

Rathe Salvage, Inc. v. R. Brown & Sons, Inc., No. S0080-04 CnC (Toor, J., Oct. 22, 2009)

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STATE OF VERMONT
CHITTENDEN COUNTY

RATHE SALVAGE, INC., Plaintiff	SUPERIOR COURT Docket No. 80-04 CnC
v.	
R. BROWN & SONS, INC., et al., Defendants	

RULING ON MOTION IN LIMINE

This is a convoluted contract dispute with allegations of, among other claims, fraud and violation of the duty of good faith and fair dealing. The case has been to the Vermont Supreme Court and back, and summary judgment having recently been denied by Judge Pearson, it is due to be scheduled for jury trial. Defendants have renewed a previous motion in limine and ask for a Daubert hearing on the motion.

The moving parties here seek permission to present evidence rather than to exclude evidence. Specifically, Defendants wish to present at trial the testimony of a polygraph examiner who examined defendant Robert E. Brown in May of 2006 with regard to certain facts at issue in this case. For example, the questions included the following: “Do you know how to cheat on the weight slips?” and “Did you have a scheme worked out to defraud Rathe on the weight slips?”

Although most courts have rejected the introduction of polygraph evidence as unreliable, Defendant correctly points out that some predate the Daubert test and relied upon the no-longer-valid “general acceptance” test that previously prevailed. Defendants also argue that field has progressed over the years and the court should hold a hearing to determine whether the evidence proffered here meets Daubert reliability standards.

The court concludes that a Daubert hearing is not necessary, because regardless of whether the testing satisfied Daubert it would invade the province of the jury in determining credibility. “It is black-letter law that assessing witness credibility and weighing the evidence are the unique province of the jury.” B & F Land Development, LLC v. Steinfeld, 2008 VT 109, ¶ 10. Thus, “an expert may not ‘infringe[] on the jury’s core function by telling it what and who should be believed.’” State v. Danforth, 2008 VT 69, ¶ 22, 184 Vt. 122, *quoting* State v. Weeks, 160 Vt. 393, 402 (1993). That is precisely what the polygraph examiner would be doing: it is the whole point of his testimony. *Accord*, United States v. Sayavongsa, 2008 WL 2325622 *4 (S. D. Tex., June 3, 2008) (“Polygraph evidence ... emanates an inference of infallibility which improperly interferes with this critical role of the finder of fact as the determiner of credibility.”).

Order

The motion in limine is denied, as is the request for an evidentiary hearing on the motion. The case will be scheduled for jury draw.

Dated at Burlington this day of October, 2009.

Helen M. Toor
Superior Court Judge