

The True Storey

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-03139-NYW-MEH

ALLSTATE INSURANCE COMPANY,

Plaintiff,

v.

JOHN CRUZ,

Defendant.

DEFENDANT'S MOTION IN OPPOSITION TO PLAINTIFF'S OMNIBUS MOTION IN LIMINE

Defendant John Cruz ("Cruz"), hereby submits his Motion in Opposition to Plaintiffs Omnibus Motion in Limine. In support of his Motion, Cruz states as follows:

LAW

Evidence is only admissible if it tends to make a fact more or less probable and is of consequence to the action. Fed. R. Evid. 401; Fed. R. Evid. 402. Relevant evidence is generally admissible and should only be excluded "if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

Fed. R. Evid. 104(a) requires only a finding by a preponderance of the evidence that a piece of evidence is what someone purports it to be. Fed. R. Evid. 104(a).

The Court may take judicial notice of a fact only if it is (1) generally known within the court's territorial jurisdiction or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

BACKGROUND

Allstate provides insurance, including property and casualty insurance, as well as other financial products and services to individuals and businesses in Colorado. Dkt. 40 ¶ 13. It markets the Allstate products in three ways: directly to customers, via Exclusive agents, and via Independent agents. Exclusive agents can sell only Allstate approved products, while Independent agents can sell a variety of products, including Allstate and competitive insurance carriers. Both Exclusive agents and Independent agents are independent contractors.

In April 2010, Cruz entered an exclusive agreement, with permission to work as an Independent Agent. At the same time he purchased three books of business from an existing Independent Agent. The business sale was approved by Allstate. It included Allstate and other carriers. Cruz has operated for over 10 years with this model. Allstate was well aware of this, as Cruz dealt with Allstate representatives almost daily as he repeatedly referred new business to Allstate.

In late 2019, Allstate claims it received word that Cruz was selling insurance products in competition with Allstate (which an Independent agent is allowed to do) and was in violation of the terms of the Exclusive Agent agreement Id. ¶ 17. Allstate conducted an investigation into Cruz's activities and confirmed that he was conducting business, and had done so for years, consistent with the 2010 agreement and the three books of business. Allstate terminated Cruz's Exclusive Agreement on August 20, 2020.

ARGUMENT

Throughout this litigation, Cruz has raised a number of substantiated allegations about Allstate that have a major effect on the claims raised by the parties. Cruz's allegations include, among other things, that 1) Allstate engaged in a series of crimes, 2) Cruz was terminated due to his discovery of Allstate's crimes, specifically, Allstate-used gift cards whereby Allstate allows Allstate representatives to receive gift cards for the referring, sharing, and transferring of customer personal information to

anyone, 3) Allstate defamed Cruz after termination of the parties' EA Agreement. Cruz has provided, and will provide, evidence in support of these allegations, including depositions of, and exhibits from, Allstate's representatives, and this relevant evidence supporting Cruz's claims should be allowed at trial.

See; Brian Mitchum: Defendants Field Manager at Allstate: Exhibit C, Recording Date

July 9, 2020, Transcript August 31, 2020

John Cruz: I hear it .from everybody. They talk about me a lot. So, you know that.

Brian Mitchum: They do.

John Cruz: So-

Brian Mitchum: Yeah.

John Cruz: They'll use anything and everything they can against me because I'm a whistleblower. And I know that. Been told by corporate people everywhere.

Brian Mitchum: Yep.

John Cruz: Yep. Mm-hmm (affirmative). So, we'll see. Time will tell.

Brian Mitchum: Time will tell indeed.

Whistleblower Protection Laws: Employees of Contractors, Grantees, and Personal Services Contractors. Under 41 U.S.C. § 4712 employees of Government contractors, subcontractors, grantees, and subgrantees-as well as personal services contractors-who make a protected disclosure about a Federal grant or contract cannot be discharged, demoted, or otherwise discriminated against as long as they reasonably believe the information they disclose is evidence of: Who May Receive a Report Covered by 41 U.S.C. § 4712,

A manager or other employee of the contractor, grantee, or personal services contractor who has responsibility for investigating, discovering, or addressing misconduct.

Allstate seeks to prohibit Cruz from introducing arguments, evidence, and/or testimony regarding any crimes he purportedly uncovered at Allstate. However Cruz's arguments, evidence, and/or testimony regarding crimes he uncovered at Allstate are directly relevant to refuting Allstate's claimed reason for terminating Cruz. Allstate claims, on page 6 of its Motion that, "whether or not Allstate engaged in any criminal activity (it did not) neither absolves Cruz of his EA Agreement

breaches, nor does it absolve or justify his trade secret misappropriation.” Cruz asserts, and has continually asserted, that Allstate’s claim that it terminated Cruz for alleged trade secret misappropriation is pre-text for the actual retaliatory termination of Cruz after Cruz uncovered crimes committed at Allstate. Cruz’s evidence in support of these allegations, including depositions of, and exhibits from, Allstate’s representatives should be allowed at trial. Cruz’s evidence is relevant because it tends to make the fact that he was terminated in retaliation for his whistleblowing and uncovering crimes at Allstate more probable and is of consequence to the action. *See* Fed. R. Evid. 401; Fed. R. Evid. 402. Cruz’s relevant evidence’s probative value outweighs the danger of unfair prejudice or confusing the issues, because it directly refutes Allstate’s claimed reason for terminating Cruz.

Allstate claims on pages 8-9 of its Motion that Cruz’s evidence “provides no legitimate defense to either the breach of contract or trade secret misappropriation claims” and that “The jury may focus on the cause of Cruz’s termination of the EA Agreement or the relationship between the parties, rather than the claims at hand.” However, the “claims at hand” concern Cruz’s EA Agreement termination and his relationship with Allstate, its representatives and its clients. In fact, Allstate’s Motion on page 2 argues that “Cruz’s evidence at trial should be limited to evidence relating to Cruz’s breach of his Allstate Agreement and misappropriation of Allstate confidential information.” Cruz’s evidence regarding crimes he uncovered at Allstate are directly relevant to Allstate’s claim that he breached his EA Agreement and misappropriated Allstate confidential information because Allstate only claimed that Cruz breached his EA Agreement and misappropriated Allstate confidential information after Cruz uncovered crimes and regulatory violations committed at Allstate and informed Allstate representatives and relevant regulatory authorities of those crimes and regulatory violations. Cruz had refused to refer, share, transfer customer personal information and get paid with gift cards for selling Allstate trade secrets. Cruz’s evidence establishes how Allstate transfers their property and trade secrets to anyone for the price of gift cards, and the probative value of this evidence substantially outweighs the danger of unfair prejudice or confusing the issues. Fed. R. Evid. 403. As examples, Cruz would submit evidence

of Allstate's knowledge that its representatives dealt in gift cards and shared or transferred customer personal information to anyone and got paid with gift cards:

Jodi Lynch Testified:

- Q Who authorized you at Allstate to refer business?
A I did. There was nothing -
Q Is it okay for you to refer business, receive gift cards for that business. and not inform Allstate, or did Allstate know about this?
A For 20- or \$25?
Q Yes. 20-, \$25 gift card.
A I don't think there's anything wrong with that.

Deposition Jodi Lynch ., 46:5-7, 46:23-47:4.

- Q So you did refer business to Steve Longnecker. You did receive gift cards. You referred Allstate's clients, past clients, leads, quotes to Steve Longnecker. You did receive gift cards, correct?

A I have. Yep.

- Q And Steve Longnecker is an independent agency, independent broker.

MR. CRUZ: Thank you.

Deposition Jodi Lynch, 76:22-25, 77:1-4

Rebecca Martens Testified:

- Q In your contract does it allow you to refer business for financial gain, direct or indirect?
A It does-

Deposition Rebecca Martens., 46:8-13

Dino DiCarlo testified:

- Q Do you keep documentation on your referrals as in regard to Allstate declining them business?
A no.

Deposition of Dino DiCarlo, 13:25 – 14:2

- Q And that contract allows you to share –refer business to outside entities –outside people of Allstate?

A Yes.

Deposition DiCarlo Dep., 16:6-9

Q So of all the business you refer out, you don't keep a log of these customers -- clients, Leads, prospects. You don't keep a log of the credit card you receive from Ivan Gerrity, Steve Longenecker, or anyone to that respect?

Q Gift card. Do you keep any logs whatsoever on gift cards?

A I do not.

Deposition of Dino Di Carlo, 15 :4-11, 15: 14-16.

Ivan Gerrity testified:

Q include customer's personal information?

A Occasionally, it did. Yes.

A And did you pay out gift cards to Allstate representatives, for referring business?

A Yes.

Q And did you, or did you not, keep account of your records?

A I don't keep records like that. There could be one in

Q Did you--

A like the send- out cards.

Q Did you report any of this information to FINRA?

A Nope.

Q To the US Treasury?

A Nope.

Q To Colorado Department of Revenue?

A Nope.

Q To the Attorney General?

A Nope.

Q Any government agency?

A Nope.

Q And how long have you you started your agency in June of 2011?

A Yeah.

Q And the referral business is still going on today, back, and forth, with Allstate representatives?

A Yeah.

Q And the referral business is still going on today, back, and forth, with Allstate representatives?

A It is. Not not frequently, but it is.

Q But it's still taking place?

A Yes

Q And these are individuals still working at Allstate agencies?

A Yes.

Deposition of Ivan Gerrity, Pg 47:1 - 48:8

Richard Poduska testified:

Q Do you have records of Allstate's quotes, Allstate's leads, Allstate's customers that have been referred to outside individuals?

A Oh, no.

Q No. And nobody keeps accounting records? Nobody you know of at Allstate keeps accounting records for quotes, leads, customers for gift cards, payments?

A Not that I'm aware of.

Deposition of Richard Poduska, 33:22-23, 48:____, 62:19-22.

Dino DiCarlo testified:

Q Do you keep a log of referrals that you refer outside Allstate?

A No.

Deposition of Dino DiCarlo, 13:25 – 14:2

Elise Teague testified:

Q Allstate keeps no records, correct me if I'm wrong, of Allstate's customers being referred outside of Allstate?

A I don't know.

Deposition of Elise Teague, 62:19-22

Jodi Lynch testified:

Q But you never declared any referral business--

A Gift cards?

Q Gift cards.

A No.

Deposition of Jodi Lynch 65:8-12

Dino DiCarlo testified:

Q Do you keep documentation on your referrals as in regard to Allstate declining them business?

A I don't keep logs of it, no.

Q So of all the business you refer out, you don't keep a log of these customers -- clients, leads, prospects. You don't keep a log of the credit card you receive from Ivan Gerrity, Steve Longenecker, or anyone to that respect?

Q Gift card. Do you keep any logs whatsoever on gift cards?

A I do not.

Deposition of Dino DiCarlo, 15:4-11, 15:14-16.

Elise Teague testified:

Q Do customers -- Allstate leads, Allstate quotes, Allstate customers, anybody at Allstate -- they go to an Allstate financial **representative**, and that representative refers that customer outside of Allstate and they receive gift cards, does the customer know that agents receive the gift cards?

A I don't know. And agents shouldn't be sharing commissions. That would be against the referral guidelines.

Deposition of Elise Teague 37:16-22, 38:2-4

Given the Court's summary judgment ruling, Cruz should also be allowed to submit evidence at trial to prove that he did not solicit Allstate customers or continue to possess Allstate confidential information after his EA Agreement terminated because Allstate allows all Allstate representatives to refer, share, transfer of customer personal information to anyone, and that Allstate makes their trade secrets available to anyone through Allstate electronic communications, email, phone, and fax and allows this information to be sold for gift cards. Cruz's evidence of this pattern and practice is contained in Allstate's representatives' depositions referred to above; evidence of what it purports to be. Fed. R. Evid. 104(a).

Allstate claims, on page 10 of its Motion that "The Court should therefore prohibit Cruz from referencing or introducing evidence regarding Allstate's use of gift cards because the issue has no bearing on whether Cruz breached his EA Agreement or misappropriated trade secrets." The role of gift cards needs to be emphasized. As noted in earlier pleadings, referral fees are prohibited in the insurance industry. Allstate used gift cards as bonuses for referrals, to evade these restrictions.

The gift card issue has direct bearing on whether Cruz breached his EA Agreement or misappropriated trade secrets. As stated in deposition by Allstate Executive Elise Teague, Allstate Executive Richard Poduska, and all deposed Allstate representatives, Allstate representatives are allowed to refer, share, transfer customer personal information and get paid with gift cards for selling Allstate claimed trade secrets. Allstate representatives only have to follow three (3) rules, 1. Only use Allstate electronic communications, email, phone, or Fax. 2. Not allowed to report to any government

agency, IRS, Sec, FINRA, 3. The only form of payment allowed to be received are gift cards, for referring, sharing, transferring customer personal information, Allstate's claimed trade secrets to anyone and paid to Allstate representatives by Gift Cards.

Allstate's trade secret protections were terminated when Allstate allowed all Allstate representatives to refer, share, transfer customer personal information. In fact, Allstate's trade secrets have been sold to anyone for over 15 years, making them public information. Allstate representatives are allowed to receive gift cards for the transfer of Allstate trade secrets, transfer trade secrets through Allstate electronic communications, email, phone, fax. Once Allstate allowed their claimed trade secrets to be transferred, and sold to anyone, their trade secret protections were lost. This evidence is included in all Allstate representative's deposition's and exhibits which Cruz seeks to submit as evidence at trial. Allstate Executives, and Allstate Representatives all have stated under Oath that Allstate allows all representatives throughout the USA and Canada to refer, share, transfer customer personal information and get paid with gift cards for selling Allstate trade secrets, using only Allstate electronic communications, email, phone, fax.

In short, this evidence is relevant and probative to establish that Cruz did not misappropriate any of Allstate's trade secrets or confidential information because Allstate's pattern and practice of allowing its representatives throughout the USA and Canada to refer, share, transfer customer personal information and get paid with gift cards for selling Allstate claimed trade secrets, using only Allstate electronic communications, email, phone, fax, negates any trade secret protections and refutes Allstate's argument that it terminated Cruz for misappropriating Allstate's trade secrets and confidential information. Simply put, none of the alleged trade secrets and confidential information Allstate claims it based Cruz's termination on are actually trade secrets or confidential information.

Accordingly, Cruz's evidence should be allowed at trial because the subject matter is to show how Allstate transfers their confidential information and trade secrets to anyone for the price of gift cards, thus negating any confidentiality concerns or trade secret protection. Such evidence is not

distracting or confusing, and it tends to show exactly what it is: proof that Cruz did not misappropriate or transfer Allstate's claimed trade secrets or confidential information because that information was not confidential or a trade secret under Allstate's established pattern and practice.

CONCLUSION

For the foregoing reasons, this Court should deny Allstate's Motion in Limine and should not preclude Cruz's evidence and information discussed above from arguments, evidence, and/or testimony at trial.

Dated February 7, 2024,

Respectfully submitted,

/s/ John Cruz

4888 Preserve Place

Firestone, CO 80504

Telephone:303-570-8925

Self Counsel - John Cruz

CERTIFICATE OF SERVICE

The undersigned, self counsel – John Cruz, states that on February 7, 2024, he caused a true and correct copy of the foregoing Defendant, John Cruz motion opposition to Plaintiffs Omnibus Motion in Limine to be served via email upon the following:

J. Scott Humphrey
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
71 South Wacker drive
Suite 1600
Chicago, IL 60606-4940
shumphrey@beneschlaw.com

/s/ John Cruz
John Cruz