

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

PATTI LEMMON,

Plaintiff,

-v-

RICHARD AYRES, et al.,

Defendants.

Case No. 3:09-CV-361

Judge Thomas M. Rose

**ENTRY AND ORDER OVERRULING DEFENDANTS' MOTION IN
LIMINE TO EXCLUDE PLAINTIFF'S EVIDENCE OF UNPAID WAGES
FOR ANY PERIOD PRIOR TO THE TWO-YEAR STATUTE OF
LIMITATIONS UNDER THE FLSA (Doc. #46)**

This Court originally granted summary judgment in this matter to the Defendants. (Doc. #32.) The Sixth Circuit reversed this grant of summary judgment on appeal and remanded the matter for further proceedings. The Court then set a Final Pretrial Conference for August 28, 2013, and a trial to begin on September 23, 2013.

Now before the Court is Defendants' Motion In Limine To Exclude Plaintiff's Evidence of Unpaid Wages for any Period Prior To the Two-Year Statute of Limitations under the FLSA. (Doc. #46.) Plaintiff Patti Lemmon ("Lemmon") has responded to this Motion and the time has run and the Defendants have not replied. This Motion is, therefore, ripe for decision. The relevant legal provisions will first be set forth followed by an analysis of the Motion.

RELEVANT LEGAL PROVISIONS

Motions In Limine

The practice of ruling on motions in limine, although not specifically authorized by the Federal Rules of Evidence or the Federal Rules of Civil Procedure, has developed pursuant to the

district court's inherent authority to manage the conduct of trials. *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984). The purpose of a motion in limine is to permit the Court to decide evidentiary issues in advance of trial in order to avoid delay and ensure an evenhanded and expeditious trial. *See Indiana Insurance Co. v. General Electric Co.*, 326 F. Supp.2d 844, 846 (N.D. Ohio 2004)(citing *Jonasson v. Lutheran Child and Family Services*, 115 F.3d 436, 440 (7th Cir. 1997)). Decisions on motions in limine may also save the parties time and cost in preparing for trial and presenting their cases.

Because it is almost always better situated during the actual trial to assess the value and utility of evidence, a court is reluctant to grant broad exclusions of evidence in limine. *Koch v. Koch Industries, Inc.*, 2 F. Supp.2d 1385, 1388 (D. Kan. 1998), *aff'd in part and rev'd in part on other grounds*, 203 F.3d 1202 (10th Cir. 2000). A court will generally not grant a motion in limine unless the moving party meets its burden of showing that the evidence in question is clearly inadmissible. *Indiana Insurance*, 326 F. Supp.2d at 846. If this showing is not made, evidentiary rulings should be deferred and resolved in the context of the trial. *Id.* Ultimately, whether a motion in limine is granted or overruled is a matter left to the sound discretion of the trial court. *See Hesling v. CSX Transportation, Inc.*, 396 F.3d 632, 643-44 (5th Cir. 2005).

The FLSA Statute of Limitations

One of Lemmon's claims involves violation of the federal Fair Labor Standards Act ("FLSA"). The FLSA has a statute of limitations. See 29 U.S.C. § 255. This statute of limitations provides that claims must be commenced within two years after the cause of action accrued except that a cause of action arising out of a wilful violation may be commenced within three years after the cause of action accrued. 29 U.S.C. § 255(a).

ANALYSIS

The Defendants seek to bar Lemmon from introducing evidence of unpaid wages that may have been owed prior to the two-year FLSA statute of limitations. Lemmon responds that there may be evidence of wilful violations of the FLSA introduced at trial and there are other causes of action that permit the introduction of this evidence.

The Defendants argue that there is no evidence of wilful violations of the FLSA. However, this assertion remains to be determined at the time of trial.

Also, Lemmon has made other claims, including unjust enrichment, promissory estoppel, negligence and intentional infliction of emotional distress, which may allow evidence of unpaid wages not limited by the FLSA two-year statute of limitations. Again, an issue to be reserved for trial.

The Defendants have not shown that evidence regarding alleged unpaid wages is, at this time, clearly inadmissible. Therefore, Defendants' Motion In Limine To Exclude Plaintiff's Evidence of Unpaid Wages for any Period Prior To the Two-Year Statute of Limitations under the FLSA (Doc. #46) is **OVERRULED**. It is, however, overruled without prejudice to being renewed, if appropriate, during the trial.

DONE and ORDERED in Dayton, Ohio this Twenty-First Day of August, 2013.

s/Thomas M. Rose

THOMAS M. ROSE, JUDGE
UNITED STATES DISTRICT

Copies furnished to: Counsel of Record