IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS DIVISION OF ST. CROIX

Civil No. SX-12-CV-370
CTION FOR INJUNCTIVE RELIEF DECLARATORY JUDGMENT, and PARTNERSHIP DISSOLUTION, WIND UP, and ACCOUNTING
Civil No. SX-14-CV-287 ACTION FOR DAMAGES and DECLARATORY JUDGMENT
Civil No. SX-14-CV-278 ACTION FOR DEBT and CONVERSION

ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTIONS TO STRIKE BUSINESS VALUATION EXPERT (INTEGRA) AND ACCOUNTING EXPERT (BDO)

This matter came on for hearing on March 6 and 7, 2017 on Plaintiff's fully briefed Motion to Strike Accounting Expert (BDO), filed October 4, 2016, and Plaintiff's Motion to Strike Business Valuation Expert (Integra), filed October 3, 2016. For the reasons that follow, the Court will deny both Motions without prejudice.

At the hearing, Hamed presented extensive testimony from several witnesses to the effect that the BDO report, supported by the report's own disclaimers, is unreliable as an expert accounting report and fails the test for admissibility under Virgin Islands Rule of Evidence 702 as defined in *Antilles*

¹ Also before the Court are Defendants' BDO Opposition, filed October 20, 2016; Plaintiff's BDO Reply filed October 26, 2016; Defendants' Supplemental BDO Opposition, filed March 21, 2017; Defendants' Integra Opposition, filed October 21, 2016; and Plaintiff's Integra Reply, filed October 26, 2016.

School, Inc. v. Lembach, 64 V.I. 400 (V.I. 2016) and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). As such, Plaintiff asserts that the report must be stricken.² Defendants respond that the Motions are premature in that the reports were submitted to the Master only as part of Defendants' proposed accounting and distribution plan, and are not a part of the record. Further, Defendants state that the BDO report represents only a preliminary accounting based on information available at the time, and will be supplemented upon completion of additional discovery. Both parties agree that more discovery is required to adequately present their respective claims.

While Plaintiff took the opportunity at the recent hearing to present evidence in the nature of a pretrial motion in limine, a determination of trial admissibility of the testimony of the author(s) of the reports in issue, and of the reports themselves, is premature. The primary purpose of conducting a *Daubert* hearing pursuant to V.I. R. Evid. 104 is to permit the trial court to act as gatekeeper to prevent a jury from hearing inadmissible testimony. Because the Court, by Memorandum Opinion and Order entered contemporaneously herewith, strikes both Plaintiff's and Defendants' demands for trial by jury, that concern is not present. Further, the ability of the Master and the Court to evaluate the reports and ascribe to them only such weight as they deserve, militates against striking the reports at this stage of the litigation.³ Accordingly, it is hereby

ORDERED that Hamed's Motion to Strike Accounting Expert (BDO) is DENIED without prejudice. It is further

ORDERED that Hamed's Plaintiff's Motion to Strike Business Valuation Expert (Integra) is DENIED without prejudice.

DATED: July 21, 2017.

Clerk of the Court

CERTIFIED A TRUE COPY

DOUGLAS A. BRADY

Judge of the Superior Court DATE:

ESTRELLA H. GEORGE TING CLERK OF THE COURT

BY: _

OURT CLERK

By: _____Court Clerk Supervisor

ATTEST: ESTRELLA GEORGE

² No evidence was presented at the hearing regarding the Integra report, which Plaintiff challenges as failing the last two of the three-prong test for admissibility: qualifications, reliability and fit. Because the same issues are involved, both Motions are treated together for purposes of this Order.

³ See, e.g., "The Court also deferred ruling on some of the motions involving expert testimony, as the judge need not serve as gatekeeper for himself." Eames v. Bedor, 2012 N.H. Super. LEXIS 15, *7 (N.H. Super. Ct. 2012) (citing Traxys N. Am., LLC v. Concept Mining, Inc., 808 F. Supp. 2d 851, 853 (W.D. Va. 2011)).