

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Roger Cleveland Golf Company, Inc.,)	Civil Action No. 2:09-2119-MBS
)	
Plaintiff,)	
)	
vs.)	<u>PLAINTIFF’S MOTION IN LIMINE</u>
)	<u>TO EXCLUDE IMPROPERLY</u>
Christopher Prince, Sheldon Shelley, Prince)	<u>DISCLOSED EXPERT</u>
Distribution, LLC, and Bright Builders,)	
Inc.)	
)	
Defendants.)	

COMES NOW the Plaintiff, Roger Cleveland Golf Company, Inc. (“Cleveland”), by and through their undersigned attorneys, and hereby moves to exclude Defendant Bright Builders, Inc.'s ("Bright Builders") proposed expert witness Chris Malta.

Pursuant to the Third Amended Scheduling Order, defendants were required to disclose expert witnesses before August 12, 2010. Mr. Malta was disclosed for the first time as a proposed expert witness in Bright Builders' Fed. R. Civ. P. 26(a)(3) disclosures filed in the Court on February 1, 2011.¹ This Court’s scheduling order is “not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.” *Campbell v. Gala Industries, Inc.*, No. 6:04-2036-RBH, 2006 U.S. Dist. LEXIS 30242, at *3 (D.S.C. May 5, 2006).

Furthermore, Bright Builders has not produced an expert report as required by Rule 26. As Mr. Malta has not been disclosed as an expert in a timely manner and because he has not provided an expert report as required, Bright Builders should be excluded from soliciting testimony and evidence from Mr. Malta at trial. *Carr v. Deeds*, 453 F.3d 593, 604 (4th Cir. 2006) (expert

¹ Bright Builders' disclosure also states that it would like to have Mr. Malta testify through videoconference. Plaintiff objects to this request as it does not satisfy the "for good cause in compelling circumstances" requirement of Fed. R. Civ. P. 43(a).

witness properly excluded where plaintiff failed to provide any information about her expert's qualifications, authored publications, other cases, or compensation).

Moreover, Mr. Malta is proposed to be used to render an unknown expert opinion on the topic of "drop shipping", which is a method of shipping consumer goods. Although, there is also no disclosure of the apparent purpose and relevance of Mr. Malta's opinion, general testimony concerning simple shipping methods does nothing to "assist the trier of fact to understand the evidence or to determine a fact in issue," a prerequisite for expert testimony in a litigation. *See* Federal Rule of Evidence ("FRE") 702; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993). Nor do his opinions qualify as "scientific, technical, or other specialized knowledge." FRE 702.

Should Bright Builders provide a written report that identifies Mr. Malta's opinions and the basis of said opinions, Plaintiff will reconsider its position on whether it is necessary to preclude Mr. Malta's testimony.

[SIGNATURE ON THE NEXT PAGE]

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