

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2019 CA 0741

2019 CA 0742

2019 CA 0743

CAMSOFT DATA SYSTEMS, INC.

VERSUS

**SOUTHERN ELECTRONICS SUPPLY, INC.
AND ACTIVE SOLUTIONS, LLC**

Judgment Rendered: JUL 02 2019

**Appealed from the Nineteenth Judicial District Court
Parish of East Baton Rouge
State of Louisiana**

Case No. 582,741

The Honorable Janice Clark, Judge Presiding

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BEFORE: CRAIN, THERIOT, and HOLDRIDGE, JJ.

THERIOT, J.

In these appeals, Dell, Inc. and Dell Marketing, L.P. (sometimes referred to collectively as “Dell”) seek review of the trial court’s judgments denying their Joint Motion in Limine to Exclude the Expert Testimony of Chetan Sharma, Joint Motion in Limine to Exclude the Expert Testimony of Stephen Dell, and Joint Motion in Limine to Exclude the Expert Testimony of Michael G. Kaplan. For the following reasons, we vacate the trial court’s judgments and remand this matter to the trial court.

FACTS AND PROCEDURAL HISTORY

The facts and procedural history are laid out in more detail in this court’s opinion in **CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.**, 2019-0730 (La. App. 1st Cir. 7/2/19) (unpublished), which is also being issued this date.

Relevant hereto, Dell filed motions jointly with MMR Constructors, Inc., MMR Group, Inc., and MMR Offshore Services, Inc., to exclude the testimony of CamSoft Data System’s (“CamSoft”) experts, Chetan Sharma (“Mr. Sharma”), Stephen Dell (“Mr. Dell”), and Michael G. Kaplan (“Mr. Kaplan”).¹ CamSoft filed oppositions, and after two hearings – the first on September 13, 2018, and the second on April 2, 2019 - the trial court signed judgments denying the motions regarding Mr. Sharma and Mr. Dell. On April 3, 2019, the trial court signed a judgment denying the motion regarding Mr. Kaplan. From these judgments, Dell appeals pursuant to La. R.S. 51:135.²

¹ Because only Dell appeals from these judgments, we refer to the motions as Dell’s.

² As set forth in La. R.S. 51:135, all interlocutory judgments in cases involving antitrust claims shall be appealable within five days and shall be heard and determined within twenty days after the appeal is lodged.

DISCUSSION

La. Code Civ. P. art. 1425(F) Reasons for Judgment

With regard to the trial court's denial of the Joint Motion in Limine to Exclude the Expert Testimony of Chetan Sharma and the Joint Motion in Limine to Exclude the Expert Testimony of Stephen Dell, Dell has asserted that the trial court erred by failing to comply with La. Code Civ. P. art. 1425(F)(4) by not providing detailed reasons for admitting the testimony of Mr. Sharma, CamSoft's expert in the mobile telecommunications industry who offered opinions on CamSoft's lost market share, and Mr. Dell, CamSoft's lost business value expert.

Louisiana Code of Civil Procedure article 1425(F)(3) and (4) provide the following:

(3) If the ruling of the court is made at the conclusion of the hearing, the court shall recite orally its findings of facts, conclusions of law, and reasons for judgment. If the matter is taken under advisement, the court shall render its ruling and provide written findings of facts, conclusions of law, and reasons for judgment not later than five days after the hearing.

(4) The findings of facts, conclusions of law, and reasons for judgment shall be made part of the record of the proceedings. The findings of facts, conclusions of law, and reasons for judgment shall specifically include and address:

(a) The elements required to be satisfied for a person to testify under Articles 702 through 705 of the Louisiana Code of Evidence.

(b) The evidence presented at the hearing to satisfy the requirements of Articles 702 through 705 of the Louisiana Code of Evidence at trial.

(c) A decision by the judge as to whether or not a person shall be allowed to testify under Articles 702 through 705 of the Louisiana Code of Evidence at trial.

(d) The reasons of the judge detailing in law and fact why a person shall be allowed or disallowed to testify under Articles 702 through 705 of the Louisiana Code of Evidence.

At the April 2, 2019 hearing, the trial court stated its belief that Mr. Sharma's testimony would have "some utility" to the jury. The trial court added that his education, experience, and knowledge would also be useful to the jury, and

it noted that the underlying field was “an emergent changing industry.” The trial court noted that Mr. Sharma utilized market share analysis, which other experts have used, and stated its opinion that the trier of fact would find Mr. Sharma’s testimony helpful, before ruling that Mr. Sharma would be allowed to testify as an expert. Similarly, with regard to Mr. Dell, the trial court stated oral reasons for its judgment, noting that Mr. Dell’s methodology “appears to have been accepted.” It added that the primary remaining question was whether Mr. Dell had sufficient facts to determine whether a worldwide market share could be demonstrated and noted that counsel would be arguing this matter before the jury, which would ultimately make a decision. The trial court stated it was a “mixed question in the mind of this court” and ruled to allow Mr. Dell’s testimony.

Despite these conclusions, we find that neither the trial court’s reasons for judgment nor the judgments themselves conformed to the requirements of La. Code Civ. P. art. 1425. This was legal error. **Robertson v. Doug Ashy Building Materials, Inc.**, 2010-1552, pp. 28-29 (La. App. 1st Cir. 10/4/11), 77 So.3d 339, 358-359, writs denied, 2011-2430, 2011-2468 (La. 1/13/12), 77 So.3d 972, 973. We further find that the matter should be remanded to the trial court for compliance with La. Code Civ. P. art. 1425(F).

Finding legal error requiring remand, we pretermite discussion of the remaining assignments of error as to these two motions.

Michael G. Kaplan’s Expert Testimony

Dell also seeks to exclude the testimony of Mr. Kaplan, CamSoft’s rebuttal expert, as irrelevant under La. Code Evid. art. 401, inadmissible under La. Code Evid. art. 702, and inadmissible under **Daubert v. Merrell Dow Pharmaceuticals, Inc.**, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). Mr. Kaplan’s opinions are as follows: (1) Mr. Dell’s work was in compliance with the National Association of Certified Valuators and Analysts (“NACVA”) Professional

Standards; (2) Mr. Dell's professional judgment related to the factors he considered with the input variables was within the scope prescribed by NACVA Professional Standards; and (3) because Mr. Kaplan understands the causes of action to be interrelated and many variables going into the measurement of damages, it would be impracticable to allocate the damages across the various causes of actions and the various defendants. Mr. Kaplan specifically stated his report was not a business valuation engagement presenting a conclusion of value, a calculation engagement presenting a calculation of value, or a business appraisal review. He averred that his testimony to the jury would simply be his opinion that Mr. Dell complied with NACVA Professional Standards.

We vacate the trial court's judgment admitting the testimony of Mr. Kaplan and remand to the trial court because we have vacated the trial court's judgment regarding the admissibility of Mr. Dell's testimony and because Mr. Kaplan's testimony centers on that of Mr. Dell.

CONCLUSION

For the foregoing reasons, we vacate the trial court's April 2, 2019 judgments denying Dell, Inc. and Dell Marketing, L.P.'s Joint Motion in Limine to Exclude the Expert Testimony of Chetan Sharma and Dell, Inc. and Dell Marketing, L.P.'s Joint Motion in Limine to Exclude the Expert Testimony of Stephen Dell, and remand to the trial court for compliance with La. Code Civ. P. art. 1425(F)(3) and (4). We further vacate the trial court's April 3, 2019 judgment denying Dell, Inc. and Dell Marketing, L.P.'s Joint Motion in Limine to Exclude the Expert Testimony of Michael G. Kaplan and remand to the trial court. Costs of these three appeals are to be assessed equally to appellants, Dell, Inc. and Dell Marketing, L.P., and appellee, CamSoft Data Systems, Inc.

JUDGMENTS VACATED; MATTERS REMANDED.