

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 08-23350-CIV-GRAHAM/TORRES

KING COLE CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff,

vs.

QBE INSURANCE CORPORATION,

Defendant.

OMNIBUS ORDER

THIS CAUSE comes before the Court upon the following pending motions: (i) Plaintiff's Motion in Limine to Preclude Evidence of Gerald Zadikoff's Prior Bankruptcy Filing and His Personal and/or Business Finances [D.E. 107]; (ii) Plaintiff's Motion to Preclude Evidence at Trial Regarding King Cole's USPlate Glass Insurance Policy [D.E. 108]; (iii) Plaintiff's Motion in Limine to Preclude Any Argument or Evidence at Trial Regarding Alleged Fraudulent Business Dealings Between Hunter R. Contracting, Ken Romain, Total Structural and Security Associates, Jeffrey Dobbins, Dawn Deitz, James Kunkel, Jeffrey Koltun, Indra Prasaud, Leigh Katzman, Alan Garfinkel, Francine Garfinkel and Garfinkel Trial Group, et. al. and Affiliates and /or Certain Individuals [D.E. 110]; (iv) Defendant's Motion in Limine to Preclude Testimony of John Mitala [D.E. 112]; and (v) Defendant's Motion to Preclude Evidence of, or References to, the Amount of Income Paid From FIU/QBE to Daniel Lavrich, P.E., and Documents from Other Lawsuits and Claims

Involving Mr. Lavrich and Incorporated Memorandum of Law [D.E. 111].

I. BACKGROUND

This case is one of several actions in this District related to damages resulting from Hurricane Wilma, which occurred in October 2005. The instant action was filed by King Cole Condominium Association against QBE Insurance Corporation for property damage to Plaintiff's residential condominium property. This Omnibus Order addresses certain pending motions in limine.

II. LAW AND DISCUSSION

A. Plaintiff's Motion in Limine to Preclude Evidence of Gerald Zadikoff's Prior Bankruptcy Filing and His Personal and/or Business Finances and Incorporated Memorandum of Law [D.E. 107]

Gerald Zadikoff, one of Plaintiff's experts, is expected to testify at trial concerning King Cole's property damage. Plaintiff, in the instant motion, seeks to preclude Defendant from presenting evidence at trial concerning Mr. Zadikoff's prior bankruptcy proceeding as well as his personal and/or business finances. [See D.E. 107] Plaintiff argues that Mr. Zadikoff's bankruptcy filing is irrelevant and, in support of the motion, alludes to a ruling by the Magistrate Judge in the case of Buckley Towers Condo. Association, Inc. v. QBE Insurance, Case No. 07-22988-CIV-GOLDBERG, and this Court's ruling in Isola Condominium Association, Inc. v. QBE Insurance Corp., Case No. 08-21592-CIV-

GRAHAM/TORRES, which granted similar motions concerning Mr. Zadikoff. Id.

In opposition, Defendant argues that the bankruptcy is highly relevant because, inter alia, Mr. Zadikoff's financial hardship provides motivation for him to testify in a certain manner. Defendant also maintains that Mr. Zadikoff's bankruptcy resulted from his alleged use of personal loans to fund the firm of G.M. Shelby & Associates, his engineering firm with corporate finances apparently closely intertwined to his personal finances.

Generally, a bankruptcy filing in no way demonstrates that the defendant had particular need for money and may have the purpose of relieving the pressure which might compel him to a certain act. See United States v. Reed, 700 F.2d 638, 642 (11th Cir. 1983). That said, a bankruptcy filing is not per se irrelevant for impeachment purposes insofar as a financial hardships may create a possible motive for a witness to testify in a certain fashion. In this case, however, the Court finds that Mr. Zadikoff's prior bankruptcy filing should be excluded at trial. To the extent that Plaintiff opens the door to the issue on direct examination, the Court may revisit the matter. Based thereon, Plaintiff's motion to exclude evidence of Mr. Zadikoff's prior bankruptcy proceeding and personal finances is granted.

B. Plaintiff's Motion in Limine to Preclude Evidence at Trial Regarding King Cole's USPlate Glass Insurance Policy [D.E. 108]

Plaintiff seeks to preclude evidence at trial regarding an insurance policy, issued by USPlate Insurance, which covered the glass windows and sliding doors on the property. Plaintiff asserts this evidence is not permissible under the collateral source rule. See Bangert v. Beeler, 470 So.2d 817, 818 (Fla. 1st DCA 1985) (holding collateral source rule precluded evidence of plaintiff's insurance policy in their breach of contract dispute).

Defendant disagrees and argues that the USPlate policy goes directly to the issue of whether Defendant breached its obligations to Plaintiff under the insurance contract. See Rease v. Anheuser-Busch, Inc., 644 So.2d 1383 (Fla. 1st DCA 1994) (holding evidence of collateral source was admissible and relevant as to defendant's liability).

The Court agrees with Defendant. Defendant shall be permitted to introduce evidence relating to the USPlate Glass Insurance Policy as it relates its obligations to Plaintiff and whether it breached the contract. Accordingly, the motion in limine is denied.

C. Plaintiff's Motion in Limine to Preclude Any Argument or Evidence at Trial Regarding Alleged Fraudulent Business Dealings Between Hunter R. Contracting, Ken Romain, Total Structural and Security Associates, Jeffrey Dobbins, Dawn Dietz, James Kunkel, Jeffrey Koltun, Indra Prasaud, Leigh Katzman, Alan B. Garfinkel, Francine Garfinkel and Garfinkel Trial Group et.al. and Affiliates [D.E. 110]

Plaintiff seeks to exclude evidence of business dealings between Hunter R. Contracting ("Hunter") and certain of Hunter's representatives and the Garfinkel Trial Group, and Affiliates, ("GTG"). Defendant asserts that the various organizations and individuals listed above worked together to falsely inflate Plaintiff's claim for property damages. In particular, Defendant asserts that these fraudulent dealings resulted in the Hunter R and TSSA reports/estimates (the "Reports"). Plaintiff asserts it never had the Reports and therefore did not rely on them to assert its claim.

The Court finds that the Reports and evidence relating to the Reports are only admissible if Plaintiff testifies that it had the reports and relied on them to make its claim. Otherwise, the Reports and evidence relating to the alleged fraudulent dealings are not admissible. If Defendant believes, during trial, that Plaintiff has opened the door for testimony about the Reports, Defendant shall request a side bar to explain the propriety of introducing the Reports and evidence regarding the alleged fraudulent dealings. Accordingly, the motion in limine is granted.

D. Defendant's Motion in Limine to Preclude Testimony of John Mitala [D.E. 112]

Defendant seeks to preclude the testimony of John Mitala regarding meteorological conditions or data during Hurricane Wilma or other information he gleaned from the National Oceanic and Atmospheric Administration ("NOAA") website. Because Mr. Mitala has only been proffered to opine as a roofing contractor, and not a meteorologist or other type of weather expert, the Court finds he should be precluded from testifying regarding meteorological conditions or data. Accordingly, the motion in limine shall be granted.

E. Defendant's Motion In Limine to Preclude Evidence of, or References to, the Amount of Income Paid from FIU/QBE to Daniel Lavrich, P.E., and Documents from Other Lawsuits and Claims Involving Mr. Lavrich and Incorporated Memorandum of Law [D.E. 111]

Defendant seeks to preclude references to the amount of income it paid one of its experts, Daniel Lavrich. The dollar amount Defendant has paid Mr. Lavrich is clearly relevant to establish prejudice and bias and Plaintiff shall be permitted to present such evidence. However, the Court will not permit Plaintiff to reference other cases where Mr. Lavrich has been sanctioned unless Plaintiff can establish how those sanctions relate to similar conduct in this case. Specifically, Plaintiff would only be permitted to reference sanctions in other cases if Mr. Lavrich

failed to produce similar documents in this case. Accordingly, the motion in limine is granted in part and denied in part.

III. CONCLUSION

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Motion in Limine to Preclude Evidence of Gerald Zadikoff's Prior Bankruptcy Filing and his Personal and/or Business Finances [D.E. 107] is **GRANTED**. It is further

ORDERED AND ADJUDGED that Plaintiff's Motion to Preclude Evidence at Trial Regarding King Cole's USPlate Glass Insurance Policy [D.E. 108] is **DENIED**. It is further

ORDERED AND ADJUDGED that Plaintiff's Motion in Limine to Preclude Any Argument or Evidence at Trial Regarding Alleged Fraudulent Business Dealings Between Hunter R. Contracting, Ken Romain, Total Structural and Security Associates, Jeffrey Dobbins, Dawn Deitz, James Kunkel, Jeffrey Koltun, Indra Prasaud, Leigh Katzman, Alan Garfinkel, Francine Garfinkel and Garfinkel Trial Group, et. al. and Affiliates and /or Certain Individuals [D.E. 110] is **GRANTED**. It is further

ORDERED AND ADJUDGED that Defendant's Motion in Limine to Preclude Testimony of John Mitala is **GRANTED**. It is further

ORDERED AND ADJUDGED that Defendant's Motion to Preclude Evidence of or reference to the amount of income paid from FIU/QBE to Daniel Lavrich PE and Documents from other lawsuits and claims

involving Mr. Lavrich is **GRANTED in part and DENIED in part.**

DONE AND ORDERED in Chambers at Miami, Florida, this ^{5th} day
January, 2010.



DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Torres
Counsel of Record