

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

MBI ACQUISITION PARTNERS, L.P., a
Delaware Limited Partnership,

Plaintiff,

v.

THE CHRONICLE PUBLISHING COMPANY,
a Nevada corporation, and RICHARD SUOMALA,
a Minnesota resident,

Defendants.

ORDER

01-C-0177-C

A hearing on motions in limine was held by telephone in this case on October 2, 2002, before United States District Judge Barbara B. Crabb. Plaintiff appeared by Jeffrey Cross and Leland Hutchinson. Defendants were represented by Kathleen Roach, Rene Pengra, Chad Pekron and Erica Pflagher.

Plaintiff's counsel asked that a question be added to the proposed voir dire concerning the jurors' familiarity with Arthur Andersen. The request was granted.

Before discussing the remaining motions in limine, I took up defendants' motion to deem the facts stated in plaintiff's disclosure of sales and return data to be a binding

admission. It was my intention that this disclosure would constitute a binding admission on plaintiff's part; plaintiff's counsel agreed that it would be when the matter was discussed at the final pretrial conference. Defendants' motion is granted.

As to motion in limine #1, it will be up to the jury to determine whether defendant Chronicle would have expected defendant Suomala to make representations concerning the value of unprocessed returns.

As to motions in limine ## 2, 7, 9, 10, 11 and 14, defendants may not use the stock purchase agreement as evidence that they had some privilege to omit making a statement they knew to be material in circumstances in which either they knew there was a danger of misleading the buyer by not disclosing the information or the danger was so obvious that any reasonable person would be considered to have known it. However, defendants may use the agreement to show their lack of knowledge of the danger of misleading the buyer or to show the absence of any indication of an obvious danger. Defendants may not use the distinction between a lease or bailment as a reason why they did not disclose the existence of the Jensen warehouse.

As to motion in limine #10 in particular, defendants may not introduce evidence that they could have sold MBI for more money had they not wanted to have a clean closing for the purpose of showing they did not need to make material disclosures but they may introduce it as part of showing the context in which the sale arose or perhaps, as it relates

to damages. However, plaintiff will have an opportunity to be heard on the relevance to damages of the nature of the sale.

Defendants may use excerpts from the video deposition of David Straden during opening argument. Counsel are to advise plaintiff's counsel promptly of the particular excerpts they intend to show.

Entered this 2nd day of October, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge