IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MATTHEW J. SPINELLI, et al.,	:	
Plaintiffs,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
COSTCO WHOLESALE CORP., et al.,	:	**No. 02-8028**
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J. **April 5, 2004**

Plaintiffs Matthew and Margaret Spinelli brought this personal injury action against supermarket operator Costco Wholesale Corp. d/b/a Costco Wholesale ("Costco") for injuries sustained by Margaret Spinelli in a slip-and-fall incident at one of Defendant's stores. On February 19, 2004, after a two-day trial, a jury found that Costco was not negligent. Presently before the Court is Plaintiffs' motion for a new trial, asserting that the Court made erroneous rulings and prejudicial statements regarding two of Plaintiffs' witnesses. For the reasons set out below, the Court denies this motion.

I. STANDARD OF REVIEW

Federal Rule of Civil Procedure 59 permits a court to order a new trial "for any reason for which new trials have heretofore been granted in actions at law in the courts of the United States." FED. R. CIV. P. 59(a). As Rule 59(a) does not specify grounds on which a court may grant a new trial, the decision is left to the discretion of the district court. *See Blancha v. Raymark Indus.*, 972 F.2d 507, 512 (3d Cir. 1992) ("The decision to grant or deny a new trial is confided almost entirely to the discretion of the district court.") (*citing Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36

(1980)). Common reasons to grant new trials include prejudicial errors of law or where the verdict is against the weight of the evidence. *See Maylie v. Nat'l R.R. Passenger Corp.*, 791 F. Supp. 477, 480 (E.D. Pa. 1992), *aff'd mem.*, 983 F.2d 1051 (3d Cir. 1992). When a Rule 59 motion is based upon a prejudicial error of law, the court has wide discretion in ruling on that motion. *See Klein v. Hollings*, 992 F.2d 1285, 1289-90 (3d Cir. 1993) ("[T]he district court's latitude on a new trial motion is broad when the reason for interfering with the jury verdict is a ruling on a matter that initially rested within the discretion of the court, e.g. evidentiary rulings . . . ." (citations omitted)). Such a motion may be granted if: (1) Error was committed; and (2) the error was so prejudicial that a denial of a new trial would be inconsistent with substantial justice. *Kennedy v. Lankenau Hosp.*, No. 97-5631, 2000 WL 1367998, at *3 (E.D. Pa. 2000).

II. TESTIMONY OF GUY DELMONTE

Plaintiffs contend that the Court erroneously restricted the questioning of Costco's general manager Guy Delmonte by incorrectly instructing Plaintiffs' attorney to rephrase a question concerning which areas of the store were "dirtiest." Plaintiffs claim that the Court's instruction to use the term "messiest" instead of "dirtiest" warrants a new trial because this rephrasing prevented them from establishing Costco's negligence.

A review of the transcript makes clear that the Court did not in any way restrict counsel's ability to inquire into the relative uncleanliness of different areas of the store. In fact, the question that Plaintiffs allege they were prevented from asking was not only asked, but it was explicitly answered three times, albeit not in a way that aided Plaintiffs' case. In response to counsel's first question regarding whether the food court and condiment areas "are the dirtiest area[s] in the store

on a consistent basis," Delmonte replied, "I don't know. *That's not how I would put it*." (R. 2/18/04 at 15 (Delmonte) (emphasis added).) Counsel then asked the witness if his response was consistent with his deposition testimony. After the witness reviewed his deposition transcript, counsel again asked whether "those two areas, the food court and the condiment area, in your experience generally get dirtier than other areas of the store." (*Id*. at 17.) Delmonte answered, "If you're referring to your [deposition] question, that was your question, *that wasn't my response*." (*Id*. (emphasis added).) Counsel then asked Delmonte what his deposition response had been, and he answered "that the food court is a large area and that there are certainly specific areas that would obtain more mess than others." (*Id*.) Counsel asked Delmonte if he had specified which "areas" he was referring to, and Delmonte answered "I don't know. I can read [the deposition transcript] again." (*Id*.) After a brief discussion regarding the transcript, the Court instructed counsel to re-ask the pending question, at which point counsel asked the witness for the third time whether the food court and condiment areas "are consistently the dirtiest areas in the store." (*Id*. at 18.) The Court interjected and asked if counsel had misstated the pending question by saying "dirtiest" instead of "messiest."[1] (*Id*.) Counsel *agreed* with the Court, stating, "Or messiest, yes." (*Id*.) Counsel then restated the question in its entirety, at which point, the following ensued:

Defense Counsel:	Objection, Your Honor. He's already done this.
Plaintiff's Counsel:	Okay. Thank you.
The Court:	[The witness] didn't say that.
Plaintiff's Counsel:	I have no further questions.

[1] Plaintiffs contend that the Court's interjection also prejudiced the jury by implying that counsel had made an error, when in fact he had not. This argument, however, is unsupported by the record, which clearly indicates that the Court *asked* counsel if he had misspoken, and counsel agreed that he had. (R. 2/18/04 at 18 (Delmonte).) In addition, the Court's jury instructions repeatedly and strongly emphasized that fact that statements made by the Court or counsel have no evidentiary value and are not to be considered by the jury in its deliberations.

The Court: Okay. He's done.

(*Id*. at 19.)

As the transcript shows, Plaintiffs' counsel asked the witness the same question three times, and all three times the witness disagreed with counsel's characterization. The Court in no way prevented these questions from being asked until Defense counsel objected to the repetitious nature of the questioning, and even then, Plaintiff's counsel voluntarily stated that his questioning was complete before the Court had even ruled on the objection. In short, the Court never impeded Plaintiffs' efforts to inquire into the relative cleanliness of various areas of the store. Accordingly, the Court finds Plaintiffs' assertion that they were improperly hindered from presenting their case with regards to the questioning of Mr. Delmonte meritless.

III. TESTIMONY OF OLGA MIANO

Plaintiffs argue that the Court improperly restricted their questioning of Costco employee Olga Miano. Miano was called by Plaintiffs to testify regarding, inter alia, "floor walk sheets" in which Costco employees recorded the cleanliness of different areas of the store at regular intervals each day. Plaintiffs' counsel now argues that the Court erred by: (a) preventing Miano from testifying regarding floor walk sheets that she did not prepare; (b) "precluding questions" concerning the floor walk reports prepared in the days before the incident in question; and (c) "commenting that Ms. Miano's testimony . . . would be boring and a waste of time." (Pls.' Supp. Mem. of Law at 2.)

Plaintiffs' first two arguments are meritless. By the time of the rulings in question, Miano had already clearly explained the markings that Costco employees made on the floor walk sheets to indicate the cleanliness of the store. Specifically, she testified that the notations "P" or "Mess"

indicated that an area was in need of cleaning. (R. 2/18/04 at 4 (Miano).) Once this testimony was given, the floor walk sheets spoke for themselves, in that the jury could see for itself which areas were often dirty and which were not, based on how frequently the sheets read "P" or "Mess." Miano had no independent recollection of these floor walks, and therefore she had nothing to add to the sheets that would have been in any way useful to the jury. For this reason, Plaintiffs' claim that Miano would have contradicted Guy Delmonte's testimony regarding the uncleanliness of certain areas of the store is faulty. The jury was able to review the floor walk sheets on its own and could decide whether the documents supported Delmonte's statements; reading the sheets into evidence would have been redundant. Thus, Plaintiffs' argument that Miano should have been permitted to narrate the floor walk sheets is without merit.

Plaintiffs' final claim is based upon a mischaracterization of the record. Plaintiffs allege that the Court stated that Miano's testimony would be "boring" and "a waste of time" if it were allowed to proceed. In fact, the Court stated that *reading the floor walk sheets into the record* would be boring (*id*. at 10) and, given that Defense counsel had stipulated to their contents (*id*. at 7-8), a waste of time. (*Id*. at 10.) The Court made no comments regarding Miano's testimony itself.[2] Thus, Plaintiffs' argument that they were prejudiced by the Court's statements is unsupported by the record.

[2] As stated previously, the Court's jury instructions emphasize that the jury may not draw any evidentiary inferences from statements made by the Court.

IV. CONCLUSION

For the reasons set out above, the Court denies Plaintiffs' motion for a new trial. An appropriate Order follows.

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	:	
COSTCO WHOLESALE CORP., et al.,	**:**	**No. 02-8028**
Defendants.	**:**	

ORDER

AND NOW, this **5th** day of **April**, **2004**, upon consideration of Plaintiffs' Motion for a New Trial (Document No. 41), it is hereby **ORDERED** that:

Plaintiffs' Motion is **DENIED**.

BY THE COURT:

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Berle M. Schiller, J.