

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**IN RE: DWIGHT'S PIANO COMPANY,  
DEBTOR**

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS, on its own behalf and on behalf  
of Dwight's Piano Company, et al.,**

**Plaintiffs,**

**vs-**

**KAREN L. HENDRICKS, et al.,**

**Defendants.**

**Case No. 1:-04-CV-066**

**(formerly Bankruptcy Court  
Case No. 01-13951; Adversary  
Proceeding No. 02-1158)**

**Judge Thomas M. Rose**

---

**ENTRY AND ORDER FINDING THAT PLAINTIFF'S EXHIBITS 158  
THROUGH 168 ARE NOT ADMISSIBLE AS EVIDENCE**

---

This matter was tried to the Court beginning on April 20, 2009, and ending on April 30, 2009. On May 26, 2009, the Parties filed their Joint Notice of Filing of Exhibits. (Doc. #195.) Therein, the Defendant objected to the admission of Plaintiff's Exhibits ("PX") 158 through 168. PX 158 through 168 are demonstrative exhibits in the form of evidentiary summaries created by Plaintiff's counsel and based upon evidence that has otherwise been admitted.

On May 27, 2009, Defendant Hendricks filed her written objections to the admission of PX 158 through 168 (doc. #197), and on June 17, 2009, the Plaintiff responded (doc. #206). This matter is, therefore, ripe for decision.

The admissibility of demonstrative evidence is governed by Fed. R. Evid. 1006. Further, such admissibility is for the sound discretion of the trial court. *United States v. Collins*, 596 F.2d

166, 169 (6th Cir. 1979).

The Sixth Circuit has imposed five requirements for the admission of an evidentiary summary: (1) the underlying documents must be so voluminous that they cannot be conveniently examined in a court; (2) the proponent of the summary must have made the documents available for examination or copying at a reasonable time and place; (3) the underlying documents must be admissible in evidence; (4) the summary must be accurate and nonprejudicial; and (5) the summary must be properly introduced through the testimony of a witness who supervised its preparation. *United States v. Modena*, 302 F.3d 626, 633 (6th Cir. 2002), *cert. denied*, 537 U.S. 1145 (2003). Further, a document that has been created to summarize or illustrate evidence and that reflects, to some extent, the inferences and conclusions drawn from the underlying evidence by the summary's proponent may be inadmissible pursuant to Fed. R. Evid. 611(a) as a pedagogical aid. *United States v. Bray*, 139 F.3d 1104, 1110-12 (6th Cir. 1998).

In this case, the underlying documents have been either identified at trial and/or admitted as evidence. Further, PX 158 through 168, although they may be based upon accurate evidence, present that evidence in a prejudicial way. Finally, PX 158 through 168 were not introduced through the testimony of a witness who supervised their preparation. Therefore, PX 158 through 168 are not admissible pursuant to Rule 1006.

PX 158 through 168 are also not admissible pursuant to Fed. R. Evid. 611(a) as pedagogical aids. PX 158 through 168 were prepared by Plaintiff's counsel and, to some extent, reflect the inference and conclusions drawn by Plaintiff's counsel.

Therefore, PX 158 through 168, although viewed by the Court as the trier of fact, are not admissible as evidence. They are not admissible pursuant to Rule 1006, and they are not

admissible pursuant to Rule 611(a) as pedagogical aids.

**DONE** and **ORDERED** in Dayton, Ohio this Twenty-Second day of June, 2009.

**s/Thomas M. Rose**

---

THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Copies furnished to: Counsel of Record