

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

Living Water Fire Protection, LLC,

Case No. 21-30616

Debtor.

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Karin A. Garvin,

Plaintiff,

v.

Adversary Case No. 23-3008

West Coast WinSupply, Inc.,

Defendant.

ORDER DENYING MOTION (DOC. 39) TO DISALLOW AND EXCLUDE

The court has reviewed the motion (doc. 39) filed by plaintiff Karin A. Garvin (“the trustee”) to disallow and exclude testimony of defendant West Coast WinSupply Inc.’s designated expert and the defendant’s opposition (doc. 42) thereto. Having carefully considered the parties’ submissions, the court denies the motion.

Background

Living Water Fire Protection, LLC, filed for chapter 7 bankruptcy in September 2021. Karin A. Garvin was appointed as the chapter 7 trustee. The trustee filed this adversary proceeding against defendant West Coast WinSupply (“WinSupply”) in September 2023.

According to the joint report (doc. 21) filed by the parties in November 2023, “the [t]rustee claims that during the 90 days prior to the Petition Date in the administrative case [defendant] WinSupply received preferential payments in the total amount of \$129,079.93 and that those preferential payments should be avoided.” WinSupply has raised several

defenses to the preference action in its answer (doc. 20), including that the payments are protected by Florida law, that the payments were contemporaneous exchanges for value, that the payments were made in the ordinary course, and that WinSupply gave new value to the debtor.

WinSupply designated R. Michael DeLoach as an expert. Mr. DeLoach's expert report is in the record at document no. 30-1, and he was also deposed. The court reached out to counsel for the parties via email for clarification whether WinSupply intended to present the expert testimony via the expert's report only or also his deposition. Counsel for WinSupply responded that WinSupply intended to submit and rely upon the report only.

The parties have previously agreed that the court can decide this adversary proceeding without a trial on a joint stipulation of facts. In any event, there will be no jury.

### Legal analysis

It is within this court's discretion whether to admit or exclude expert testimony under Federal Rule of Evidence 702 and relevant case law. *See In re Deepwater Horizon BELO Cases*, No. 20-14544, 2022 WL 104243, at \*2 (11th Cir. Jan. 11, 2022). The court has "considerable leeway" in this respect. *See United States v. Brown*, 415 F.3d 1257, 1266 (11th Cir. 2005) (citation and quotation marks omitted); *House v. DePuy Synthes Sales, Inc.*, No. 21-12897, 2022 WL 1749201, at \*2 (11th Cir. May 31, 2022) ("Because the task of evaluating the reliability of expert testimony is uniquely entrusted to the [trial] court, we give [trial] courts considerable leeway in executing this duty.") (citation and quotation marks omitted).

In cases where the court is the factfinder – like this one – the standard for the admissibility of expert testimony is "somewhat relaxed." *See Bass v. M/V Star Isfjord*, No.

1:20-CV-7-TFM-M, 2022 WL 18781201, at \*4 (S.D. Ala. Sept. 16, 2022). The court “has the discretion to admit the evidence subject to the ability to later exclude it or disregard it if the [c]ourt finds it is not relevant to the claims at hand.” *See id.* “That is because the [c]ourt as the fact finder is presumably competent to disregard what [it] thinks [it] should not have heard, or to discount it for practical and sensible reasons.” *See T.T. Int’l Co. v. BMP Int’l, Inc.*, No. 8:19-CV-2044-CEH-AEP, 2022 WL 843588, at \*4 (M.D. Fla. Mar. 22, 2022) (citation and quotation marks omitted). The court, “is free to later decide to disregard testimony in whole or in part and/or to decide how much weight to give it.” *See id.* “At bottom, the [c]ourt, sitting as trier of fact, is in the best position to distinguish between persuasive and insufficient expert evidence at trial.” *Kimberly Regenesys, LLC v. Lee Cnty.*, No. 2:19-CV-538-SPC-NPM, 2024 WL 3103451, at \*8 (M.D. Fla. June 24, 2024).

The court agrees that some of the expert’s report borders on legal conclusions that are for this court to decide. But consistent with the law on expert testimony in nonjury trials, “the [c]ourt may choose what, if any weight to give [the expert]’s testimony while acting as the factfinder . . . , without concern that its admission will improperly influence a jury.” *See RLI Ins. Co. v. OutsideIn Architecture, LLC*, 692 F. Supp. 3d 1077, 1093 (M.D. Fla. 2023). A practical problem at this point is that the court has not heard any evidence or seen the stipulation of facts that the parties intend to submit. The court thus intends to consider Mr. DeLoach’s proposed expert testimony after the case has been submitted on stipulated facts and the case has been fully briefed on the merits. The court will then decide how much, if any, of Mr. DeLoach’s testimony to consider and what weight to give it.

Finally, with respect to Mr. DeLoach’s qualifications specifically (and it is unclear to the court if those are being challenged), it is well-settled that “so long as the witness is

minimally qualified, objections to the level of his expertise go to credibility and weight, not admissibility.” *See Settle v. Collier*, No. 3:22CV22688-TKW-HTC, 2024 WL 3433380, at \*1 (N.D. Fla. June 12, 2024). Again, the court finds that there is no harm in admitting Mr. DeLoach’s expert report at this stage, with the caveat that the court may determine at a later stage that his qualifications or the helpfulness of the report are questionable.

To the extent the court has not specifically addressed any of the parties’ arguments, it has considered them and determined that they would not alter this result. For the above reasons, the court denies the motion to exclude. The parties should proceed to submit a joint stipulation in accordance with the third amended scheduling order (doc. 36).

Dated: August 19, 2024

  
HENRY A. CALLAWAY  
U.S. BANKRUPTCY JUDGE