

Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC, 2017 NCBC Order 20.

STATE OF NORTH CAROLINA  
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
14 CVS 1783

INSIGHT HEALTH CORP. d/b/a  
INSIGHT IMAGING,

Plaintiff,

v.

MARQUIS DIAGNOSTIC IMAGING  
OF NORTH CAROLINA, LLC;  
MARQUIS DIAGNOSTIC IMAGING,  
LLC; JOHN KENNETH LUKE;  
GENE VENESKY; and TOM  
GENTRY,

Defendants.

**ORDER ON DEFENDANTS' MOTION  
IN LIMINE REGARDING PRIOR  
ALLEGED "BAD ACTS"**

1. This Matter is before the Court upon Defendants' Motion *in Limine* Regarding Prior Alleged "Bad Acts" (the "Motion") in the above-captioned case.

2. After considering the Motion, the arguments of counsel for the parties at the October 19, 2017 hearing on the Motion, and the briefs by the parties in support of and in opposition to the Motion, the Court hereby memorializes its oral ruling at the October 19 hearing and **DENIES** the Motion for the following reasons.

3. This case is currently scheduled for trial commencing on November 6, 2017.

4. The factual and procedural background of the case is recited in detail in *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2017 NCBC LEXIS 14 (N.C. Super. Ct. Feb. 24, 2017). The alleged facts relevant to the resolution of the Motion are set forth below.

5. This action concerns a lease agreement (the "MRI Agreement") for a magnetic resonance imaging ("MRI") scanner between Plaintiff Insight Health Corp.

(“Insight”) and Defendant Marquis Diagnostic Imaging of North Carolina, LLC (“MDI-NC”). Insight also asserts claims against John Kenneth Luke (“Luke”), Gene Venesky (“Venesky”), Tom Gentry (“Gentry”) (collectively, the “Individual Defendants”), and Marquis Diagnostic Imaging, LLC (“MDI”) (collectively, with MDI-NC and the Individual Defendants, the “Defendants”). MDI is the sole member of MDI-NC and several related entities, and Luke and Venesky each hold a 49.5% interest in MDI. Gentry serves as the Chief Financial Officer (“CFO”) of MDI.

6. Insight brings a claim for breach of contract against MDI-NC and brings claims against Defendants for breach of fiduciary duty, constructive fraud, and unfair or deceptive trade practices under N.C. Gen. Stat. § 75-1.1. Insight also asks the Court to pierce the corporate veil of MDI-NC and hold Defendants liable for the actions of MDI-NC.

7. Defendants’ Motion asks the Court to exclude four exhibits from the trial as well as any live testimony or deposition testimony about the contents of the exhibits. Exhibit A, a newspaper article, and Exhibit D, a Securities Exchange Commission (“SEC”) Form 8k filing, relate to Individual Defendants’ previous relationships with a corporate entity not a party to this action—MQ Associates, Inc. Exhibit C is a United States Tax Court memorandum regarding tax losses claimed by Luke and Venesky on their 1999–2001 tax returns. Exhibit B is a 2007 SEC order involving Gentry.

8. Defendants argue that the facts Insight seeks to explore by introducing these exhibits at trial—or offering testimony about the same matters—are irrelevant

and excludable under Rule 402 of the North Carolina Rules of Evidence. Defendants also contend that the exhibits are hearsay and that matters relating to the exhibits are impermissible character evidence. Finally, Defendants ask the Court to exclude the exhibits and testimony regarding the matters embraced by the exhibits under Rule 403.

9. “A motion *in limine* seeks pretrial determination of the admissibility of evidence to be introduced at trial.” *State v. Britt*, 217 N.C. App. 309, 313, 718 S.E.2d 725, 728 (2011). The Court’s ruling on motions *in limine* is interlocutory and “subject to modification during the course of the trial.” *Hamilton v. Thomasville Med. Assocs.*, 187 N.C. App. 789, 792, 654 S.E.2d 708, 710 (2007) (quoting *Heatherly v. Indus. Health Council*, 130 N.C. App. 616, 619, 504 S.E.2d 102, 105 (1998)).

10. It appears to the Court that Insight faces several hurdles if it seeks to introduce Exhibits A–D, or other forms of evidence exploring the facts underlying Exhibits A–D, at trial. First, the relevancy of these facts and exhibits appears doubtful. Each exhibit involves facts that occurred ten or more years ago linked either to a corporation that is not involved in this case, or to tax losses claimed on personal tax returns. The Court is skeptical these facts would make any material fact in this case more or less probable. *See* N.C. R. Evid. 401. Second, Exhibits A–D will likely be hearsay if offered to prove the truth of the matters asserted within their text, *see* N.C. R. Evid. 801(c), and it appears unlikely that another purpose exists to permit their introduction. Third, to the extent Exhibits A–D are offered for purposes of impeachment, the facts contained within them appear to relate to matters

collateral to this case, and the exhibits themselves would thus be inadmissible extrinsic evidence of collateral matters. *See State v. Gabriel*, 207 N.C. App. 440, 447, 700 S.E.2d 127, 131 (2010) (describing the prohibition on introducing extrinsic evidence to impeach a witness on collateral matters as a “longstanding rule”). Fourth, the facts underlying Exhibits A–D appear likely to constitute propensity evidence forbidden by Rule 404. *See* N.C. R. Evid. 404(b). Finally, it appears to the Court that Exhibits A–D likely carry a high risk of unfairly prejudicing Defendants or confusing the jury. *See* N.C. R. Evid. 403. This is not a trial about Luke’s or Venesky’s tax liability or Gentry’s work as the CFO of MQ Associates.

11. The Court is not prepared, however, to conclude that Exhibits A–D, or the facts underlying Exhibits A–D, are inadmissible at this time. While the Court remains skeptical, the development of evidence at trial will allow the Court to make a more informed ruling on these issues. Thus, out of an abundance of caution, the Court will defer ruling on Defendants’ Motion until the appropriate time at trial.

12. For the foregoing reasons, the Court, after consideration of the North Carolina Rules of Evidence, in the exercise of its discretion, and without prejudice to the Court’s right to modify its Motion *in Limine* rulings during the course of the trial, hereby **DENIES** Defendants’ Motion *in Limine* and defers ruling on the admissibility of Exhibits A–D, or other forms of evidence exploring the facts underlying Exhibits A–D, until the appropriate time at trial.

**SO ORDERED**, this the 1st day of November, 2017.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Special Superior Court Judge  
for Complex Business Cases