



IT IS ORDERED as set forth below:

Date: December 17, 2007

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

In the United States Bankruptcy Court
for the Northern District of Georgia
Rome Division

In re)	Case No. 04-44635
)	
Shirley Ann Herzfeld,)	Chapter 7
)	
Debtor.)	Judge Diehl
)	
Alliance Financial Capital, Inc.,)	
)	
Plaintiff,)	Adversary Case
)	
v.)	No. 05-05001
)	
Shirley Ann Herzfeld,)	
)	
Defendant.)	

**ORDER DENYING DEFENDANT'S
MOTION IN LIMINE**

This is an Adversary Proceeding to determine the dischargeability of a debt pursuant to

11 U.S.C. § 523(a)(2)(B).¹ The case arises out of a factoring arrangement between The Catoosa Corporation d/b/a Forest Rug Mills (“Forest Rug”) and Plaintiff Alliance Financial Capital, Inc. (“Alliance”). Defendant Shirley Ann Herzfeld (“Debtor”) was a principal of Forest Rug and guaranteed the obligations of Forest Rug to Alliance. Alliance now contends that the amount of \$1,116,795.98, the principal amount owed pursuant to the guaranty, is non-dischargeable. A Pretrial Order was entered in the case on August 16, 2007, and on October 15, 2007, Debtor filed a Motion in Limine with respect to certain of the Exhibits listed by Alliance in the Pretrial Order. Alliance filed a Brief in Opposition to the Motion in Limine on October 29, 2007, and the matter is now ripe for decision.

A motion in limine is a tool that is prevalent in criminal law practice and is also useful in civil jury trials. Its purpose may be to admit, exclude, or limit the evidence presented to the trier of fact. A motion in limine made in a case where the trial judge is the trier of fact essentially asks the court to pass on the admissibility of evidence before the evidence has been tendered in the context of the trial. Many courts have agreed that motions in limine should only be granted sparingly, noting that the “better practice is to deal with questions of admissibility of the evidence as they arise.” See, e.g., *Sperberg v. Goodyear Tire & Rubber Co.*, 519 F.2d 703, 712 (6th Cir. 1975). Indeed, a ruling on a motion in limine is interlocutory and therefore subject to reconsideration by the Court at trial so its value to the litigants in determining its trial strategy is limited.

¹The Consolidated Pretrial Order submitted by the parties and entered by the Court after conducting a Pretrial Conference specifies that the sole legal issue is dischargeability pursuant to section 523(a)(2)(B) (Pretrial Order PP 12). Alliance’s Footnote 1 is therefore incorrect and the case is indeed a “523(a)(2)(B) case.”

Here, the Motion addresses three categories of documents: (1) Bulk Assignment schedules and supporting documentation (Exhibits 14, 15, 16 and 18); (2) documents produced by non-party The Bradley Factor, Inc. (Exhibits 150-156); and (3) documents produced by non-party Walmart Stores, Inc. (Exhibits 130-149). For the reasons set forth herein, Debtor's Motion will be **DENIED**.

With respect to the Bulk Assignment documents, the Court discussed with the parties at the Pretrial Conference the apparent defects in the labeling as one exhibit separate documents which were not created at the same time and which the parties agree were not created as a single document. To that end, the Court indicated that each of Documents 14, 15, 16 and 18, would need to be broken into its component parts when tendered into evidence and the Court would consider the admissibility of the separate parts at that time.

With respect to the documents produced by The Bradley Factor, Inc., Debtor questions the Certification accompanying the documents because it was given by a restructuring officer of an insolvent entity. Debtor questions the ability of such an individual to give an affidavit with respect to the business records of the entity prior to his employment. Such a challenge goes to the weight and not admissibility of the evidence and is not an appropriate basis for a court to grant a motion in limine in a non-jury trial.

The same analysis applies with respect to the documents produced by non-party Walmart. Debtor is free to argue that the invoices are not admissible as and when they are introduced at trial but it would be inappropriate for the Court to exclude them in this context.

It is important to note that the denial of a motion in limine does not result in the admission of the documents. It is merely a determination by the court that admissibility of the

documents is better decided in the context of the trial. “Denial of a motion in limine does not necessarily mean that all evidence contemplated by the motion will be admitted at trial. Denial merely means that without the context of trial, the court is unable to determine whether the evidence in question should be excluded. The court will entertain objections on individual proffers as they arise at trial, even though the proffer falls within the scope of a denied motion in limine.” *Hawthorne Partners v. AT & T Technologies, Inc.*, 831 F. Supp. 1398 (N.D. Ill. 1993).

Debtor’s Motion is **DENIED**. The trial of this matter shall commence on January 14, 2008, at 9:30 a.m., in Courtroom 326, United States Courthouse, 600 East First Street, Rome, Georgia.

END OF DOCUMENT

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