

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

GUILLERMO ELESCANO,

Plaintiff,

v.

HY CITE CORPORATION,

Defendant.

ORDER

11-cv-240-bbc

In this civil action for monetary relief, plaintiff Guillermo Elescano contends that defendant Hy Cite Corporation terminated him in retaliation for exercising his rights under the Family and Medical Leave Act, 29 U.S.C. §§ 2601-2654. The case is scheduled for trial on June 11, 2012.

Now before the court is plaintiff's motion in limine, dkt. #13, in which he seeks to preclude defendant from submitting evidence that plaintiff owned and received income from real estate. Plaintiff contends that such evidence would be irrelevant under Fed. R. Evid. 401. In response, defendant states that it intends to introduce evidence that plaintiff received income from rental properties both before and after his termination from defendant in 2010 and that plaintiff was seeking to purchase a house in Maryland while he was employed by defendant. Defendant says this evidence is relevant to show that "(a) [plaintiff] cared less about his job performance and/or losing his job because he desired to move to Maryland to be with his family; and (b) [plaintiff] went on FMLA leave to explore

the option of moving to Maryland.” Dft.’s Br., dkt. #28, at 2. Defendant also says that evidence is relevant to plaintiff’s failure to mitigate his lost wages because it shows that he “was less motivated to find alternative employment because he had an alternative source of income.” Id.

I will grant the motion in part and deny it in part. Plaintiff’s theory is that defendant fired him because he took FMLA leave. Defendant has not argued that it fired plaintiff because he owned or received income from real estate, probably because such justification for terminating plaintiff would make no sense. Thus, defendant may not introduce evidence that plaintiff owned or received income from rental properties. Additionally, such evidence is not relevant to whether plaintiff mitigated his damages. The relevant issue for mitigation is whether plaintiff did, in fact, mitigate his damages by looking for other work, not whether plaintiff “was less motivated” to do so.

However, defendant may introduce evidence to support its theory that it fired plaintiff because some of his leave was not FMLA related. In particular, defendant can introduce evidence that plaintiff took leave in order to buy a house and pursue his plan to move to Maryland.

ORDER

IT IS ORDERED that plaintiff Guillermo Elescano’s motion to preclude defendant Hy Cite Corporation from introducing evidence at trial that plaintiff owned and received income from real estate, dkt. #13, is GRANTED IN PART and DENIED IN PART.

Defendant may introduce such evidence solely for the purpose of showing that plaintiff took leave because he was planning to move to Maryland and not for a qualified reason under the Family and Medical Leave Act.

Entered this 4th day of June, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge