

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO. 2019-CP-10-04116
)	
Ashley Mathers, as Personal Representative)	
of the Estate of Michael Earl Withey, Jr.,)	
)	
Plaintiff,)	
)	ORDER
vs.)	
)	
Saltwater Cowboys LLC; Dart Shelter, LLC)	
d/b/a The Shelter Kitchen & Bar; and)	
William Henry Aniello Sipes, III,)	
)	
Defendants.)	
)	

This matter came before the Court on October 26, 2020 for a hearing on (1) Plaintiff’s Motion to Strike the Errata Sheet of Defendant Saltwater Cowboys’ Rule 30(b)(6) Designee and (2) The Shelter’s Motion for Protective Order. After careful and deliberate consideration and review of the memorandum and exhibits, as well as the arguments of counsel, the Court hereby **GRANTS** Plaintiff’s Motion to Strike and **DENIES** The Shelter’s Motion for Protective Order.

BACKGROUND

This is a dram shop and wrongful death action that arises out of a fatal collision that occurred at approximately 11:30 p.m. on July 4, 2019. Plaintiff alleges that Defendant William Sipes consumed substantial amounts of alcohol at Saltwater Cowboys and The Shelter—two commercial establishments in Mt. Pleasant, South Carolina—and later that evening, while driving under the influence of alcohol, hit and killed Plaintiff’s father on a bicycle in a crosswalk and fled the scene. Plaintiff brought this action against Defendant Sipes as well as Saltwater Cowboys and The Shelter, alleging that the latter two Defendants were negligent per se in violating South Carolina’s alcohol control statutes, S.C. Code Ann. § 61-6-2220 and § 61-4-580, by selling alcohol to Defendant Sipes who they knew or should have known was intoxicated.

1. Plaintiff's Motion to Strike Errata Sheet of Saltwater Cowboys' 30(b)(6) Designee

On August 4, 2020, Plaintiff's counsel took the Rule 30(b)(6) deposition of Saltwater Cowboys on several topics related to Saltwater Cowboys' safe alcohol service policies, including training and enforcement of the same. Saltwater Cowboys designated as its testifying representative Jay Forino, a former general manager of Saltwater Cowboys and now the Director of Operations of Palmetto Restaurant Group (the company that owns and operates Saltwater Cowboys). During his deposition, Mr. Forino gave several unequivocal responses and admissions concerning Saltwater Cowboys' service of alcohol to intoxicated patrons. However, following his deposition, Mr. Forino submitted a 15-page, hand-written errata sheet pursuant to Rule 30(e), SCRCF, which contained approximately fifty (50) extensive and dramatic changes, contradicted his prior testimony, and repeatedly offered the same response in an attempt to fit the applicable legal standard in this case: "Saltwater Cowboys does not knowingly serve alcohol to anyone who is intoxicated."

Even though South Carolina Rule 30(e) allows for any changes to form or substance which the witness desires to make, this Court does not believe that this rule was intended to permit what happened here. The Court has carefully reviewed the questions, the answers, and then the proposed changes and it certainly appears very suspicious and likely that Saltwater Cowboys' corporate representative, Mr. Forino, obtained legal assistance in crafting the changed answers to make them more favorable to Saltwater Cowboys' position in this litigation. Even though the rule potentially allows *a witness* to make changes, to permit changes of this type and magnitude would almost defeat any reason to have a deposition because at a later date a lawyer and client could come along and completely redraft, recraft, or restate the answer to make it more favorable to them. *See In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 552 S.E.2d 10 (2001)

(“Conferences called to assist a client in framing an answer, to calm down a nervous client, or to interrupt the flow of a deposition are improper and warrant sanctions. . . . According to [Rule 30, SCRCF], even during breaks in the deposition such as a lunch or overnight break, witnesses and their counsel cannot talk substantively about prior or future testimony in the deposition.”).

This Court finds persuasive the case of *Ashmore for Wilson v. Sullivan*, C/A No. 8:15-cv-00563-JMC, 2018 WL 507792 (Jan. 23, 2018), in which a defendant sought to similarly alter its deposition testimony in an errata sheet to enhance its defense. In that case, U.S. District Judge Michelle Childs granted the plaintiff’s motion to strike the defendant’s errata sheet. Like in *Ashmore*, it appears here that “[r]ather than advancing the pursuit of truth in discovery, a policy of liberal ‘amendments’ and ‘corrections’ would encourage and intensify lawyer wordsmithing and parsing.” C/A No. 8:15-cv-00563-JMC, 2018 WL 507792 at *3 (Jan. 23, 2018). The Court does not believe that Rule 30(e) was intended for this purpose. Therefore, Plaintiff’s Motion to Strike is **GRANTED**.

2. The Shelter’s Motion for Protective Order

On August 25, 2020, Plaintiff’s counsel took the deposition of The Shelter’s bar manager, Chris Jones. Mr. Jones has worked at The Shelter as either a bartender or manager since its opening roughly nine (9) years ago and has been working as a bartender or bar manager for the last sixteen (16) years. During the deposition, Plaintiff’s counsel sought to examine Mr. Jones regarding an “Approximate BAC Chart” which is included in The Shelter’s alcohol service training materials, which emanate from the national “eTIPS” (“Training for Intervention Procedures”) program on the safe service of alcohol. The Shelter’s counsel instructed Mr. Jones not to answer any questions concerning this chart because he is not a toxicologist or other expert and therefore any hypothetical questioning using his training materials would be improper. However, Mr. Jones

testified that: he had been certified through eTIPS or other similar programs throughout the course of his sixteen (16) year career as a bartender; that he had re-taken the online eTIPS course the day before his deposition and it was fresh in his mind; that he was familiar with, had been trained on, and knew how to read the Approximate BAC chart; and that it is an important tool for a bartender or server in assessing whether or not a patron can be safely served alcohol. Given that the eTIPS Approximate BAC Chart is part of the training materials The Shelter uses to train its employees, Plaintiff's counsel is entitled to examine Mr. Jones about the use of this chart as it relates to the evidence in this case. Therefore, The Shelter's Motion for Protective Order is **DENIED**.

AND IT IS SO ORDERED!

The Honorable William H. Seals, Jr.

_____, 2020
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Ashley Mathers , plaintiff, et al VS William Henry Aniello Sipes III ,
defendant, et al
Case Number: 2019CP1004116
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157