

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

LAWSON HEIRS INCORPORATED,
a Virginia corporation

Plaintiff,

v.

Civil Action No. 2:17-cv-2198

SKYWAY TOWERS, LLC, a
Delaware limited liability
Company, and DELORSE FRY FARLEY,
and HOWARD LEE FARLEY JR.,
husband and wife,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is the plaintiff's Motion in Limine and Incorporated Memorandum of Law to Exclude Expert Testimony, filed July 11, 2018.

The plaintiff seeks to exclude the testimony of the defendants' surveying experts, Robert McMillen and William Whitman, with respect to the disputed boundary line at issue in this case. It claims that because McMillen is not a licensed surveyor in the state of West Virginia, his testimony would not meet the requirements of Rule 702 of the Federal Rules of Civil Procedure. In addition, plaintiff asserts that because Whitman "sealed" three drawings produced by McMillan, his opinion

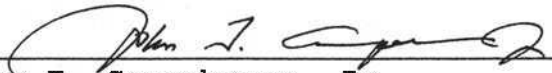
likewise does not qualify as expert testimony. Plaintiff also challenges the accuracy of the surveyors' findings with respect to the boundary line in question.

McMillan and Whitman are experienced surveyors who combined to employ acceptable methods and reliable principles in reaching their conclusion as to the boundary line in issue after consulting applicable deeds and after one of them viewed the property on the ground, with the other one having since visited the site. The mere fact that McMillan may have learned from the defendant, Howard Farley, the property owner, where he thought the boundary line was located, is not disqualifying. McMillan and Whitman were not engaged for the survey by Mr. Farley but, rather, by those acting on behalf of Skyway. The McMillan and Whitman testimony as experts will, of course, be subject to cross examination at trial.

It is, accordingly, ORDERED that the plaintiff's motion be, and hereby is, denied.

The Clerk is requested to transmit copies of this order to all counsel of record and any unrepresented parties.

ENTER: March 22, 2019



John T. Copenhaver, Jr.
Senior United States District Judge