UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

Living Water Fire Protection, LLC, Case No. 21-30616

Debtor.

Karin A. Garvin,

Plaintiff,

v. Adversary Case No. 23-3008

West Coast WinSupply, Inc.,

Defendant.

ORDER ON MOTION IN LIMINE

This case is set for trial on August 1, 2025. The defendant has filed a motion in limine (doc. 93). The motion has now been fully briefed.

The motion requests an order: "(1) disallowing the testimony of Robert Leal and Somar Leal; and (2) not admitting into evidence the deposition transcripts of: (a) Robert Leal, taken January 10, 2022 (Plaintiff's Exhibit 19); and (b) Lorenzo Evans, taken January 10, 2022 (Plaintiff's Exhibit 18) . . . ." (*See* motion, doc. 93, p.1). The court will address these arguments in reverse order.

Deposition transcripts

In her response (doc. 98) to the motion in limine, the plaintiff states that she "does not seek to admit the [deposition] transcripts into evidence [but] rather to use them to refresh recollection, if necessary." Depositions themselves are generally not admissible into evidence. *See, e.g.*, Fed. R. Evid. 612; *Flowers v. Striplin*, No. 01-1765, 2003 WL 25683914, at *1 (E.D.

La. May 22, 2003) ("The Court notes that, as a general rule, . . . discovery depositions are hearsay, and therefore generally not admissible as exhibits, although they may be the subject of testimony and might be used to impeach a witness or refresh a witness' recollection."). The court thus grants the motion with respect to the deposition transcripts themselves as evidence. The court also agrees with the defendant that the depositions cannot be used as a substitute for an unavailable witness under Federal Rule of Evidence 804(b)(1) because the defendant did not have an opportunity to examine the witnesses at deposition. But the depositions can be used to refresh a witness's recollection or as a prior inconsistent statement under Rules of Evidence 612 and 613, which do not have the same requirement.

Witnesses Robert Leal and Somar Leal

The defendant initially argued that it was unaware of the existence of these witnesses. But the plaintiff disclosed both in December 2023 as part of her initial disclosures under Federal Rule of Civil Procedure 26(a)(1).

The defendant now contends that "under *no* circumstances did the Defendant understand that Robert and Somar Leal were going to testify for the Plaintiff in this adversary proceeding." (*See* doc. 102, p.2). Rule 26(a)(1) required the plaintiff to disclose "the name and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment . . . ." The plaintiff did so.

The plaintiff disclosed Robert Leal and Somar Leal in her initial disclosures and timely listed those people on her witness list. The defendant has not identified any law or pretrial obligation that would have required the plaintiff to list her trial witnesses at an earlier stage. The

court therefore denies the motion in limine in this respect and will allow the plaintiff to call those witnesses at trial.

Conclusion

To the extent the court has not specifically addressed any of the arguments for or against the motion made in the parties' filings, it has considered them and determined that they would not alter this result.

Dated: July 25, 2025

HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE