

IN THE DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

MARILYN A. FAIRCHILD,

Plaintiff,

vs.

DJBCK, INC. d/b/a DALTON PLUMBING,
HEATING AND COOLING, INC.,

Defendant.

CASE NO. LACV137917

PLAINTIFF'S MOTION IN LIMINE

COMES NOW the Plaintiff, Marilyn Fairchild and moves in limine for an order from this Court on the following matters:

1. *Non-disclosed/Untimely Disclosed Documents.* Plaintiff moves for an order in limine prohibiting the Defendant, its attorneys, and witnesses from introducing or otherwise relying upon any document that has not been previously or timely provided by the Defendant in discovery in this case. The discovery plan in this matter provided standard deadlines for the exchange of documents by the parties and was agreed to by counsel for Plaintiff and counsel for Defendant. (*See Trial & Approving Discovery Plan (Sept. 9, 2019).*) The Court should therefore not allow the Defendant to introduce or discuss documents that have not yet been disclosed to Plaintiff's counsel or that were not timely filed or exchanged under the discovery plan. Such evidence is excludable under the discovery plan in this matter and under Iowa Rule of Evidence 5.403 as it presents an "unfair prejudice" to Plaintiff and her trial preparation.
2. *Undisclosed Testimony from Proffered Expert Witnesses.* Plaintiff moves for an order in limine prohibiting the Defendant, their attorneys, and witnesses from introducing or otherwise relying upon any testimony from any proffered expert witnesses in this case.

Under Iowa Rule of Civil Procedure 1.500(2), “a part a party must disclose to the other parties the identity of any witness the party may use at trial to present [expert evidence].” This includes, in particular, disclosure of a written report from any such expert. *See* Iowa R. Civ. P. 1.500(2)(b). That report must contain *inter alia* a “complete statement of all opinions the witness will express and the basis and reasons for them,” any and all “facts or data considered by the witness in forming the opinions,” and “[a]ny exhibits that will be used to summarize or support the opinions.” Under the Discovery Plan that governs this case, such disclosures and reports from Defendants were due no later than “150 days before trial” or by Monday, December 21, 2020¹. (*See* Trial Scheduling & Discovery Plan (Sept. 9, 2019).)

However, Defendant did not formally designate any retained experts in this case by naming them in discovery and providing their required reports. (*See generally* Docket.) Instead, Defendant indicated in its December 2019 expert filing that it “has retained no experts but has identified employees and former employees” whose testimony may be “deemed expert in nature.” (*See* Def.’s Designation (Dec. 19, 2020) (emphasis added).) While Plaintiff takes no issue with Defendant’s designation on the matter of non-retained employees and former employees, the Court should not permit any additional, outside expert testimony from Defendant on any material issue in the case. Such evidence, if offered, would be excludable under the discovery plan in this matter and under Iowa Rule of Evidence 5.403 as it presents an “unfair prejudice” to Plaintiff and her trial preparation.

3. *Affirmative Defense.* Plaintiff moves for an order in limine prohibiting the Defendant, their

¹ Notably, the Court has entered an order regarding discovery that permits Plaintiff to supplement her expert disclosures at any time up to and including two weeks before trial. (*See* Order on Motion at ¶ 1 (Mar.17, 2021).) The Court entered this ruling based on the lack of timely discovery responses from Defendant as well as Defendant’s failure to adhere to a prior, October 2020 order to compel discovery. (*See generally* Docket.)

attorneys, and witnesses from testifying or otherwise raising any affirmative defense. “Failure to plead an affirmative defense normally results in waiver of the defense.” *Hope K. Farms, LLC v. Gumm*, 2016 WL 3553605, No. 14-1371 at *4 (Iowa Ct. App. June 29, 016) (citing *Dutcher v. Randall Foods*, 546 N.W.2d 889, 893 (Iowa 1996)). Defendant has not pled any affirmative defense in this case. Therefore, Defendant shall be prohibited from raising any such defense at trial.

4. *Attorney-Client Matters*. Plaintiff moves for an order in limine under Iowa Code section 622.10 prohibiting any testimony or questioning about attorney-client communications for which that privilege has not been waived.
5. *Sequestration of Witnesses*. Plaintiff moves for an order in limine under Iowa Rule of Evidence 5.615 to exclude witnesses from the courtroom so that they cannot hear other witnesses’ testimony. Under the Rules of Evidence, sequestration orders have been recognized as a reliable means of “discouraging and exposing fabrication, inaccuracy, and collusion.” *See* Iowa R. Evid. 5.615 cmt. Thus, sequestration is generally available to a requesting party as a matter of right. *Id.*

WHEREFORE, Plaintiff Marilyn Fairchild respectfully requests that the Court grant her Motion in Limine on all items discussed herein and grant any such further relief that is necessary and appropriate in the premises.

Respectfully submitted,

DUTTON, DANIELS, HINES, KALKHOFF,
COOK & SWANSON, P.L.C.
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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on May 4, 2021.

By: ☐ U.S. Mail ☐ Fax
☐ Hand Delivered ☐ UPS
☐ Federal Express ☐ E-mail
☒ EFC or EDMS System Participant (Electronic Service)

Signature: /s/Jamie Showalter

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