as a result of the actions of Parag requires expert testimony. Plaintiff has no such expert. Rather, he has chosen to proceed to trial without an expert despite warnings by the Court some months ago that such an expert was needed.

While Plaintiff may be inclined to take the stand himself and testify as to why the ground can no longer support a loading dock, he has not put forth any evidence as to his expertise on this subject. “Under *Daubert*, ‘[i]n order for expert testimony

⁹ D.I. 547.

¹⁰ *Id.* at 8-9.

¹¹ *Campbell v. DiSabatino*, 947 A.2d 1116, 1118 (Del. 2008) (quoting *Davis v. Maute*, 770 A.2d 36, 40 fn. 3 (Del. 2001)).

to be admissible, the trial judge must act as a gatekeeper and determine that the evidence is both (1) reliable and (2) relevant.”¹² Plaintiff has not established that he has the requisite knowledge to testify as to the bearing capabilities of the ground at issue and, on this record, he will be barred from testifying as his own expert. Furthermore, Delaware Rule of Evidence (“DRE”) 701 prohibits specialized knowledge testimony for a lay witness:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; **and** (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.¹³

As noted above, a discussion as to why the ground has been disturbed in such a way that it can no longer support a loading dock would clearly require some type of scientific or technical knowledge. In totality, Plaintiff will not be permitted to take the stand and discuss why the ground is unable to withstand a loading dock. Nor can any comment be made by Plaintiff during any portion of the trial before the jury about this issue.

¹² *In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1144 (Del. 2025) (quoting *Tumlinson v. Advanced Micro Devices, Inc.*, 106 A.3d 983, 990 (Del. 2013)).

¹³ Delaware Rule of Evidence (“DRE”) 701 (emphasis added).

Having established expert testimony is needed, the question becomes whether Plaintiff may offer the August 8 letter for any other purpose. He may not. To allow Plaintiff to use this evidence would confuse the jury for numerous reasons: 1) it would inject into the case a fact that is not supported by any competent evidence; 2) it would give credence to Plaintiff's view that the ground where the mixture was allegedly placed was somehow affected when there is no competent evidence to support the claim; and 3) it could potentially bolster a speculative claim that has no basis in fact. The fact that Plaintiff believed this to be the case, when it was not supported by expert evidence, is simply not relevant to the proceedings. Even if relevant, the probative value is far outweighed by the prejudicial effect that it could have on a jury.¹⁴

Defendant's motion to preclude the August 8, 2023 letter and mention of the contents in it is **GRANTED**. Plaintiff may not admit the letter. Plaintiff may not present any testimony that the ground was affected by any substance he alleges that Parag put on the ground. Accordingly, Plaintiff's motion to admit the letter or offer testimony that the ground may have been affected and that played some role in how he acted is **DENIED**. Plaintiff may make no reference to the August 8 letter at trial.

¹⁴ DRE 403.

By making this ruling, Plaintiff's motion that he is not required to present a structural engineer to support his claim for damages¹⁵ is **DENIED** as to any claim that any substance placed on the ground impacted a loading dock.

As pointed out by defense counsel, the lack of experts also leads to an issue establishing damages. Plaintiff alleges economic damages and lost profit damages as a result of the trespass by Parag.¹⁶ However, "[t]he law does not permit a recovery of damages which is merely speculative or conjectural."¹⁷ "It is well-settled law that 'a recovery for lost profits will be allowed only if their loss is capable of being proved, with a reasonable degree of certainty. No recovery can be had for loss of profits which are determined to be uncertain, contingent, conjectural, or speculative.'"¹⁸ "[T]here must be evidence that establishes with a reasonable probability the nature and extent of future damages."¹⁹ "The burden is upon the plaintiff to furnish such proof."²⁰ "Plaintiff must at least offer some evidence of loss of earnings ... and, if possible, the nature and extent of his loss."²¹ "The issue of

¹⁵ D.I. 531.

¹⁶ D.I. 489; D.I. 317.

¹⁷ *Henne v. Balick*, 146 A.2d 394, 396 (Del. 1958) (citing *Scotton v. Wright*, 121 A. 180, 183 (Del. Super. Ct. 1923)).

¹⁸ *Callahan v. Rafail*, 2001 WL 283012, at *1 (Del. Super. Ct. Mar. 16, 2001) (quoting 22 Am. Jur. 2d Damages § 625 (1988)); see also *Empire Fin. Servs., Inc. v. Bank of New York (Delaware)*, 2007 WL 1991179, at *4 (Del. Super. Ct. June 19, 2007), *aff'd*, 945 A.2d 1167 (Del. 2008) ("It is axiomatic that a claim for lost profits requires evidence of lost revenues."); see also *Willie L. Bowman v. Roberto Duran-Madrigal and Evergreen Waste Servs., LLC*, No. 427, 2025, at 4 (Del. July 21, 2026).

¹⁹ *Giles v. Nationwide Ins. Co.*, 2003 WL 1580604, at *2 (Del. Super. Ct. Jan. 13, 2003) (citing *Henne*, 146 A.2d 394).

²⁰ *Henne*, 146 A.2d at 396; see also *Bowman*, No. 427, 2025, at 4.

²¹ *Henne*, 146 A.2d at 396 (citing *Budden v. Goldstein*, 128 A.2d 730, 733 (N.J. App. Div. 1957), *overruled in part by Botta v. Brunner*, 138 A.2d 713 (N.J. 1958)); see also *Giles*, 2003 WL 1580604, at *2 (citing *McNally v. Eckman*, 466 A.2d 363, 366 (Del. 1983), *overruled in part by Wright v. State*, 953 A.2d 144 (Del. 2008)) ("Evidence of substantial permanent injuries and the nature of plaintiff's vocation, standing alone, is an insufficient basis for the jury to determine loss of future wages."); see also *Bowman*, No. 427, 2025, at 4.

whether a litigant has produced sufficient evidence to warrant an instruction as to los[t] ... earnings is a matter soundly within the discretion of the trial judge.”²²

“Delaware law consistently holds that economic and financial damages require expert testimony”²³ because “[l]ay experts cannot provide testimony on ... damages with reasonable certainty.”²⁴ Just as with the ground disturbance issue above, “this testimony requires special skill or knowledge that is not appropriate for the lay witness.”²⁵ Here, Plaintiff has identified no experts as to lost income or other economic damages. “Since Plaintiff is defined as a lay witness, he cannot testify as to diminution in value or economic and financial damages.”²⁶ Accordingly, there is no competent witness to testify as to Plaintiff’s economic damages. As such, Plaintiff may not present any evidence regarding lost profits. What the jury will award beyond nominal damages awaits the proof that Plaintiff presents, but that proof will not include lost profits, nor will it be based on any testimony regarding the disturbance of the ground affecting a loading dock.

²² *Giles*, 2003 WL 1580604, at *2 (citing *Christinia School District v. Rueling*, 577 A.2d 752 (Del. 1990)).

²³ *PJ King Enters., LLC v. Ruello*, 2008 WL 4120040, at *3 (Del. Super. Ct. July 1, 2008) (citing *Empire Fin.*, 2007 WL 1991179, at *4); *see also Data Logger Sols., LLC v. Digi SmartSense, LLC*, 2024 WL 4224997, at *5 (Del. Super. Ct. Sept. 18, 2024) (citing *PJ King*, 2008 WL 4120040, at *2) (“Delaware law requires that economic and financial damages require expert testimony.”).

²⁴ *Data Logger*, 2024 WL 4224997, at *5 (citing *PJ King*, 2008 WL 4120040, at *2).

²⁵ *PJ King*, 2008 WL 4120040, at *2.

²⁶ *Id.* at *3.

**DEFENDANT’S MOTION IN LIMINE REQUESTING THE COURT
DETERMINE THAT THE AUGUST 8, 2023 LETTER AND THE LETTERS
ALLEGEDLY RECEIVED FROM ZEP TEPI ARE FRAUDULENT**

Early in this litigation, Plaintiff claimed that he suffered a loss to the value of his house as a result of Parag’s actions. In support of this claim, Plaintiff produced a May 1, 2023 letter of intent to purchase the plaintiff’s property from Zep Tepi Institute, Inc. (“Zep Tepi”) for \$450,000.²⁷ A July 12, 2023 letter from Zep Tepi was an amended letter of intent to purchase the property for \$295,000.²⁸ Plaintiff claimed that the reduced price was a consequence of the actions of Parag. The Court ruled that the letters of intent from Zep Tepi were insufficient to prove this claim and Zep Tepi had to appear at trial to testify to these facts.²⁹ After the Court made this ruling, Plaintiff abandoned this claim.

Defendant has filed a counterclaim sounding in fraud.³⁰ The basis of the fraud is a claim that the Zep Tepi letters were manufactured by Plaintiff.³¹ Defendant also relies on the August 8, 2023 letter from Plaintiff to Major Johnson in support of his fraud claim. According to Parag, this letter was never sent³² and Plaintiff’s attempt to rely on the letter also constitutes fraud.

²⁷ D.I. 546, Ex. A.

²⁸ D.I. 546, Ex. F.

²⁹ D.I. 258, at 15-16.

³⁰ D.I. 80, at 57; *see generally* D.I. 546.

³¹ D.I. 80, at 50-63; *see generally* D.I. 546.

³² D.I. 546, at 17.

Whether the Zep Tepi letters were manufactured by Plaintiff and whether the August 8, 2023 letter was ever sent present questions of fact. Defendant is not entitled to a ruling as a matter of law on this issue. This is a matter for the jury's consideration. If Parag continues to pursue a claim based on the August 8, 2023 letter, that may undoubtedly lead the Court to allow the admission of that letter to the jury. The Court will not grant the defendant's request that the letter cannot be affirmatively used by Plaintiff for some limited purpose if the defendant elects to use the letter for an affirmative purpose. What the letter can be used for by Plaintiff will have to await trial and will be governed by how far the defendant opens the door to the use of this letter.

PLAINTIFF'S MOTION IN LIMINE REGARDING CERTAIN EXHIBITS

Plaintiff has filed a motion in limine regarding the introduction of certain exhibits.³³ Plaintiff is permitted to introduce the Deed, the 2025 and 2020 surveys, the photographs depicting the scene and Exhibits B (photographs of the area in question), C (photographs of the hole) and F (the survey) to Defendant's reply to the motion for summary judgment.³⁴ The Defendant's reply to the summary judgment motion itself is not admissible. To the extent that there are admissions made in the

³³ D.I. 528.

³⁴ D.I. 175.

Defendant's reply to the summary judgment motion, those admissions are admissible.

PLAINTIFF'S MOTION REGARDING HIS CORPORATION

Plaintiff seeks a ruling that he be permitted to offer evidence that George X was a Delaware certified RRP Renovator, and that Clean and Fresh Environmental Services was a Delaware RRP contractor firm associated with 301 Bayard Street, Delaware City, Delaware.³⁵ The Court will await trial to make a ruling on this issue. Plaintiff's further motion that the defendant be precluded from arguing, as a blanket matter, that Plaintiff's business records are inadmissible or speculative as a matter of law³⁶ has been addressed in this order.

PLAINTIFF'S MOTION REGARDING COMMUNICATIONS WITH THE CITY

Plaintiff seeks a ruling that he be permitted to enter into evidence communications and events involving Delaware City officials.³⁷ It is impossible to make a blanket ruling on this point without hearing the context of how the evidence is relevant. It is generally the Court's view that communications with the city and its officials are beyond the scope of this trial and are not admissible. If Plaintiff can

³⁵ D.I. 537.

³⁶ D.I. 540.

³⁷ D.I. 543.

make a particularized showing about a specific communication or record that relates to the issues involved in the trial, the Court will consider it at trial.

TRIAL TERMINOLOGY

Plaintiff has filed a motion requesting that the Court require neutral evidence-based terminology for plaintiff's deed-based appurtenant right-of-way'/access area and Defendant Parag's trespass-related obstruction.³⁸ Without the context of the statement in trial it is impossible to rule in advance on this motion. In deferring the motion to trial, the Court advises the parties the jury will be instructed that Plaintiff had a right of way and that the defendant could not take any action that impeded that right of way. Further, the jury will be instructed that there is a factual dispute about what Parag actually did on the right of way and whether whatever was done interfered with Plaintiff's property rights.

IT IS SO ORDERED, this 27th day of July, 2026.

/s/ Francis J. Jones

Francis J. Jones, Judge

³⁸ D.I. 525.