

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 1:14-cv-23193-UU

QUANTUM CAPITAL, LLC,

Plaintiff,

v.

BANCO DE LOS TRABAJADORES, *et al.*,

Defendants.

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**ORDER ON MOTIONS IN LIMINE**

THIS CAUSE is before the Court upon the following Motions:

- Defendants' Motion in Limine to Preclude Evidence Pertaining to the "Acuerdo de Entendimiento", D.E. 162;
- Defendants' Motion in Limine to Preclude Evidence as to Value of Damages for the Claims of Unjust Enrichment, D.E. 163;
- Defendants' Motion in Limine to Preclude Evidence Pertaining to Work Performed by Oswaldo Jugo on Behalf of Non-Party Entities, D.E. 164;
- Plaintiff's Motion in Limine to Preclude Defendants' Attorneys from Testifying at Trial and to Preclude Defendants from Offering Evidence on Certain Topics for Which No Adequate 30(b)(6) Witness Was Designated, D.E. 165;
- Plaintiff's Motion in Limine to Exclude Evidence and Certain References Regarding Issues of Legality, D.E. 166.

The Motions are now ripe for disposition.

THE COURT has reviewed the pertinent portions of the record and is otherwise fully advised in the premises.

**I. Defendants' Motion in Limine to Preclude Evidence Pertaining to the "Acuerdo de Entendimiento" [D.E. 162]**

Defendants move to exclude all evidence concerning a document titled the "Acuerdo de Entendimiento" because, they contend, it has no relevance to the issues in this case and will only serve to confuse and mislead the jury. The "Acuerdo" has been at the center of many disputes in this action and formed the basis for Plaintiff's Motion for Sanctions, D.E. 138. As alleged in Plaintiff's Amended Complaint, the "Acuerdo" bestowed a personal benefit on the individual Defendants if Bantrab was to complete the capitalization with DHK Finance. D.E. 40 ¶¶ 70, 72. Accordingly, the "Acuerdo" provided motivation for the individual Defendants to fraudulently induce Plaintiff to continue working on the capitalization. *Id.* ¶ 84.

Plaintiff's fraudulent inducement claim is no longer a part of this action. However, the "Acuerdo" is plainly relevant to Plaintiff's remaining claims. It was created and signed as part of the negotiations surrounding Bantrab's capitalization with DHK, which is one of the two transactions at issue in this case. Further, there is testimony from Jugo that he helped prepare this document, and therefore this document is evidence that Jugo provided financial advisory services on behalf of Quantum for the capitalization. D.E. 181-4 at 134:5-20. Finally, Plaintiff claims that the individual Defendants represented that Quantum had an existing oral agreement with Bantrab to work on the capitalization in exchange for a 5% success fee at the meeting where the "Acuerdo" was signed. Accordingly, Defendants' Motion in Limine to Preclude Evidence of the "Acuerdo" is DENIED.

**II. Defendants' Motion in Limine to Preclude Evidence as to Value of Damages for the Claims of Unjust Enrichment [D.E. 163]**

Defendants move to exclude evidence pertaining to the value of benefits conferred under Plaintiff's unjust enrichment claims because Plaintiff has failed to provide any calculation for the reasonable value of the benefits allegedly conferred to Bantrab in connection with the two transactions in this case. As a preliminary matter, the Court has granted summary judgment for Bantrab on Plaintiff's unjust enrichment claim based on Quantum's work on the Deutsche Bank transaction, so Defendants' Motion is moot to the extent it applies to the Deutsche Bank transaction. For the DHK transaction, Defendants contend that Plaintiff has not disclosed any evidence as to the value of the benefit conferred onto Bantrab for the capitalization transaction or the reasonableness of such value. Plaintiff argues that it is entitled to prove unjust enrichment damages through a variety of evidence demonstrating the fair market value of the benefit provided to Defendants, including through other contracts Bantrab entered into to obtain financial advisory services for the capitalization with DHK.

The Restatement (Third) of Restitution and Unjust Enrichment provides the following:

Enrichment from the receipt of nonreturnable benefits may be measured by

- (a) the value of the benefit in advancing the purposes of the defendant,
- (b) the cost to the claimant of conferring the benefit,
- (c) the market value of the benefit, or
- (d) a price the defendant has expressed a willingness to pay, if the defendant's assent may be treated as valid on the question of price.

Restatement (Third) of Restitution and Unjust Enrichment § 49 (2011). As such, Bantrab's contracts with other entities regarding what it was willing to pay for financial services in connection with the DHK capitalization are relevant evidence of the measurement of how much Bantrab was enriched by Quantum's alleged conduct. Additionally, Jugo claims that Bantrab's directors agreed to pay Quantum a 5% success fee in exchange for its work on the capitalization, which is also evidence of a price Bantrab was willing to pay. Plaintiff can therefore present this

evidence to support its claim for unjust enrichment damages. Accordingly, Defendants' Motion to preclude evidence as to value of damages for the claims of unjust enrichment is DENIED.

**III. Defendants' Motion in Limine to Preclude Evidence Pertaining to the Work Performed by Oswaldo Jugo on Behalf of Non-Party Entities [D.E. 164]**

Defendants move to exclude any evidence and testimony regarding the work done by Jugo on behalf of separate and unrelated non-party entities to the extent that Plaintiff attempts to treat such work as work performed by Jugo on Plaintiff's behalf. Defendants use this Motion to rehash the arguments they made in their motion for summary judgment on Count I of Plaintiff's Amended Complaint, essentially copying and pasting pages 3 to 5 of its motion for summary judgment into this Motion. This Motion seeks to exclude evidence, without specifying what evidence exactly, that goes to the heart of the dispute in this case – what work did Jugo perform on behalf of Quantum under the written contract with Bantrab and the alleged oral agreement with Bantrab. As this is the essential issue underlying Plaintiff's claims, Defendants' Motion is DENIED.

**IV. Plaintiff's Motion in Limine to Preclude Defendants' Attorneys from Testifying at Trial and to Preclude Defendants from Offering Evidence on Certain Topics for Which No Adequate 30(b)(6) Witness was Designated [D.E. 165]**

Plaintiff moves to exclude Carlos Poitevin and Vinicio Rodriguez from testifying at trial because, Plaintiff argues, they are serving in an impermissible dual role as advocate and witness in this action and because they improperly use the attorney-client privilege as a sword and shield. Plaintiff also moves to preclude Bantrab from introducing evidence on Plaintiff's 30(b)(6) topics 11, 12, 20, 21, 22, 23, and 33, because the witnesses who were designated for these topics were allegedly unprepared for their depositions.

As Plaintiff notes in its Reply brief, Defendants have not listed either Poitevin or Rodriguez as witnesses that will be called or may be called at trial. Thus, these witnesses will not

be testifying and Plaintiff's Motion is moot insofar as it relates to Poitevin and Rodriguez.

Accordingly, the Court will turn to Plaintiff's argument regarding inadequate preparation of Garcia as a Rule 30(b)(6) witnesses.

Rule 30(b)(6) governs deposition notices directed toward a corporation and requires that a deposition notice "describe with reasonable particularity the matters for examination." Fed. R. Civ. P. 30(b)(6). "The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify." *Id.* "The persons designated must testify about information known or reasonably available to the organization." *Id.*

"A corporation has an affirmative duty to provide a witness who is able to provide binding answers on behalf of the corporation." *QBE Ins. v. Jorda Enters., Inc.*, 277 F.R.D. 676, 688 (S.D. Fla. 2012); see *Brazos River Authority v. GE Ionics, Inc.*, 469 F.3d 416, 433 (5th Cir. 2006) ("The deponent must prepare the designee to the extent matters are reasonably available, whether from documents, past employees, or other sources."). "The rule implicitly requires the corporation to review all matters known or reasonable available to it in preparation for a Rule 30(b)(6) deposition." *QBE Ins. Co.*, 277 F.R.D. at 690. "If it becomes obvious that the deposition representative designated by the corporation is deficient, the corporation is obligated to provide a substitute." *Brazos River Auth.*, 469 F.3d at 433. "The failure to properly designate a Rule 30(b)(6) witness can be deemed a nonappearance justifying the imposition of sanctions." *QBE Ins. Co.*, 277 F.R.D. at 690 (citing *Resolution Trust Corp. v. S. Union Co., Inc.*, 985 F.2d 196, 198 (5th Cir 1993)). "The rule provides for a variety of sanctions for a party's failure to comply with its Rule 30(b)(6) obligations, ranging from the imposition of costs to preclusion of testimony and even entry of default." *Id.* at 690; *Strategic Decisions, LLC v. Martin Luther King*,

*Jr. Ctr for Nonviolent Social Change, Inc.*, No. 1:13-CV-2510-WSD, 2015 WL 2091714, at \*7 (N.D. Ga. May 5, 2015) (“ Permissible sanctions for failing to designate a witness knowledgeable about Rule 30(b)(6) categories include prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters into evidence.” (internal quotations omitted)).

Defendant Ronald Garcia was designated as the corporate witness for Topics 11 and 12 of Plaintiff’s Rule 30(b)(6) deposition notice. These topics are as follows:

Topic 11: The contract attached as Exhibit “A” to the Amended Complaint, including but not limited to any and all meetings, communications, and/or correspondence related to the contract, work to be performed, and/or the work performed under the contract.

Topic 12: All efforts or work undertaken or performed by NCF, UCS, Mr. Jugo and/or Quantum with regards to the debt issuance transaction between Deutsche Bank and BANTRAB that was consummated in or about 2013.

D.E. 165-3. Plaintiff takes issue with Garcia’s testimony because he prepared for his deposition by meeting with counsel for five hours and only reviewed documents filed in this action. Plaintiff also contends that Garcia was inadequately prepared to testify on these topics because he testified that he could not recall whether Quantum had provided the services required of it in the July 25, 2011 contract.

The Court finds that Garcia was adequately prepared to testify about these topics. Garcia testified extensively about the separate contracts with NCF, UCS, Jugo, and Quantum. D.E. 184-1 at 40-59. He also testified that Jugo did not work on the bond issuance, after 2009. *Id.* at 69-70. He testified extensively about work done to complete the Deutsche Bank transaction, and specifically testified that Jugo did not participate in the bond issuance in 2013. *Id.* at 115-121. “Absolute perfection is not required of a Rule 30(b)(6) witness,” and Garcia was an adequate 30(b)(6) witness. *QBE Ins. Corp.*, 277 F.R.D. at 691; *cf. Strategic Decisions*, 2015 WL 2091714,

at \*9 (sanctioning party where 30(b)(6) witness was “unable to provide the most basic factual information required by the Rule 30(b)(6) Topics”). Accordingly, Bantrab will be able to present evidence on Topics 11 and 12 of Plaintiff’s Rule 30(b)(6) deposition notice at trial and Plaintiff’s Motion is DENIED.

**V. Plaintiff’s Motion in Limine to Exclude Evidence and Certain References Regarding Issues of Legality [D.E. 166]**

Plaintiff moves to preclude Defendants from offering at trial any lay witness testimony regarding the legality of the contracts on which Plaintiff’s claims are based. The Court has stricken Defendants’ proposed experts on the legality of these contracts because they were untimely disclosed. Plaintiff argues that testimony as to whether these contracts are legal requires an expert’s specialized knowledge. Plaintiff also requests that the Court preclude Defendants, their attorneys, and any witnesses they call to testify from using words to suggest Plaintiff and/or its principal has done anything illegal or unlawful, including using the words “legal,” “illegal,” “unlawful,” or “prohibited by law.” Plaintiff also requests that the Court preclude Defendants from offering any testimony regarding foreign or Guatemalan law.

The Court held in its Omnibus Order that Guatemalan law, and whether the alleged contracts are legal under Guatemalan law, is not a part of this case. D.E. 206 at 21 n.2. As such, Defendants will be precluded from making any argument at trial that the contracts are illegal under Guatemalan law. Similarly, the Court granted judgment for Plaintiff on Defendants’ affirmative defense of illegality to the extent it is based on federal securities law. D.E. 206 at 26. The Court, however, allowed Defendants’ defense of illegality to proceed to trial to the extent it is based on Florida securities law.

A lay witness will not be able to testify as to whether these contracts are illegal under Florida securities law because such a conclusion would have to be based on specialized

knowledge of Florida securities law and how the law would apply to the facts of this case. Similarly, a lay witness cannot testify that Jugo was a “dealer” as defined by the Florida statute that was required to register with the Florida Office of Financial Regulation. Because no witness will testify as to whether Jugo or Quantum was required to register as a broker/dealer, or whether the contracts in this case violate Florida Statute § 517.12 because they call for Jugo and Quantum to act as unregistered dealers, Defendants will be precluded from making these arguments to the jury. Accordingly, Plaintiff’s Motion is GRANTED.

**CONCLUSION**

For the foregoing reasons, it is hereby

ORDERED AND ADJUDGED that Defendants’ Motion in Limine, D.E. 162, is DENIED. It is further

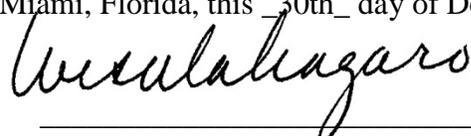
ORDERED AND ADJUDGED that Defendants’ Motion in Limine, D.E. 163, is DENIED. It is further

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ORDERED AND ADJUDGED that Plaintiff’s Motion in Limine, D.E. 166, is GRANTED.

DONE AND ORDERED in Chambers at Miami, Florida, this 30th day of December, 2015.



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URSULA UNGARO  
UNITED STATES DISTRICT JUDGE

copies provided: counsel of record