

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GEORGE X,

Plaintiff,

v.

THOMAS J. PARAG, DAVID L.
BAYLOR, SHANE MILLER and
WILLIAM J. RHODUNDA, JR.,

Defendants,

and

PAUL L. PARETS and THOMAS
PARAG,

Counterclaim Plaintiffs/Third-
Party Plaintiffs,

v.

GEORGE X,

Counterclaim Defendant,

and

ZEP TEPI INSTITUTE INC.,

Third-Party Defendant.

C.A. No. N24C-10-237 FJJ

SUBMITTED: August 18, 2026

DECIDED: August 21, 2026

ORDER

*On Defendant's Motion for Sanctions, Legal Fees and Costs, and Plaintiff's Motion
for Additur or, in the Alternative, New Trial*

Having considered Defendants' Motion for Sanctions, Legal Fees and Costs, Plaintiff's response, and the Plaintiff's Motion for Additur or, alternatively, a New Trial, it appears to the Court that:

1. 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. Three of the defendants, David Baylor, Shane Miller and William J Rhodunda, were sued in their capacity as officials of Delaware City. On June 17, 2026, this Court entered summary judgment in their favor on the grounds of immunity.¹ On August 10, 2026, a one-day jury trial was held. The sole defendant that proceeded to trial was Thomas Parag. Mr. Parag is Mr. X's neighbor. Partial summary judgment had been granted in favor of Mr. X as to this trespass claim against Mr. Parag as the Court found that Mr. Parag had installed the hoop in the right of way. Trial was reserved for the questions of causation and damages. The jury returned a verdict in favor of Mr. X in the amount of \$1.

¹ Docket Item ("D.I.") 450.

2. Defendants have filed the instant motion for Sanctions and Legal Fees and Costs maintaining that Mr. X's claim was frivolous and that he engaged in bad faith litigation tactics.

3. Delaware follows the American Rule as to the award of attorney's fees.² Generally, the American Rule states that parties must cover their own litigation costs. However, there are a few exceptions to the rule. One such exception is the "Bad Faith Exception,"³ which has been recognized by both the US Supreme Court⁴ and Delaware Courts.⁵ The Chancery Court in *Beck v. Atlantic Coast PLC* provided a general outline of the exception:

The bad faith exception to the American Rule applies in cases where the court finds litigation to have been brought in bad faith or finds that a party conducted the litigation process itself in bad faith, thereby unjustifiably increasing the costs of litigation. *There is no single standard of bad faith that warrants an award of attorneys' fees in such situations; rather, bad faith is assessed on the basis of the facts presented in the case. Courts have found bad faith conduct where parties have unnecessarily prolonged or delayed litigation, falsified records, or knowingly asserted frivolous claims.* Specific behavior that has been found to constitute bad faith in litigation includes misleading the court, altering testimony, or changing position on an issue. *The bad faith exception is not lightly invoked. The party seeking a fee award bears the stringent evidentiary burden of producing "clear evidence" of bad-faith conduct.*⁶

² *In re Delaware Public Schools Litigation*, 312 A.3d 703, 715 (Del. 2024).

³ *Johnston v. Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542, 545 (Del. 1998).

⁴ *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991); *Christiansburg Garment Co. v. Equal Emp. Opportunity Comm'n*, 434 U.S. 412, 419, 422 (1978).

⁵ *Est. of Hsia by & through Chao v. KAPG Hockessin Senior Hous. Opco, LLC*, 2026 WL 1471125, at *2 (Del. Super. Ct. May 26, 2026).

⁶ *Beck v. Atl. Coast PLC*, 868 A.2d 840, 850–51 (Del. Ch. 2005) (citations omitted) (emphasis added).

4. “[T]he bad faith exception applies only in extraordinary cases, and the party seeking to invoke that exception must demonstrate by clear evidence that the party from whom fees are sought ... acted in subjective bad faith.”⁷ “Although there is no single definition of bad faith conduct, courts have found bad faith where parties have unnecessarily prolonged or delayed litigation, falsified records or knowingly asserted frivolous claims.”⁸ “Bad faith conduct also can include reversing position on issues and changing testimony to suit the moment.”⁹ However, “the bad faith exception does not apply to conduct that gives rise to the substantive claim itself.”¹⁰ “Accordingly, ‘an award of fees for bad faith conduct must derive from either the commencement of an action in bad faith or bad faith conduct taken during litigation, and not from conduct that gave rise to the underlying cause of action.’”¹¹ “The purpose of [the] bad faith exception is to deter abusive litigation in the future, thereby avoiding harassment and protecting the integrity of the judicial process.”¹²

⁷ *Lawson v. State*, 91 A.3d 544, 552 (Del. 2014) (quoting *Dover Historical Soc’y, Inc. v. City of Dover Planning Comm’n*, 902 A.2d 1084, 1093 (Del. 2006)) (also quoting *Auriga Capital Corp. v. Gatz Properties, LLC*, 40 A.3d 839, 880 (Del.Ch.2012), *aff’d*, 59 A.3d 1206 (Del. 2012)) (internal quotation marks omitted).

⁸ *Johnston v. Arbitrium*, 720 A.2d at 546 (multiple citations omitted).

⁹ *In re Rural Metro Corp.*, 88 A.3d 54, 109 (Del. Ch.), decision clarified on denial of reargument sub nom. *In re Rural Metro Corp. S’holders Litig.* (Del. Ch. 2014) (quoting *In re Trados Inc. S’holder Litig.*, 73 A.3d 17, 78 (Del. Ch. 2013)) (internal quotation marks omitted).

¹⁰ *Johnston v. Arbitrium*, 720 A.2d at 546 (citing *Shimman v. International Union of Operating Engineers Local 18*, 744 F.2d 1226, 1230 (6th Cir. 1984), *cert. denied* 469 U.S. 1215).

¹¹ *Versata Enters., Inc. v. Selectica, Inc.*, 5 A.3d 586, 607 (Del. 2010) (citing *Johnston v. Arbitrium*, 720 A.2d at 546).

¹² *In re Rural*, 88 A.3d at 109 (quoting *Kaung v. Cole Nat’l Corp.*, 884 A.2d 500, 506 (Del. 2005)) (internal quotation marks omitted).

5. Defendants have raised a number of arguments in support of their claim which the Court will address in turn.

6. The first argument offered by the Defendants is that the claims were frivolous. I find no merit to this argument. There was in fact a trespass committed by Mr. Parag. While there may not have been any real damage as a result of that trespass a trespass nonetheless occurred. Mr. X was forced to file his lawsuit because the City, through two of its defendants, did not conduct a complete investigation as the Court more fully set out in its decision on the City Defendants' Motion for Summary Judgment.¹³ Defendants point to the jury's verdict of \$1 as evidence that his claim was frivolous.¹⁴ The problem with this argument is that all that is known from the jury's verdict is that the jury did not believe Mr. X suffered any damage beyond nominal damages. There was no specific finding made by the jury on what it thought about when the concrete was installed.

7. The second basis for relief centers on two letters allegedly written by Salih Hall/Zep Tepi to Mr. X which formed the basis of a loss in the value of his property due to the trespass. Defendants have claimed that the letters were not authentic but authored by Mr. X to support a claim for damages. The Court is not satisfied that Defendants proved that the letters were not authentic. Mr. X, as was

¹³ D.I. 450, at 20-21.

¹⁴ Defendants also argue that the verdict is proof the jury accepted Mr. Parag's version of when the offending concrete was installed rather than Mr. X's version.

his right, abandoned this claim after the Court ruled that the letters were hearsay, and the author of the letter would need to appear at trial and testify to the contents. Notwithstanding this fact, the defendants never met their burden of proving that the letters were not authentic.

8. Defendants also rely on an August 8, 2023 purported letter written by Mr. X to former Delaware City Mayor Paul H. Johnson. Defendants claim that this letter was never sent to Delaware City and was another fabrication by Mr. X. Mr. X presented evidence (which I did not admit at trial) that the letter was actually received by one of the cc's on the letter the Veteran Services. As such, the events surrounding the August 8, 2023 letter do not give rise to a claim of fabrication.

9. Defendants claim that they are entitled to fees because Mr. X did not take the leading role over the preparation of and filing of both the pretrial stipulation and proposed jury instructions. Defendants claim that they took the laboring oar on these matters, and this requires fee shifting. I find from the pleadings filed on the docket that Mr. X was sufficiently active in the process of both the jury instructions and pretrial stipulation. While his conduct falls short of what the Court would expect from an attorney it does not arise to a level that justifies fees shifting.

10. Defendants seek fees for the fact that Mr. X failed to appear for mediation on October 21, 2025; was 45 minutes late for the pretrial conference; and did not appear in person for jury selection. I will accept Mr. X's excuse that he failed

to appear for mediation on October 21, 2025 due to transportation issues. I will not accept his excuse for being 45 minutes late for the pretrial conference in that he has provided the Court with no substantiated evidence of why he was late. I am awarding Defendant Parag \$263 which is $\frac{3}{4}$ of Mr. Rhodunda's hourly rate. Mr. X did not appear for jury selection. Once the Court got Mr. X on the phone the morning of jury selection after he failed to timely appear, it was clear to the Court that Mr. X had no valid reason for not being present for jury selection. Jury selection went forward with Mr. X present on the phone on the morning of jury selection after he agreed to waive his appearance. However, due to Mr. X's actions the selection process nonetheless started an hour late. Mr. X was warned by the Court at the pretrial conference that the Court would not tolerate lateness for jury selection. The Court awards Defendant Parag an additional \$350 in attorneys' fees which represents a fee for the one-hour delay in selecting a jury due to Mr. X's failure to appear.

11. In summary, except for Mr. X's tardiness in appearing timely for the pretrial conference and jury selection, the Defendants have not carried the high burden they bear to shift fees and costs from them to the plaintiff. The Court awards attorneys' fees against Mr. X in favor of Mr. Parag in the amount of \$613.

12. Plaintiff has filed a separate motion for Additur or, alternatively, a Motion for New Trial on Damages. Plaintiff maintains that a New Trial is necessary to expand the factual record to allow him to more fully address Defendants' Motion

for fees and costs. This Court has denied Defendants' motion for fees and costs except as to two specific instances where the plaintiff did not appear timely. The record does not have to be expanded to address the two instances where fees were awarded as the Court is content with the record as it exists.

13. Plaintiff has moved for Additur. "A trial judge confronted with a motion for additur must review the record and determine if the damages awarded by the jury are 'within a range supported by the evidence' and should vacate the jury award only if it is 'so grossly out of proportion to the injuries suffered as to shock the Court's conscience and sense of justice.'"¹⁵ The jury's award of \$1 for nominal damages does not shock the conscience of the Court. When the evidence is viewed in a light most favorable to the Defendant a jury finding that the plaintiff suffered no harm as a result of Mr. Parag's trespass is supported by the evidence presented. A finding that Mr. Parag had nothing to do with the concrete that was installed is supported by the evidence. Such a finding, in and of itself, supports a conclusion of a nominal damage award since the concrete was the basis for the actions that Plaintiff said he took as it relates to his business. Plaintiff is not entitled to Additur.

14. To the extent that Plaintiff maintains he is entitled to a new trial because he could not present his "full" damage case, the Court rejects this argument. The Court ruled in limine that the plaintiff could not present evidence that the ground

¹⁵ *Est. of Rae v. Murphy*, 956 A.2d 1266, 1272 (Del. 2008) (quoting *Wilhelm v. Ryan*, 903 A.2d 745, 754 (Del. 2006)).

was disturbed as a result of Mr. Parag's actions because there was no expert to support such a claim. The Court ruled that the August 8, 2023 letter was inadmissible for that reason. The Veteran Services and Joseph Walls materials were excluded for the same reason. Even though the August 8, 2023 letter and the Walls materials were excluded, Plaintiff was permitted to testify about his concerns about why he did not continue his business, which included his view that he was concerned that Mr. Parag's actions caused safety issues in operating his business. Plaintiff was not permitted to introduce economic data regarding his business because expert testimony is required to support such a claim and no expert was ever timely identified by the plaintiff. Plaintiff was permitted to present his proof of damages that was consistent with the proof that he actually mustered to support his claim. To the extent that Plaintiff was not able to fully present his damage claim, that was a result of his failure to secure proper expert testimony. Plaintiff is not entitled to a new trial.

SO ORDERED this 21th day of August 2026.

/s/ Francis J. Jones, Jr.
Francis J. Jones, Jr., Judge

cc: All Counsel of record via File & ServeXpress
George X