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Defendant Tejon Ranchcorp

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER)	Judicial Council Coordination No. 4408
CASES)	
)	Santa Clara Case No. 1-05-CV-049053
Included Actions:)	Assigned to Hon. Jack Komar
Los Angeles County Waterworks District No. 40)	
v. Diamond Farming Co., Superior Court of)	OBJECTION OF TEJON
California, County of Los Angeles, Case No. BC)	RANCHCORP TO VIDEOTAPED
325201;)	DEPOSITION OF N. THOMAS
)	SHEAHAN
Los Angeles County Waterworks District No. 40)	
v. Diamond Farming Co., Superior Court of)	Phase 2 Trial Date: November 3,
California, County of Kern, Case No. S-1500-CV-)	2008
254-348;)	
)	
Wm. Bolthouse Farms, Inc. v. City of Lancaster,)	
Diamond Farming Co. v. Lancaster, Diamond)	
Farming Co. v. Palmdale Water Dist., Superior)	
Court of California, County of Riverside, Case)	
No. RIC 353 840, RIC 344 436, RIC 344 668)	

I. OBJECTION

A. Introduction.

TEJON RANCHCORP ("Tejon") objects to use at trial of the videotaped deposition of N. Thomas Sheahan by BOLTHOUSE PROPERTIES, LLC and W.M. BOLTHOUSE FARMS, INC.'s (collectively "Bolthouse") on the ground that Bolthouse

has failed to comply with Code of Civil Procedure section 2025.340(m).

B. Bolthouse Has Failed to Designate That Portion of Sheahan's Deposition Being Offered at Trial.

The right to conduct pre-trial discovery and confront and cross-examine a live witness is fundamental. Indeed, nowhere is the need to conduct pre-trial discovery more important, than when dealing with experts. (*Bonds v. Roy* (1999) 20 Cal.4th 140, 147 [The opportunity to depose an expert during trial is wholly inadequate and frustrates the very purpose of pre-trial discovery.].) Accordingly, the Legislature has established strict procedural rules governing the use of video-taped transcripts at trial.

Code of Civil Procedure section 2025.340(m) provides in relevant part:

"A party intending to offer an audio or video recording of a deposition in evidence under Section 2025.620 **shall notify the court and all parties in writing** of that intent and of the **parts of the deposition to be offered**. That **notice shall be given** within sufficient time for objections to be made and ruled upon by the judge to whom the case is assigned for trial or hearing, and for any editing of the recording." (Emphasis added.)

Bolthouse declared N. Thomas Sheahan as a rebuttal expert, but failed to produce any reports or disclose the substance of his anticipated testimony prior to the October 6, 2008 trial. Tejon filed a *motion in limine* to exclude Mr. Sheahan's testimony. On October 6, 2008 this court denied Tejon's motion but advised that Tejon could take the deposition of Mr. Sheahan to remedy the prejudice and unfair surprise. (RT 31:15-18.)¹

¹ 15 "HOWEVER, I'M GOING TO OFFER COUNSEL SHOULD

16 THEY SEEK A FURTHER REMEDY BY WAY OF TAKING FURTHER

On October 13, 2008 Bolthouse took the unusual step of noticing the deposition of its own retained expert for October 27, 2008 and gave notice that it intended to use the videotaped deposition at trial – effectively eliminating Tejon's right to pre-trial discovery. Tejon also noticed Mr. Sheahan's deposition for October 24, 2007. Bolthouse refused to produce Mr. Sheahan on October 24, 2007 or any earlier date. Mr. Sheahan's deposition lasted three days, beginning October 27 and ending October 29, 2008.

Trial is set to resume on November 3, 2008. As of October 30, 2008, Bolthouse still has not designated the portions of Mr. Sheahan's testimony that it intends to offer at trial. Since Bolthouse has failed to comply with its mandatory obligation under section 2025.340(m), Bolthouse is barred from offering any portion of the videotaped transcript at trial. Furthermore, it would manifestly unfair if Bolthouse were permitted to shift to the Court and to the parties, the laborious task of sifting through three days of video deposition transcripts on the eve of trial. Under section 2025.340(m), that obligation falls squarely on Bolthouse.

C. Conclusion.

Accordingly, Tejon requests that the court bar Bolthouse from offering any or all of Mr. Sheahan's deposition transcript at trial.

Dated: October 30, 2008

KUHS & PARKER

By 

Robert G. Kuhs, Attorneys
for the Defendant Tejon Ranchcorp

17 DEPOSITIONS OR SOME OTHER REMEDY TO BRING THAT TO THE
18 COURT'S ATTENTION."

II. DECLARATION OF ROBERT G. KUHS

I, ROBERT G. KUHS, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts of the State of California and a partner of Kuhs & Parker, counsel for Tejon.
2. On October 14, 2008 Bolthouse noticed the deposition of its own expert N. Thomas Sheahan for October 27, 2008 without consultation with my office.
3. On October 14, 2008 I noticed the deposition of Mr. Sheahan for October 24, 2008.
4. On October 15, 2008 Bolthouse objected to Tejon's deposition notice and stated that it would not produce Mr. Sheahan for deposition on October 24, 2008.
5. I attended the deposition of Mr. Sheahan on October 27 and 28, 2008. I understand from conversations with Anaverde, LLC's counsel that the deposition continued through October 29, 2008.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 30, 2008


Robert G. Kuhs

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PROOF OF SERVICE

I, Lidia E. Luna, declare:

I am employed in the County of Kern, State of California. I am over the age of 18 and am not a party to the within action; my business address is Kuhs & Parker, 1200 Truxtun Avenue, Suite 200, Bakersfield, California 93301.

On October 30, 2008, I caused the foregoing document(s) described as: **OBJECTION TO TEJON RANCHCORP TO VIDEOTAPED DEPOSITION OF N. THOMAS SHEAHAN** to be served on the parties in this action, as follows:

- (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: www.scefilings.org regarding the Antelope Valley Groundwater matter.
- () (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in seal envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Bakersfield, California, addressed to:
- () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- () (BY FACSIMILE TRANSMISSION) I am "readily familiar" with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- () (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Lidia E. Luna