

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHARON HULIHAN,)	2:09-cv-01096-ECR-RJJ
)	
Plaintiff,)	
)	
vs.)	<u>Order</u>
)	
THE REGIONAL TRANSPORTATION)	
COMMISSION OF SOUTHERN NEVADA, a)	
Public Entity under State and)	
Federal Statutes and LAIDLAW)	
TRANSIT SERVICES, INC., a Foreign)	
Corporation; and FIRST TRANSIT,)	
INC., a Foreign Corporation; and)	
DOES 1-100, inclusive,)	
)	
Defendants.)	
)	
)	

On September 13, 2010, Plaintiff Sharon Hulihan ("Plaintiff") filed a motion (#56) to enter evidence and expert witness, subpoenaed documents and affidavit (the "Motion to Enter Evidence"). Defendants opposed (#62) and Plaintiff replied (#65). On October 6, 2010, Plaintiff's Motion to Enter Evidence came for hearing before Magistrate Judge Robert Johnston, who denied the motion (#56).

On May 3, 2011, Plaintiff filed a motion (#78) for the Judge to retroactively order a document that had apparently been lost in the mail to be filed nunc pro tunc judgment ("Motion to Retroactively File Document"). In this motion, Plaintiff requested that this Court enter into evidence her previous Motion to Enter Evidence and the documents attached thereto on the belief that such documents had been lost in the mail. (#78) On May 16, 2011, Plaintiff filed a

1 motion (#80) for Magistrate Judge to Reconsider regarding the
2 admissibility of evidence. The motion (#78) is ripe, and we now
3 rule on it.

4 In fact, the Court did not fail to enter these documents into
5 evidence because they were lost in the mail. Rather, Magistrate
6 Judge Johnston previously denied Plaintiff's Motion to Enter
7 Evidence related to this material on October 6, 2010 (#56).
8 Plaintiff's request that this Court enter the documents into
9 evidence nunc pro tunc will therefore be considered as an appeal
10 from Magistrate Judge Johnston's ruling.

11 At the hearing on October 6, 2010, Magistrate Judge Johnston
12 indicated that Plaintiff's motion to enter the documents into
13 evidence is premature and that the evidence must be authenticated by
14 witnesses at trial. We have reconsidered Magistrate Johnston's
15 ruling and find that it was proper and appropriate. Plaintiff
16 should appropriately wait until trial to seek to admit this
17 evidence. We note that some of the documents, if they are relevant
18 and permitted by the pretrial order, may be admissible through an
19 affidavit and others if not pursuant to Federal Rule of Evidence
20 902(11).

21

22 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's Motion (#78)
23 to Retroactively file Document is **DENIED** without prejudice.

24

25 DATED: June 8, 2011.

26

27

28


UNITED STATES DISTRICT JUDGE