



## **Morgan v. Central RV, Inc.**

2018 | Cited 0 times | D. Kansas | September 20, 2018

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS TODD MORGAN,

Plaintiff, v. Case No. 17-2300-JPO CENTRAL RV, INC.,

Defendant.

ORDER IN LIMINE The plaintiff, Todd Morgan, claims that the defendant, Central RV, Inc., violated the Kansas Consumer Protection Act and engaged in fraud by silence in connection with the sale of a recreational travel trailer. A jury trial is scheduled to begin granted in part and denied in

part, in limine likewise is granted in part and denied in part. I. Governing Legal Standards

In ruling on motions in limine, the court applies the following standard: The movant has the burden of demonstrating that the evidence is inadmissible on any relevant ground. The court may deny a motion in limine when it lacks the necessary specificity with respect to the evidence to be excluded. At trial, the court may alter its limine ruling based on developments at trial or on its sound judicial discretion. Denial of a motion in limine does not necessarily mean that all evidence

contemplated by the motion will be admitted at trial. Denial only means that the court cannot decide admissibility outside the context of trial. A ruling in limine does not relieve a party from the responsibility of making objections, raising motions to strike or making formal offers of proof during the course of trial. 1

Plaintiff moves the court to preclude defendant from eliciting testimony about the value of the subject rec the other than plaintiff or Brad Jacobs. Plaintiff asserts that testimony about the value of the Rockwood RV requires scientific, technical, or other specialized knowledge that only a disclosed expert witness could provide. 2

Defendant has not disclosed any expert witnesses, retained or otherwise.

Defendant agrees that lay witnesses may not express an opinion regarding the value of the Rockwood RV. 3

Defendant asserts, however, that its corporate



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1 BHC Dev., LC v. Bally Gaming, Inc., No. 12-2393, 2014 WL 524665, at \*7 (D. Kan. Feb. 10, 2014) (quoting Schipper v. BNSF Ry. Co., No. 07-2249, 2009 WL 997149, at \*1 (D. Kan. Apr. 14, 2009) and First Sav. Bank, F.S.B. v. U.S. Bancorp, 117 F.Supp.2d 1078, 1082 (D. Kan. 2000)).

2 See

3 Specifically, in seeking to exclude expert testimony from Brad Jacobs, defendant thout

No. 74 at 4.

representative, Nick Ford, and experience in selling the RV at issue to [p]

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Under Fed. R. Evid. 701, lay witnesses may give opinion testimony only if the

on scientific, technical, or other specialized knowledge within the 5 beyond the realm of common experience and which require the special skill and

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4 ECF No. 77 at 2. 5 Despite the absence of any reference to Kansas law Erie doctrine, as it was added to the Rules by amendment under the Rules Enabling Act, 28 U.S.C. § 2072, and was therefore not an act of Congress outside Kelchi Tp. V. Freightliner, LLC, 592 Fed. Appx. 657, 672 73 (10th Cir. 2014) (citing James River Ins. Co. v. Rapid Funding, LLC, 658 F.3d 1207, 1218 (10th Cir. 2011)). 701(c) and a state evidentiary rule, the federal rule must yield to its state counterpart application of the federal rule represents a valid exercise of the rulemaking authority. Id. (quoting James River, 658 at 1218). The parties fail to evince any conflict between state and federal law, and in any event, K.S.A. 60-456(a) similarly precludes lay witnesses from offering opinions based on scientific, technical, or other

6 Morton v. Progressive N. Ins. Co., No. 11-6082, 2012 WL 4801110, at \*3 (10th Cir. Oct. 10, 2012) (quoting James River Ins. Co. v. Rapid Funding, LLC, 658 F.3d 1207, 1214 (10th Cir. 2011)).

As indicated above, the parties agree that opinion testimony regarding the value of the Rockwood RV requires specialized knowledge. Nonetheless, the precise nature of introduce, is unclear. For examp 7

The court finds such testimony, if so limited, might be permissible under Rule 701. But to the extent defendant seeks to have Mr. Ford offer an opinion regarding the value of the subject Rockwood RV, or any RV, with and without salvage brand, motion in limine is granted, because the parties essentially agree that such testimony is encompassed by Rule 702, and because defendant has never served any disclosures under Fed. R. Civ. P. 26(a)(2)(C) indicating Mr. Ford would be testifying as a



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non-retained expert witness.

Defendant moves the court to preclude the introduction of evidence about (and reference to) four matters.

1. Defendant first moves the court to preclude plaintiff from arguing defendant has on the grounds that the phrase is conclusory and defamatory. Plaintiff counters that whether defendant engaged in title

7 ECF No. 77 at 2.

washing, and hid that fact from plaintiff, is one of the allegations in this case. Indeed, plaintiff alleges that after purchasing the Rockwood RV with a Nebraska-issued salvage title, defendant applied for a Kansas certificate of title which it knew would not bear any brands or otherwise indicate the [ ] salvage history, and subsequently 8

which are titled outside of the state of titles by re-titling them in Kansas, and then selling those travel trailers without disclosure

9

supporting authorities,

2. Evidence or Statements Regarding the Number of Previously Salvaged

Travel Trailers Defendant Sold Next, defendant seeks to exclude evidence regarding the number of travel trailers it sells that were previously salvaged versus the number of travel trailers sold that were not previously salvaged or new. 10

Without citing to any authority in a similar consumer-

8 ECF No. 56 at 6. 9 Id. at 7. 10 ECF No. 74 at 2.

fraud case context, defendant simply asserts that such evidence is not relevant under Fed. R. Evid. 401. a fact more or less probable than it would be without the evidence; and (b) the fact is of

Under the Rule 401 relevancy standard, the court has little trouble finding that -salvaged vehicles could shed light on facts -by-silence and KCPA claims. Defendant has failed to meet his burden of showing such evidence should be ion is denied.

3. Expert Opinion or Unqualified Lay Testimony of Brad Jacobs Defendant seeks to exclude



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testimony from Brad Jacobs as to the value of [the Rockwood RV] with and without a salvage title. 11

As noted above, defendant claims such testimony requires specialized knowledge that only a disclosed expert witness could provide. Defendant argues plaintiff has not disclosed any expert witnesses under Fed. R. Civ. P. 26(a)(2).

Plaintiff concedes that his lay witnesses may not testify in this regard. Plaintiff asserts, however, that he properly disclosed Mr. Jacobs as a non-retained expert under Fed. R. Civ. P. 26(a)(2)(C). Under Rule 26(a)(2)(C), disclosures of non-retained experts

11 ECF No. 74 at 2.

must state

Plaintiff notes that his Rule 26(a) disclosures identified Mr. Jacobs able to authenticate and explain an appraisal he provided [p]laintiff for the subject RV on

appraisal report. 12

Nothing in the instant record suggests that Mr. Jacobs can be properly -retained expert, 13

Still, to the extent the record is sufficiently unclear, the court declines to bar Mr. Jacobs from offering expert testimony, at least at this juncture. 14

Plaintiff is cautioned, however, that unless the record changes in some material way, it appears plaintiff failed to properly disclose Mr. Jacobs as a retained expert witness, and his testimony should be deemed inadmissible.

12 ECF No. 79 at 5 6. 13 Fed. R. Civ. P. 26(a)(2)(B). 14 appraisal is separately admissible. The court notes, however, that on the instant record, the appraisal document appears to be inadmissible hearsay.

refers only to Brad Jacobs, the text of the motion briefly suggests that plaintiff should not be permitted to offer a valuation opinion at trial. Plaintiff does not address this portion of notes in briefs on other motions in limine fy as an expert on the value of the 15

The precise nature of the valuation testimony that defendant seeks to exclude, and that which plaintiff seeks to introduce, is unclear. plain s 701 or 702 of the Federal Rules of

Evidence. 16



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The court respectfully declines to enter any ruling on the admissibility of prevent the issue from coming to a head at trial, however, the court will allow the parties to submit supplemental briefing limited to 5 double-spaced pages in support of their respective positions by September 25, 2018. This briefing should address the testimony under Rules 701 and/or 702, as well as any conflict between federal and Kansas law. 17

4. Evidence Regarding Other Claims or Lawsuits 15 ECF No. 84 at 3. 16 To the extent plaintiff seeks to offer testimony under Fed. R. Evid. 702, it appears he has not been disclosed as an expert under Fed. R. Civ. P. Rule 26(a)(2).

17 See FN 4.

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Defendant asserts such references are barred by Federal Rules of Evidence 401, 403, and 404(b).

As noted before, under dency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining th Rule 403 provides that although is substantially outweighed by a Finally, under Rule

404(b)(1), is not admissible to prove a occasion the person acted in accordance with the character ; h purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge,

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The court has no trouble finding that evidence of prior customer complaints filed against defendant

18 ECF No. 74 at 4. 19 Fed. R. Evid. 404(b)(2).

may be relevant to -by-silence and KCPA claims. Without providing any information as to the customer complaints to be excluded, defendant has failed to meet its burden of showing such evidence is more prejudicial than pro

in limine (ECF No. 75) is granted in part and denied in part, granted in part and denied in part.

Dated September 20, 2018, at Kansas City, Kansas.

James P. O Hara U.S. Magistrate Judge

