

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

WELLS FARGO BANK, N.A.,

Plaintiff,

:

Case No. 3:07-cv-449

-vs-

Magistrate Judge Michael R. Merz

:

LaSALLE BANK NATIONAL
ASSOCIATION,

Defendant.

**DECISION REGARDING DESIGNATIONS IN THE DEPOSITION OF
MICHAEL ROOTHS**

This case is before the Court on the parties' request that the Court rule in limine on the admission of designated and cross-designated portions of depositions to be played at trial from edited videorecordings of the depositions. The background for the procedure to be followed is set forth in the Decision and Order Vacating Trial Date (Doc. No. 229). Rulings on the depositions will be issued as completed so that the video editing process can be started as needed.

The Court rules on the objections made in the Chart (attachment to Doc. No. 225) as corrected pursuant to Doc. Nos. 226 and 231, and as further clarified by the Appendix¹ to Doc. No. 192 as subsequently numbered in Attorney Marx's email of 8/12/2009 (12:11 P.M.), as follows:

Plaintiff objects generally to any designation from this deposition on grounds of irrelevance and confusion of the issues. That general objection is overruled in that Mr. Rooths is being questioned about the condition of one of the properties in suit at a relevant time or times. The Court

¹Both the numbered and unnumbered versions of this Appendix are now filed and docketed in the case for future reference at Doc. No. 241.

does not understand why, in Wells Fargo's opinion, the testimony is likely to be confusing to a jury because it was taken in a foreclosure action filed by Wells Fargo against Bonita and Michael Rooths. Although the parties have not addressed the point, none of Mr. Rooths' deposition could be used in lieu of live testimony without a demonstration that he is beyond the subpoena power of the Court, a point on which the Court has no current information.

The Court rules below only on those objections which are in addition to this general objection.

p. 19, ll. 14-22	Wells Fargo's objection (Attachment to Doc. No. 225 at 355) that the designation is an "incomplete answer without question" is overruled: the designation includes complete questions and the answers given to them
p. 22, l. 21 to p. 23, l. 2	Wells Fargo's objection is well taken unless the exhibit referred to in the deposition is also a trial exhibit
p. 61, ll. 1-9	Wells Fargo's lack of foundation objection is sustained; its hearsay objection is overruled
p. 70, ll. 18-25, and p. 71, ll. 9-17	Wells Fargo's lack of foundation objection is sustained because LaSalle has not designated testimony (or at least not called to the Court's attention where it has designated testimony) which establishes the foundation it claims in its response to the objection. It also appears that Mr. Rooth is testifying from a document, which makes his testimony hearsay. Additionally, the document is not identified.

September 29, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge