

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below.



**/S/ RUSS KENDIG**  
Russ Kendig  
United States Bankruptcy Judge

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

In re:	)	
	)	CHAPTER
MICHAEL JOSEPH SZERWINSKI &	)	
DONNA MARIA SZERWINSKI	)	CASE NO. 09-64294
	)	
Debtors.	)	ADV. NO. 10-6009
_____	)	
	)	JUDGE RUSS KENDIG
JOSIAH L. MASON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MICHAEL JOSEPH SZERWINSKI, et	)	
al.	)	<b>MEMORANDUM OF OPINION</b>
	)	<b>(NOT FOR PUBLICATION)</b>
Defendants.	)	

On May 16, 2011, defendant National City Bank (“National City”) filed a motion to exclude testimony. This motion is now before the court.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the general order of reference entered in this district on July 16, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

This opinion is not intended for publication or citation. The availability of this opinion, in

electronic or printed form, is not the result of a direct submission by the Court.

### **BACKGROUND**

National City's motion to exclude asks the court to exclude the testimony of two witnesses, William Stepp and James K. Wagner. Only James K. Wagner's testimony remains at issue because the plaintiff no longer intends to call Mr. Stepp.

On May 20, 2011, the plaintiff filed his witness list. As required by the trial order, the witness list sets forth a "brief summary of the area of testimony the witness will present . . . ." The summary for James K. Wagner is as follows.

Attorney James K. Wagner, 3 North Main Street, Suite 808, Mansfield, Ohio 44902. He has been a practicing attorney in Mansfield, Richland County, Ohio, since 1977, is an agent for Ohio Bar Title Company and First American Title Company (companies have now merged), and has specialized in title work throughout his practice. He will testify as to his opinion concerning the relevant documents and whether they create a valid security interest in the structure in question. (This is subject to a pending Objection by the Plaintiff.)

Also on May 20, 2011, the plaintiff submitted Mr. Wagner's curriculum vitae. The curriculum vitae confirms that Mr. Wagner is an attorney and a registered title agent.

### **LAW AND ANALYSIS**

The admissibility of expert testimony is governed by Federal Rule of Evidence 702, which states that

[i]f scientific, technical, or other specialized knowledge *will assist the trier of fact* to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

(emphasis added).

National City argues that the court does not need the assistance an attorney to understand the law of secured transactions as applied to chattels, fixtures and personal property. The court agrees. In this adversary, the court previously has issued an opinion on this very issue. Furthermore, plaintiff's counsel does not need a witness to make legal arguments.

Accordingly, National City's motion to exclude is granted.

An order will issue with this opinion.

# # #

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