

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF OHIO  
 EASTERN DIVISION



In re:	)	Case No. 11-19329
	)	
GARY ROSEWELL,	)	Chapter 7
	)	
Debtor.	)	Chief Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
MARVIN A. SICHERMAN, TRUSTEE,	)	Adversary Proceeding No. 12-1119
	)	
Plaintiff,	)	
	)	
v.	)	<b><u>ORDER CONDITIONALLY</u></b>
	)	<b><u>SUSTAINING TRUSTEE'S</u></b>
GARY ROSEWELL, <i>et al.</i> ,	)	<b><u>EVIDENTIARY OBJECTION AND</u></b>
	)	<b><u>DENYING DEFENDANT'S</u></b>
Defendants.	)	<b><u>EVIDENTIARY OBJECTION</u></b> <sup>1</sup>

In this adversary proceeding, the plaintiff-chapter 7 trustee seeks to avoid and recover an allegedly fraudulent transfer relating to the transfer of a 2007 Chevrolet Impala from the defendant-debtor Gary Rosewell to his wife, defendant Phyllis Rosewell. The matter is set for final pretrial on September 13, 2012. As required by the court's trial order, each side has reviewed the other side's proposed exhibits, and filed a written objection where the exhibits are not stipulated as admissible into evidence at trial.

The Defendants' Objection to Trustee's exhibits 9 and 10 (Docket 36, 37)

Trustee's exhibit 9 is the National Automotive Dealers Association (NADA) value for a 2007 Chevrolet Impala; exhibit 10 is the Kelley Blue Book value for the same make and model car. The debtor objects that these are hearsay.

---

<sup>1</sup> This order is not intended for commercial publication, either print or electronic.

Federal Rule of Evidence 801(c) provides that hearsay is “a statement that: (1) the declarant does not make while testifying at the current trial . . . ; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” The trustee argues that the exhibits fall within an exception to the hearsay rule that exists for market reports and similar commercial publications. FED. R. EVID. 803(17). The exception applies to “[m]arket quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.”

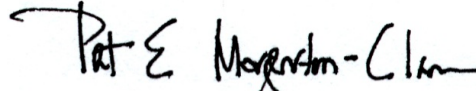
As one court in the Sixth Circuit has noted: “Federal courts have routinely admitted the Blue Book into evidence as falling within the exception provided in Rule 803(17).” *CIT Grp./ Equip. Fin., Inc. v. Landreth*, 2007 WL 4554224 at \*5 (E.D. Tenn. 2007). The same is true for the NADA publication. *In re Henry*, 328 B.R. 529, 535 n.7 (Bankr. S. D. Ohio 2004). Subject to appropriate testimony establishing the relevance, the court will admit the two exhibits. The admission does not, however, mean that the value stated is conclusive.

The Trustee’s Objection to the Defendants’ Exhibit 2 (Docket 38)

The defendants describe their proposed exhibit 2 as “Skipco auto results for sales of 2007 Impalas from March 2010 through February 2011.” The trustee argues that this is hearsay and does not come within the Rule 803(17) exception because Skipco is only one company, and its sales do not amount to a nationally recognized compilation generally relied upon by the public. Based on the information before the court, the Skipco exhibit is not admissible because it is hearsay and does not fall within the exception. The trustee’s objection is, therefore, sustained unless at trial the defendants present evidence that would support admitting the exhibit under

Rule 803(17) or evidence that the document is being admitted to show something other than the truth of the figures stated in the document.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Pat E. Morgenstern-Clarren". The signature is written in a cursive style with a large, looping initial "P".

---

Pat E. Morgenstern-Clarren  
Chief Bankruptcy Judge