

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

RENT-A-CENTER EAST, INC.,

Defendant.

Case No. 16-cv-2222

Magistrate Judge Long

PLAINTIFF EEOC'S MOTION IN LIMINE NO. 5

**MOTION TO EXCLUDE ARGUMENTATIVE QUESTIONS AND REMARKS
CHALLENGING A WITNESS'S CONCLUSIONS**

The EEOC moves for an order excluding all argumentative questions or remarks challenging a witness's conclusions pursuant to Rules 403 and 611.

During depositions in this case, counsel to Rent-A-Center ("RAC") asked witnesses questions in the form of, "And you are as positive about that as you are about everything else you testified here today"? *See, e.g.* Ex. A, Kerr Dep. 53:19-22, 130:15-19, 146:3-6, 147:10, 154:20-22, 183:9-11, 195:5-7, 234:7-9, 304:22-2, 363:21-24, 399:17-19; and Ex. B, Kasper Dep. 24:16-24, 26:3-5.

Such questions are argumentative and improper. It is for the jury to decide the credibility of the witness and the reasonableness of the inferences from the witness's testimony. These questions do not seek facts—they challenge the witness about conclusions. *See United States v. Newman*, 49 F.3d 1, 8 (1st Cir. 1995) (questions are improper when they are "not directed at ascertaining any relevant fact"). "An argumentative question that essentially talks past the witness, and makes an argument to the jury, is improper because it does not seek to elicit

relevant, competent testimony, or often any testimony at all.” *People v. Chatman*, 133 P.3d 534, 563 (Cal. 2006). This type of argumentative question does not produce any evidence and would waste time pursuant to Rules 403 and 611(a)(2). Further, since these questioned are not designed to elicit evidence they are not “effective for determining the truth.” F.R.E. 611(a)(1).

WHEREFORE, the EEOC requests an order, *in limine*, to exclude all argumentative questions or remarks challenging a witness’s conclusions.

December 15, 2017

Respectfully Submitted,

s/ Miles Shultz

Miles Shultz

Trial Attorney

U.S. Equal Employment Opportunity Commission

500 W. Madison St., Ste. 2000

Chicago, IL 60661

CERTIFICATE OF SERVICE

I hereby certify that on today's date, I caused the EEOC'S MOTION IN LIMINE NO. 5 to be served upon counsel to Defendant via the court's Electronic Case Filing system, pursuant to Local Rule 5.3(A).

December 15, 2017

Respectfully Submitted,

s/ Miles Shultz

Miles Shultz

Trial Attorney

U.S. Equal Employment Opportunity Commission

500 W. Madison St., Ste. 2000

Chicago, IL 60661

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff, No. 16-CV-2222

vs.

RENT-A-CENTER EAST, INC.,

Defendant.

The videotaped deposition of MEGAN VANNA,
called for examination pursuant to the Rules of
Civil Procedure for the United States District
Courts pertaining to the taking of depositions,
taken before CHERYL L. SANDECKI, Certified
Shorthand Reporter for the State of Illinois, at
321 North Clark Street, Chicago, Illinois, on
January 17, 2017, at the hour of 9:00 a.m.

REPORTED BY: CHERYL L. SANDECKI, CSR, RPR
LICENSE NO.: 084-03710
JOB NO.: 548721

1 A. Correct.

2 Q. That's it. You've narrowed it down to
3 those two Masonic lodges, correct?

4 A. To my knowledge, yes.

5 Q. And if nobody at the Paxton, Illinois,
6 Masonic lodge and nobody at the Rantoul Masonic
7 lodge has any idea of what you are talking
8 about, about moving a family from a mini storage
9 unit to a unit, helping them get furniture and
10 helping them get a house, nobody has any idea at
11 either of those two lodges, could you explain
12 that?

13 A. I just did.

14 Q. Okay.

15 A. I already explained.

16 Q. And what's the answer?

17 A. Well, at the time Russell Weideman was
18 the headmaster for the Paxton lodge.

19 Q. And you are as positive about Russell
20 Weideman being the headmaster at the Paxton
21 lodge as you are about everything else you've
22 testified here today, correct?

23 A. Yes.

24 Q. And that would have been the

1 Q. When did you move from that residence
2 in Paxton, Illinois?

3 A. The end of October.

4 Q. Of 2014?

5 A. Yes.

6 Q. When did you move out of the commercial
7 lease space for Ink's Mistress?

8 A. October.

9 Q. Of 2014?

10 A. Yes.

11 Q. Did you leave owing money to both
12 landlords, meaning your residence landlord and
13 your commercial lease landlord?

14 A. Not that I'm aware of.

15 Q. And you are as positive about that,
16 moving out in October of your residence and the
17 commercial leasing in October 2014, as you are
18 about everything else you testified here today,
19 correct?

20 MR. SHULTZ: Objection. Form.

21 THE WITNESS: Yes.

22 BY MR. TRUSEVICH:

23 Q. So after you left Rent-A-Center, did
24 you try to find work?

1 THE WITNESS: No.

2 BY MR. TRUSEVICH:

3 Q. And you are as positive about that as
4 everything else you've testified to the judge
5 and jury today under oath under penalty of
6 perjury, correct?

7 MR. SHULTZ: Objection. Form.

8 THE WITNESS: I'm positive I've never done
9 anything for personal use from Rent-A-Center.

10 BY MR. TRUSEVICH:

11 Q. Let me ask the question again. You are
12 positive -- when I asked you isn't it true you
13 never worked for Rent-A-Center on a Sunday, you
14 never did any pickups, you never did deliveries
15 for Rent-A-Center other than the one that you
16 did in what you say was August 2014 on that
17 Sunday for Amber Shumate. Putting that aside,
18 you never worked or did a pickup or delivery on
19 a Sunday, correct?

20 MR. SHULTZ: Objection. Form.

21 Mischaracterizes testimony.

22 THE WITNESS: That is not correct.

23 BY MR. TRUSEVICH:

24 Q. I'm saying that -- you can agree or

1 disagree with me. What I'm saying is: Isn't it
2 true that you never did any deliveries. You're
3 making -- everything you testified to about
4 doing deliveries on a Sunday, you are making up,
5 other than the Amber Shumate. Do you agree with
6 that or do you disagree with that?

7 MR. SHULTZ: Objection. Form.

8 THE WITNESS: I am not making it up.

9 BY MR. TRUSEVICH:

10 Q. And you are as positive about that as
11 everything else you testified here today?

12 MR. SHULTZ: Objection. Form.

13 THE WITNESS: Absolutely.

14 BY MR. TRUSEVICH:

15 Q. Now, when you were terminated from
16 Rent-A-Center, you tried to get a job, correct?

17 A. Correct.

18 Q. Do you believe you put your best
19 efforts in it?

20 A. Everyday.

21 Q. And you -- you sent out resumés to
22 employers, correct?

23 A. Correct.

24 Q. And it's important to be accurate with

1 million dollars a year?

2 A. Sherman, Texas, store.

3 Q. And who -- who would be able to
4 corroborate that?

5 A. Calvin Davis.

6 Q. Calvin Davis. He will say that because
7 of you, that store went over a million dollars?

8 MR. SHULTZ: Objection. Foundation.

9 THE WITNESS: Yes.

10 BY MR. TRUSEVICH:

11 Q. Okay. And what years did that store in
12 Sherman, Texas, the Rent-A-Center store in
13 Sherman, Texas, gross over a million dollars?

14 A. I don't remember.

15 Q. Well, what years were you there?

16 A. '95.

17 Q. Okay. So 1995, that store grossed over
18 a million dollars, according to you, right?

19 A. Yes.

20 Q. And you are as positive about that as
21 everything else you have told this judge and
22 jury today, correct?

23 MR. SHULTZ: Objection. Form.

24 THE WITNESS: Yes.

1 the Sherman, Texas, store from 300 to 800
2 accounts per year?

3 A. Starting from 1995.

4 Q. And how long would it take you to grow?

5 A. At least a year.

6 Q. So '95 -- 1995 to 1996 time frame,
7 correct?

8 A. Correct. And continuing on.

9 Q. All right. And you are as positive
10 about that as you are about everything else
11 you've told this jury about, correct?

12 MR. SHULTZ: Objection. Form.

13 THE WITNESS: Yes.

14 BY MR. TRUSEVICH:

15 Q. What was that?

16 A. Yes.

17 Q. Okay. [As read]: Reduced repair
18 service/cost by doing onsite repairs, \$10,000 in
19 one year.

20 What store was that?

21 A. That would have been the Sherman store.

22 Q. And Calvin would -- would have
23 knowledge of that, correct?

24 A. Yes.

1 Q. Well, when do you recall working at
2 Demon Dogs?

3 A. I don't have a specific date. I didn't
4 keep track of the dates that I worked there.

5 Q. But you are as positive about working
6 at Demon Dogs as you are about test --
7 everything else you testified today, correct?

8 MR. SHULTZ: Objection. Form.

9 THE WITNESS: Yes.

10 BY MR. TRUSEVICH:

11 Q. And Demon Dogs would have a record
12 of -- Demon Dogs would have a record of you
13 working for them, correct?

14 MR. SHULTZ: Objection. Foundation.

15 THE WITNESS: Correct.

16 BY MR. TRUSEVICH:

17 Q. And you have no doubt about that?

18 MR. SHULTZ: Objection. Foundation.

19 THE WITNESS: Absolutely.

20 BY MR. TRUSEVICH:

21 Q. And can you explain why that money
22 wasn't listed in that interrogatories?

23 MR. SHULTZ: Objection. Form. Foundation.

24 THE WITNESS: Because it was extremely

1 Q. And no question, Elena told you during
2 the week of July 13th, 2014, to July 20th, 2014,
3 "Hey, by the way, Brock used the truck the
4 previous weekend and moved into my house,"
5 correct?

6 A. Something to that effect.

7 Q. Right. And you are as positive about
8 that as everything else you testified today,
9 correct?

10 A. Yes.

11 MR. SHULTZ: Objection. Form.

12 BY MR. TRUSEVICH:

13 Q. What was your answer?

14 A. Yes.

15 Q. Okay. Let me hand you what's been
16 marked as Exhibit 8.

17 (Whereupon, RAC Deposition
18 Exhibit 8 was marked for
19 identification.)

20 BY MR. TRUSEVICH:

21 Q. And I will represent to you that this
22 is your EEOC intake questionnaire that you
23 filled out and signed. Take a moment to review
24 that and let me know when you're done.

1 Q. Well, just a moment ago -- can you read
2 back her answer?

3 (Whereupon, the record was read
4 as requested.)

5 BY MR. TRUSEVICH:

6 Q. So you answered "yes" to that, are you
7 sticking by that sworn testimony?

8 A. What I am stating is that Mary Ann
9 asked me to leave the property.

10 Q. And --

11 A. Part of that discussion was that it had
12 come out that I was transgender.

13 Q. Did you ever complain to any government
14 agency that your landlord kicked you out because
15 you're transgender?

16 A. No.

17 Q. Did you ever file any complaint?

18 A. No.

19 Q. Did you ever think about filing a
20 complaint?

21 A. No.

22 Q. And your testimony under oath -- well,
23 first of all, you are as positive about Mary Ann
24 telling you that, what you just told the ladies

1 under oath, just so I'm clear, that you were a
2 franchisee of CGX Video Games; is that right?

3 MR. SHULTZ: Same objection.

4 THE WITNESS: Yes.

5 BY MR. TRUSEVICH:

6 Q. So that means there would be a record
7 you signed a franchisee agreement, correct?

8 MR. SHULTZ: Objection. Foundation.

9 THE WITNESS: Not if it was like Enzo's where
10 I'm paying into it, trying to get to that point.

11 BY MR. TRUSEVICH:

12 Q. And I was just going to ask you: Did
13 you sign a franchisee agreement for Enzo's?

14 A. No.

15 Q. So you didn't sign a franchise
16 agreement for Enzo's?

17 A. No.

18 Q. You didn't sign a franchise agreement
19 for CGX Video Games, right?

20 A. Right.

21 Q. And you are as positive about being a
22 franchisee of CGX Video Games and Enzo's Pizza
23 about everything else you have testified here
24 today, correct?

1 MR. SHULTZ: Same objection.

2 THE WITNESS: Given that I ran a spellcheck
3 through this and they didn't pick them up, no, I
4 would not agree with you.

5 BY MR. TRUSEVICH:

6 Q. By the way, on the second page, you
7 testified this morning numerous times that you
8 have an EMT certificate. That is not -- that is
9 not true, isn't it?

10 A. That's absolutely true.

11 Q. And so your records from Grayson County
12 College in Denison would show that you have an
13 EMT certificate, correct?

14 A. Correct.

15 MR. SHULTZ: Objection. Foundation.

16 BY MR. TRUSEVICH:

17 Q. And you are as positive about that as
18 you are as to everything else you testified
19 today, correct?

20 MR. SHULTZ: Objection. Form.

21 THE WITNESS: Absolutely.

22 BY MR. TRUSEVICH:

23 Q. And where is your EMT certificate?

24 A. Right now?

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

RENT-A-CENTER EAST, INC.,

Defendants.

No. 16-CV-2222
Judge Colin Stirling
Bruce

Magistrate Judge
Eric I. Long

DEPOSITION OF RUSSELL KASPER
January 19, 2017
I Hotel and Conference Center
1900 South First Street
Champaign, Illinois
10:00 a.m.

Barbara A. Glover: CSR #084-001223

1 Q. Yeah. This would be Elena Reeves.

2 A. Several months later.

3 Q. Okay. And then what was -- what was
4 said in that discussion between you and Elena
5 Reeves in the Walmart?

6 A. It was just, hey, how are you doing,
7 and, oh, haven't seen you in a long time, and I
8 said how is everybody doing, said everybody is
9 doing okay, but Elena was -- or Megan was no
10 longer employed there.

11 Q. What else was said in that discussion?

12 A. Have a good life, and we went our
13 ways.

14 Q. Did she say that anyone told her not
15 to talk about that in that conversation?

16 A. She may have said it at that time too,
17 but, like I say, it was a very short conversation
18 in passing.

19 Q. And you are as positive about Elena
20 Reeves calling you after you were fired and
21 telling you Jason Morris -- or Jason Carnahan
22 told us not to talk about you as you are about
23 your testimony that Jason Carnahan told you to
24 look for a way to fire Megan Kerr. Correct?

25 MR. MULAIRE: Object to form.

1 finish his previous answer, for the record.

2 BY MR. TRUSEVICH:

3 Q. And you are as positive about that,
4 sir, as you are as Elena Reeves calling you after
5 you were fired. Correct?

6 MR. MULAIRE: Object to form.

7 THE WITNESS: True.

8 BY MR. TRUSEVICH:

9 Q. Okay. We'll look at that in a minute,
10 sir.

11 All right. Now, let's go and talk
12 about -- let's back up a couple of months. Do
13 you recall in March of 2013 Megan Kerr presenting
14 you documents showing that she was changing her
15 name from Jason Kerr to Megan Kerr?

16 A. Correct.

17 Q. And is that when you started these
18 daily harassing, embarrassing, and discriminatory
19 comments at least two to three times a day,
20 according to Megan Kerr?

21 A. No.

22 MR. MULAIRE: Objection. Form and
23 foundation.

24 BY MR. TRUSEVICH:

25 Q. Because, according to you, that never