

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LATINO FOOD MARKETERS, LLC,

Plaintiff,

v.

OLE MEXICAN FOODS, INC.,

Defendant.

ORDER

03-C-0190-C

A final pretrial conference was held in this case on April 1, 2004. Plaintiff appeared by Marta Meyers and Richard Bolton. Defendant appeared by Kevin Hudson, Michael Robl, Steven Streck and Albert Bolet, III.

Counsel approved the voir dire questions in the form submitted to them with minor changes. Eight jurors will be selected from a qualified panel of fourteen. Each side will exercise three peremptory challenges. Trial days will begin at 9:00 a.m. and last until 5:30 p.m. with an hour for lunch. At the end of each day, counsel are to advise opposing counsel of the witnesses he or she expects to call the next day.

Witnesses are to be sequestered. Plaintiff asked for and received permission for Mr. and Mrs. Leal to take turns acting as corporate representative present at trial.

Counsel are to have exhibit lists and copies of written exhibits on the bench on Monday, April 5, 2004, before the start of trial.

Counsel reviewed the form of the liability verdict and the instructions and raised questions about both. The questions will be addressed after the evidence is in at trial.

Counsel may re-designate deposition testimony in light of the ruling on the motion for summary judgment.

Defendant will go first with its proof at trial. I denied defendant's motion to eliminate all references to plaintiff and defendant.

I made the following rulings on defendant's motions in limine.

1. Defendant's motion to exclude evidence of defendant's negotiations with other manufacturers is DENIED.

2. Defendant's motion to exclude evidence that defendant does not have a contract with Wisconsin Cheese Producers is GRANTED.

3. Defendant's motion to exclude evidence that defendant was ordering more cheese from another supplier is DENIED.

4. Defendant's motion to exclude evidence relating to the modification of Exhibit A, the certificate of insurance and customers lists is DENIED. Defendant's motion to preclude any reference to the forum selection clause is GRANTED.

5. Defendant's motion to exclude evidence of the contents of the Fed Ex package

is DENIED.

6. Defendant's motion to exclude references to prior court orders is GRANTED.

7. Defendant's motion to exclude evidence that defendant did not identify Ashong as a witness until after defendant had advised plaintiff it had found the signed contract is DENIED.

8. Defendant's motion to exclude evidence that defendant made late payments is DENIED.

9. Defendant's motion to exclude evidence of contract discussions in Atlanta in June 2002 is DENIED.

10. Defendant's motion to exclude evidence of Moreno's dishonesty is DENIED.

11. Defendant's motion to exclude documents produced after Yoder's deposition relating to quality problems with other customers is GRANTED. Defendant's motion to exclude documents related to Luis Padron is DENIED.

I made the following rulings on plaintiff's motion in limine:

1. Plaintiff's motion to exclude Walmart's vendor number is DENIED as moot.

2. Plaintiff's motion to exclude any evidence of damages is DENIED. However, defendant must produce its 2001 and 2002 income and expense reports, subject to the parties' protective order and, if defendant wishes, for disclosure to counsel and plaintiff's expert witness only.

3. Plaintiff's motion to exclude evidence concerning quality problems is DENIED.

4. Plaintiff's motion to exclude evidence of damages related to defendant's relationship with El Valu is DENIED.

5. Plaintiff's motion to prohibit defendant from measuring its damages by relying on prices charged to Quay Corporation is DEFERRED until liability is decided.

6. Plaintiff's motion to exclude evidence of Quay Corporation's lawsuit against plaintiff is GRANTED.

7. Plaintiff's motion for reconsideration is GRANTED to the extent that defendant cannot assert that plaintiff acted in bad faith by charging higher prices and seeking out defendant's customers if no contract is shown. However, defendant can argue that plaintiff purposefully sent orders that were short and of poor quality with the intent to disrupt defendant's business and contractual relationships.

Defendant will use Exhibits 501, 529 and 534 in his opening statement. Plaintiff has no objection to the use of these exhibits. Plaintiff's counsel is to advise defendant's counsel no later than noon on Friday, April 2, 2004, of the exhibits she intends to use in her opening statement.

Exhibit 529 can be shown to the jury together with Mr. Rodriguez's English interpretation of the message. However, Exhibit 581 will be interpreted by the official

interpreter at trial.

Entered this 2nd day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge