

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 06-50126
)	
EARL L. BLANE,)	CHAPTER 7
)	
DEBTOR(S))	
)	
MURRAY PLASCO,)	
)	ADVERSARY NO. 06-05116
PLAINTIFF(S),)	
)	JUDGE MARILYN SHEA-STONUM
vs.)	
)	
EARL BLANE,)	
)	
DEFENDANT(S).)	MEMORANDUM OPINION DENYING PLAINTIFF'S MOTION <i>IN LIMINE</i>
)	

This adversary proceeding is before the Court on the following documents: Murray Plasco's ("Plaintiff") Motion *in Limine* to Exclude The Defendant From Offering Evidence at Trial (docket #13)("Motion"); Earl Blane's ("Defendant") Brief in Opposition to Plaintiff's Motion *in limine*

(docket #20); Plaintiff's Reply to Defendant's Brief in Opposition to Plaintiff's Motion *in Limine* (docket #22), and Defendant's Surreply Brief (docket #23). After a pretrial conference on August 16, 2006, the matter was taken under advisement by the Court.

I. BACKGROUND

Defendant filed his voluntary petition for relief under Chapter 7 of the Bankruptcy Code on February 8, 2006 in this Court. Plaintiff is a creditor of Defendant by virtue of obligations arising from a Judgment Entry ("Judgment") in the Court of Common Pleas, Summit County, Ohio, Case No. 2005-09-5473. This Judgment confirmed the Award of Arbitrator, Jason Blackford ("Arbitrator"), dated September 6, 2005, and rendered judgment in favor of Plaintiff against Defendant in the amount of \$208,534.96, including punitive damages, plus interest and costs. Listed, among others, on Defendant's Schedule F - Creditors Holding Unsecured, Nonpriority Claims - was Plaintiff for the amount of the Judgment.¹ On May 8, 2005, Plaintiff filed a complaint in this adversary proceeding pursuant to 11 U.S.C. § 523(a)(4) and 11 U.S.C. § 523(a)(6) of the Bankruptcy Code, alleging that the amount owed to him by Defendant as a result of the Judgment is not dischargeable in Defendant's Chapter 7 Bankruptcy case.

The circumstances that gave rise to the Judgment are as follows. On October 6, 2000, Plaintiff entered into a Close Corporation Agreement for BP Flooring, Inc. ("Agreement") with Defendant and Allen Blane, Defendant's brother. Pursuant to the Agreement, the parties agreed to submit any disputes with respect to the interpretation or performance of the Agreement to arbitration. Sometime between the date of the Agreement and early 2005, Plaintiff alleged that a controversy

¹ The amount listed on Defendant's Schedule F is \$208,777.46, perhaps the total due with interest and costs.

arose that was within the scope of the arbitration clause of the Agreement; to wit, that Defendant engaged in self-dealing to the detriment of Plaintiff, and that Plaintiff suffered a loss as a result of this self-dealing. This claim was presented to the Arbitrator and resolved as described in the Arbitrator's Award ("Award"). On November 10, 2005, the common pleas court issued its Judgment whereby it ordered that the Award be confirmed in favor of Plaintiff and against Defendant.

In the Motion before this Court, Plaintiff seeks to limit Defendant from offering any evidence at trial that would refute the Arbitrator's finding that defendant acted with malice and intent to harm Plaintiff, as well as any evidence in support of Defendant's claims against Plaintiff.² Plaintiff alleges that the Judgment constitutes a binding and final judgment against Defendant, and as such, Defendant is barred by the doctrine of collateral estoppel from introducing evidence pertaining to issues that were resolved by the Judgment.

This matter is before the Court under 28 U.S.C. § 157(a) and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. Determinations regarding the dischargeability of debt pursuant to 11 U.S.C. § 523 are core proceedings pursuant to 28 U.S.C. § 157(b)(2)(I).

II. DISCUSSION

A. Motions *In Limine*

The motion *in limine* is a comparatively recent legal development. 20 Am. Jur. *Trials* 441, § 3 (2006). Typically, a motion in *limine* is a motion made before or during a jury trial outside of

² Defendant seeks to produce evidence demonstrating that the conduct of Plaintiff after the Award was issued constitutes partial satisfaction of the Judgment, and that this conduct is relevant to the present proceedings because it will have a direct impact upon the amount of the debt that is held to be nondischargeable if Plaintiff prevails.

the hearing of the jury, the purpose of which is to prevent the jury from hearing certain evidence, questions, or statements that are allegedly prejudicial to the movant without first asking the court's permission. *See Provident Life & Accident Insurance Co. v. Adie*, 176 F.R.D. 246, 250 (E.D. Mich. 1997); 20 Am. Jur. *Trials* 441 §4, § 5. The motion *in limine* affords the court an opportunity to rule on the admissibility of evidence in advance of trial. It is generally used to ensure evenhanded and expeditious management of trials by eliminating evidence that is clearly inadmissible for any purpose. *Indiana Insurance Co. v. General Electric Co.*, 326 F. Supp 2d 844, 846 (N.D. Ohio 2004), citing *Jonasson v. Lutheran Child and Family Serv.*, 115 F. 3d 436, 440 (7th Cir. 1997).

Although few jurisdictions have adopted statutes or rules expressly recognizing motions *in limine*, it can be argued that the general catch-all provisions of rules authorizing pretrial conferences and orders contemplate the type of rulings required by a motion *in limine*. *See* Fed. R.Civ. P 16; Fed. R. Bankr. P. 7016 (c)(16) (empowers the court to call a conference before trial to consider “[s]uch other matters as may facilitate the just, speedy, and inexpensive disposition of the action.”); Fed. R. Evid. 103(c) (proceedings in all jury cases shall be conducted whenever practicable so as to prevent inadmissible evidence from being suggested to the jury); Fed. R. Evid. 104 (c) (hearings on preliminary matters shall be conducted out of the hearing of the jury when required by the interests of justice); Fed. R. Evid. 403 (authorizes the exclusion of even relevant evidence where its probative value is substantially outweighed by danger of unfair prejudice, confusion, misleading the jury, delay, waste of time, or needless presentation of cumulative evidence).

As motions *in limine* are not provided for in the Federal Rules of Civil Procedure and are

merely requests for the Court's guidance, a court may, in the exercise of discretion, decline to make a pretrial ruling. *Hunter v. Blair*, 120 F.R.D. 667 (S.D. Ohio, 1987); *see also United States v. Luce*, 713 F. 2d 1236 (6th Cir. 1983).

B. Plaintiff's Motion

A review of Plaintiff's Motion reveals that he has neglected to cite any authority or present argument with respect to the foregoing principles regarding the appropriateness of a motion *in limine* in this proceeding. In fact, the memoranda of both parties are completely devoid of any reference to the law governing motions *in limine* as a basis for whether this Court should grant or deny the Motion. Accordingly, for this and the reasons that follow, Plaintiff's request is not properly the subject of a motion *in limine*, and is not well-taken.

First, Plaintiff's complaint does not include a jury demand. Therefore, even if the matter were to proceed to trial, it would not take place before a jury, but would instead be tried to the bench. Accordingly the issue of the introduction of prejudicial, irrelevant, or otherwise inadmissible evidence is not one that merits a precautionary ruling or, for that matter, presents any foreseeable detriment to Plaintiff's right to a fair trial.

Next, Plaintiff has not identified the particular items, inferences, documents, testimony, witnesses, or other evidence sought to be excluded. In short, Plaintiff has not identified with any specificity the actual relief sought. In addition, Plaintiff has not explained why he thinks any reference to the material sought to be excluded would cause prejudice, be inadmissible under the Federal Rules of Evidence, or if admissible, that its probative value is outweighed by other factors that make it excludable. Simply stated, Plaintiff has not carried his burden of proving that a motion *in limine* is a necessary method for preserving the fairness of a trial in this matter.

The basic premise of Plaintiff's argument is that there are no genuine issues of material fact as to the nondischargeability of the debt owed by Defendant because the doctrine of collateral estoppel prevents Defendant from offering evidence to refute the Award and subsequent Judgment. As such, resolution of the matters raised in Plaintiff's Motion is more properly the subject of a motion for summary judgment. The standing rule in this court location is that parties cannot file motions for summary judgment until they have gone through a stipulation process. This instant Motion might be read as an attempt to circumvent this important procedural requirement.

Based on the foregoing, Plaintiff's Motion is not the appropriate vehicle for addressing the matters raised therein. Plaintiff's Motion is **HEREBY DENIED**.

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cc: (via electronic mail) Richard A. Baumgart
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