E-FILED
Friday, 12 January, 2018 05:12:20 PM
Clerk, U.S. District Court, ILCD

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

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. **RENT-A-CENTER EAST, INC.,** Defendant.	No. 16-CV-2222 Magistrate Judge Eric I. Long

DEFENDANT RENT-A-CENTER EAST, INC.'S
REPLY IN SUPPORT OF ITS MOTION IN LIMINE

Defendant Rent-A-Center East, Inc. ("RAC") files its replies in support of Defendant's Motions in Limine Nos. 3, 4, 5, and 8.

3. EVIDENCE/TESTIMONY RELATING TO ALLEGED MISTREATMENT OF AMBER SHUMATE BY RAC'S PRIVATE INVESTIGATOR.

The EEOC opposed RAC's motion to exclude scurrilous allegations by Amber Shumate that RAC's private investigator mistreated her during a voluntary interview. The EEOC contends that this evidence is tantamount to evidence of "an attempt to persuade a witness not to testify," and is therefore relevant and admissible. *See* ECF # 78 at 3 (discussing *Ty Inc. v. Softbelly's Inc.*, 353 F.3d 528, 534 (7th Cir. 2003) and *U.S. v. Shorter*, 54 F.3d 1248, 1260 (7th Cir. 1995)). The cases cited by the EEOC, however, concern scenarios where litigants attempted to prevent witnesses from testifying. No such allegations are made here – neither Shumate nor the EEOC contends that RAC or its investigator attempted to coerce Shumate not to testify. (RAC denies that any untoward conduct took place at all.) Moreover, Shumate made similar allegations against EEOC investigator Gloria Mayfield, stating that Mayfield was "extremely rude" and called Shumate a liar. *See* ECF # 43 at Ex. 4, 73:16-75:10. These allegations are

remarkably similar to Shumate's contentions that RAC's investigator was "domineering" and "tried to cause her to change her testimony" (the latter being the EEOC's gloss on the matter).

At bottom, the cases that the EEOC cites are inapposite, as there are no contentions here that any party has attempted to bar Shumate from testifying in this matter. Even if the evidence comported with the EEOC's misguided belief that the conduct of RAC's investigator belies some "consciousness of guilt," that sword cuts both ways. Shumate's allegations concerning the conduct of the EEOC's investigator (for which the EEOC later apologized) would likewise show that the agency considers its case to be, in its own words, "weak, unfounded, or false." For these reasons, the Court should grant RAC's Motion in Limine No. 3.

4. EVIDENCE/TESTIMONY RELATING RAC'S POSITION STATEMENT TO THE EEOC.

The EEOC's opposes RAC's motion in limine to exclude evidence regarding RAC's position statement submitted to the EEOC in response to Megan Kerr's Charge of Discrimination. The agency does so in spite of the prevailing law in the Seventh Circuit that such statements may be used only for impeachment, as they have no evidentiary value otherwise. Specifically, as explained by this Court's sister district, "***statements made to the EEOC do not carry significance independent of possible impeachment***." *Gage v. Metro. Water Reclamation Dist. of Greater Chicago*, 365 F. Supp. 2d 919, 937 (N.D. Ill. 2005) ("Thus, this Court will exclude the EEOC submissions and grant the Defendant's motion in limine.").

Moreover, RAC's position statement holds no impeachment value in any event. The position statement was not drafted or signed by RAC – it was prepared and signed by RAC's outside counsel, making it a hearsay summary of other hearsay statements. The fact that the document was not prepared or signed by RAC renders it worthless even as impeachment evidence – the sole purpose for which it could be used under the prevailing law.

Courts have disavowed the impeachment value of position statements even where prepared by the company's *in-house* lawyer, explaining that "the likelihood that the information in the position statement or correspondence could be used to impeach [the in-house lawyer's] trial testimony is ***virtually non-existent***," because the in-house lawyer would not be called as a witness. *Reynolds v. Family Dollar Servs., Inc.*, No. CIV.A. 09-56-DLB, 2011 WL 618966, at *1 (E.D. Ky. Feb. 10, 2011). Here, the possibility of a (double) hearsay position statement being used for impeachment is even more remote, and indeed vanishes entirely, as the statement was prepared by *outside* counsel. Likewise, the position statement could not be used to impeach RAC's other witnesses: "It would be highly unusual to impeach a witness with the statement of another witness, especially in a situation like this one where that other witness is an attorney who is required by law to respond to the EEOC's investigation." *Id.* Even as a tool for impeachment, RAC's position statement is worthless from an evidentiary standpoint.

While the EEOC argues RAC's position statement is relevant because it includes "an account of the events at the core of this case," they are again swimming upstream given the law in this circuit. The entire purpose of trial is to present an account of the facts at the core of the case; a position statement would be a needless addition to the trial record. Given that the parties will present witness testimony concerning the fact of the case, "then the presentation of the EEOC statement would be a ***'needless presentation of cumulative evidence'*** and thus inadmissible pursuant to Rule 403.'" *Id.* (quoting *Flowers v. Komatsu Mining Sys.*, 165 F.3d 554, 556 (7th Cir.1999) (describing the exclusion of transcripts of investigatory interviews as cumulative where witnesses testified live)); *see also Swartz v. Wabash Nat. Corp.*, 674 F. Supp. 2d 1051, 1057 (N.D. Ind. 2009) ("Because WNC's EEOC position statement merely echoes the version of events already outlined in Miller's deposition, it is 'a needless presentation of

cumulative evidence and thus inadmissible pursuant to Rule 403.'").

The EEOC has presented no grounds for admitting the position statement, and Seventh Circuit courts have recognized that such hearsay statements are not competent evidence absent use for impeachment. The EEOC has presented no authority to the contrary, and accordingly, the Court should grant RAC's Motion in Limine No. 4.

5. EVIDENCE/TESTIMONY RELATING TO KERR'S "EVICTION" FROM HER APARTMENT.

RAC's Motion in Limine No. 5 concerns Megan Kerr's "eviction" from her apartment. The EEOC misconstrues the scope of RAC's Motion. RAC does not seek to exclude evidence that Kerr was moving her belongings, or even that she was vacating her apartment. RAC seeks only to exclude evidence of whether or not the *reason* that Kerr was vacating her apartment was because she was "evicted," or whether she was leaving for some other reason. In short, RAC seeks to spare the Court and the jury from a mini-trial as to whether it would be proper to characterize Kerr's vacating of her apartment as an "eviction." This issue has no bearing on the material facts of the case and would simply confuse the issues presented to the jury.

8. EVIDENCE/TESTIMONY RELATING OTHER ILLEGAL ACTS ALLEGEDLY COMMITTED BY RAC.

The EEOC opposes RAC's Motion in Limine No. 8 excluding testimony of other illegal acts allegedly committed by RAC, including that RAC instructed Russell Kasper and other employees to peddle merchandise door-to-door in violation of local laws. The EEOC appears to argue that evidence of such acts would be admissible under Rule 608 – that is, that such purported actions would be probative of RAC's "character for truthfulness." As a threshold matter, it is difficult to conceive of the metes and bounds of a corporation's "character for truthfulness." Indeed, courts addressing "character" evidence of corporations have been

befuddled as to how character evidence would apply to a corporation. *See Colley v. CSX Transp., Inc.*, No. CIVA1:07CV1175HSOJMR, 2009 WL 1515524, at *1 (S.D. Miss. May 27, 2009) ("It is not clear that [the prohibition on character evidence in] Rule 404(b) applies to corporations . . ."); 22B WRIGHT & GRAHAM, FED. PRAC. & PROC. EVID. § 5234 (2d ed.) (explaining that the "failure to cover 'corporate character' in the Rule [404] may suggest that the Advisory Committee did not believe any such thing existed"). Though the EEOC requests that the Court dive into uncharted waters by applying Rule 608 to RAC's corporate "character for truthfulness" – whatever that might mean – it provides no authority on which to base such an expansion of the evidentiary rules.

Even if Rule 608 did apply, the evidence the EEOC seeks to present here is substantially more prejudicial than probative. The EEOC's opposition boils down to a "suggestion that [Defendant] must have violated certain rules in this case because it did so in other instances" – evidence which is clearly unfairly prejudicial. *See Ross v. Am. Red Cross*, No. 2:09-CV-00905-GLF, 2012 WL 2004810, at *5 (S.D. Ohio June 5, 2012), *aff'd*, 567 F. App'x 296 (6th Cir. 2014) ("Even if this information were probative of a fact in this litigation, its probative value is substantially outweighed by the risk of unfair prejudice."); *see also Irvan v. Frozen Food Exp., Inc.*, 780 F.2d 1228, 1231 (5th Cir. 1986) (reversing jury verdict in favor of plaintiff in part on the "prejudicial effect of . . . the admission into evidence of the irrelevant computer printouts of unrelated accident claims").

Moreover, introduction of this evidence would create a trial within a trial, confusing the jury as to the material issues involved. Specifically, RAC would be required to produce evidence to refute the spurious allegations of "illegal" activity, creating a significant risk that the jury will be confused as to their ultimate task – whether it is to decide Kerr's claims, or whether

it is to determine whether RAC had employees peddle "door to door."

As there is no legal basis or precedent for admitting evidence of a corporation's "character for truthfulness," and as the evidence is unfairly prejudicial to RAC in any event, the Court should grant RAC's Motion in Limine No. 8.

Respectfully submitted,

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Dated: January 12, 2018

CERTIFICATE OF SERVICE

I, **J. Bradley Spalding**, an attorney, certify that I served the attorney of record named below with a copy of **Defendant's Reply in Support of its Motion in Limine** via ECF (*Electronic Case Filing*) on January 12, 2018:

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