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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

625 3RD STREET ASSOCIATES, L.P., a California
limited partnership,

Plaintiff,

No. C 09-00564 WHA
No. C 09-03820 WHA

v.

BOARD OF THE NATIONAL CREDIT UNION
ADMINISTRATION, in its capacity as liquidating
agent for the Kaiperm Federal Credit Union,
KAIPERM FEDERAL CREDIT UNION, a federal
credit union, ALLIANT CREDIT UNION, an Illinois
corporation, and STANLEY ABRAMS, an individual,

**ORDER REGARDING
MOTIONS IN LIMINE**

Defendants.

The pretrial conference in this action was heard on September 16, 2010. In advance of that conference, plaintiff submitted nine motions *in limine* and defendants submitted seven. As stated at the pretrial conference, any denial below does not mean that the evidence at issue in the motion is admitted into evidence — it must still be moved into evidence, subject to other objections, at trial. And, a grant of a motion *in limine* does not exclude the evidence under any and all circumstances; the beneficiary of a grant may open the door to the disputed evidence, for example.

PLAINTIFF'S MOTION IN LIMINE NO. 1

Plaintiff moved *in limine* to exclude certain testimony of defendant Stanley Abrams. At the pretrial conference, plaintiff withdrew this motion, so it is **DENIED AS MOOT**.

1 **PLAINTIFF’S MOTION IN LIMINE NO. 2**

2 Plaintiff moved *in limine* to exclude testimony of defense expert Hernan Santos. This
3 motion is **DENIED WITHOUT PREJUDICE**. The parties did not provide the report of the expert in
4 question. Plaintiff may renew its motion after expert voir dire. Issues raised in this motion can
5 alternatively be raised on cross-examination and related to jury instructions at the charging
6 conference.

7 **PLAINTIFF’S MOTION IN LIMINE NO. 3**

8 Plaintiff moved *in limine* to exclude testimony of defense expert Albert Nagy. This
9 motion is **DENIED**. Plaintiff’s evidence does not support its argument that Nagy does not have
10 sufficient knowledge or experience in the context of sale-leaseback transactions. Plaintiff’s
11 evidence also does not support its argument that his opinions are so based on the work of others
12 that they are not reliable. Nagy may help the jury understand industry customs and practices
13 associated with sale-leasebacks of office property with a long-term, single-tenant lease. Issues
14 raised in this motion can more properly be raised on cross-examination.

15 **PLAINTIFF’S MOTION IN LIMINE NO. 4**

16 Plaintiff moved *in limine* to exclude certain testimony of defense expert James Likens.
17 For reasons stated at the pretrial conference, this motion is **DENIED**.

18 **PLAINTIFF’S MOTION IN LIMINE NO. 5**

19 Plaintiff moved *in limine* to exclude evidence that plaintiff was negligent in the
20 performance of its financial due diligence of Kaiperm. For reasons stated at the pretrial
21 conference, this motion is **DENIED**. Issues raised in this motion can be raised related to jury
22 instructions at the charging conference.

23 **PLAINTIFF’S MOTION IN LIMINE NO. 6**

24 Plaintiff moved *in limine* to exclude evidence of or reference to plaintiff’s settlement or
25 settlement negotiations with Alliant Credit Union. This motion is **GRANTED IN PART AND**
26 **DENIED IN PART** to this extent: All evidence of the settlement negotiations is excluded under
27 Federal Rule of Evidence 408 and on the further ground that the duty to mitigate does not include
28 the duty to settle for more with a co-defendant. Defendants do not supply authority to the

1 contrary. In the event that plaintiff is entitled to damages, the amount of the settlement with
2 Alliant can be deducted from the verdict(s) and judgment entered for the reduced amount. This
3 approach has been agreed to by both sides.

4 **PLAINTIFF’S MOTION IN LIMINE NO. 7**

5 Plaintiff moved *in limine* to exclude evidence of or reference to plaintiff’s post-close of
6 escrow communications between and amongst its partners and representatives. For reasons stated
7 at the pretrial conference regarding plaintiff’s motion *in limine* 4, this motion is **DENIED**.

8 **PLAINTIFF’S MOTION IN LIMINE NO. 8**

9 Plaintiff moved *in limine* to exclude testimony of defense expert John Callan. This motion
10 is **DENIED**, for the reasons stated regarding plaintiff’s motion *in limine* 5. Plaintiff has not
11 presented evidence that Callan is not qualified or his methods not reliable. Issues raised in this
12 motion can more properly be raised on cross-examination.

13 **PLAINTIFF’S MOTION IN LIMINE NO. 9**

14 Plaintiff moved *in limine* to exclude evidence related to a “banking privilege” or
15 “regulatory privilege” as a defense. For reasons stated at the pretrial conference, this motion is
16 **DENIED**.

17 **DEFENDANT NCUA’S MOTION IN LIMINE NO. 1**

18 Defendant NCUA moved *in limine* to exclude NCUA examination reports, evidence of
19 “CAMEL” ratings, documents of resolution, evidence of Kaiperm’s assignment to “special
20 action,” and evidence of appointment of a “problem case officer.” For reasons stated at the
21 pretrial conference, this motion is **DENIED**.

22 **DEFENDANT NCUA’S MOTION IN LIMINE NO. 2**

23 Defendant NCUA moved *in limine* to exclude Bruce Lum’s monthly diaries (deposition
24 exhibits 110 and 116). For reasons stated at the pretrial conference, this motion is **DENIED**.

25 **DEFENDANT NCUA’S MOTION IN LIMINE NO. 3**

26 Defendant NCUA moved *in limine* to exclude evidence relating to the NCUA as a
27 guarantor of the transaction at issue, references to the National Share Insurance Fund, and
28 evidence relating to any claim for punitive damages against the Liquidating Agent. This motion

1 is **GRANTED** to this extent: It was made clear at the pretrial conference that plaintiff cannot
2 pursue a theory that it had a right to get NCUA’s approval of the transaction for *plaintiff’s* benefit
3 or protection; NCUA was not in the business of protecting plaintiff’s interests. Evidence may be
4 permitted on Kaiperm’s representations of NCUA’s approval or lack thereof of the transaction,
5 but how the jury will be instructed thereon will await the charging conference. Plaintiff does not
6 oppose the parts of the motion concerning the National Share Insurance Fund and punitive
7 damages against the Liquidating Agent.

8 **DEFENDANT NCUA’S MOTION IN LIMINE NO. 4**

9 Defendant NCUA moved *in limine* to exclude evidence of breach of section 13 of the
10 lease agreement because plaintiff failed to exhaust its administrative remedies. For reasons stated
11 at the pretrial conference, this motion is **DENIED**.

12 **DEFENDANT NCUA’S MOTION IN LIMINE NO. 5**

13 Defendant NCUA moved *in limine* to exclude evidence of communications with
14 Kaiperm’s former CFO, David Moore, after his employment at Kaiperm. This motion is **DENIED**
15 **WITHOUT PREJUDICE**. The issues in the motion are not ripe. Defendant states, “Plaintiff can
16 stand on its claim of privilege *or* avoid interjecting their communications with Moore after
17 January, 2008 into this trial.” There is no issue for decision at this time. If the parties have
18 objections as to specific documents related to plaintiff’s counsel’s communications with Mr.
19 Moore on the basis of previously-asserted privilege — as defendants seem to signal they do —
20 they can raise them if and when such documents are offered.

21 **DEFENDANT STANLEY ABRAMS’S MOTION IN LIMINE NO. 6**

22 Defendant Stanley Abrams moved *in limine* to exclude testimony of plaintiff’s expert John
23 Moulton or, in the alternative, to exclude testimony regarding certain topics. This motion is
24 **DENIED**. Moulton’s banking experience may help the jury understand Kaiperm’s financial
25 condition during the period of time at issue. Defendant’s objections are points for cross-
26 examination.

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DEFENDANT STANLEY ABRAMS’S MOTION IN LIMINE NO. 7

Defendant Stanley Abrams moved *in limine* to exclude evidence regarding his receipt of a contractual severance payment. This motion is **DENIED WITHOUT PREJUDICE** to a renewed motion concerning specific evidence at such time as it is offered by plaintiff.

IT IS SO ORDERED.

Dated: September 17, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE