

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

VICTORIA SPECIALTY INSURANCE CO.)	CASE NO. CV 11-769003
)	
Plaintiff,)	JUDGE PAMELA A. BARKER
)	
v.)	<u>OPINION AND JOURNAL ENTRY</u>
)	<u>ON MOTION TO STRIKE</u>
SAM SKOURLIS, et al.)	
)	
Defendants)	
)	

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This matter is before the Court on Defendant Anton Sarossy-Christon's Motion To Strike Examination Under Oath Of Sam Skourlis, Attached As An Exhibit To Plaintiff's Motion For Summary Judgment, filed on March 8, 2013 ("Defendant's Motion"), Plaintiff Victoria Specialty Insurance Company's Brief In Opposition To Defendant's Motion To Strike Examination Under Oath Of Sam Skourlis, filed on March 19, 2013 ("Plaintiff's Brief"), and Defendant Anton Sarossy-Christon's Reply to Plaintiff's Brief, filed on March 28, 2013 ("Defendant's Reply").

In support of Plaintiff Victoria Specialty Insurance Company's Motion For Summary Judgment filed on February 5, 2013 ("Plaintiff's summary judgment motion"), Plaintiff attached thereto as an Exhibit, excerpts from the September 22, 2011 Examination Under Oath ("EUO") of Sam Skourlis , the Policyholder under a policy of insurance, number 005530845, issued to him by Plaintiff and in effect on the date of the January 24, 2010 accident ("the policy") that is the subject of the lawsuit captioned Anton Sarossy-Christon v. Christo Skourlis and John Skourlis, Case No. CV 11 746712 filed in the Cuyahoga County Court of Common Pleas.¹

¹ A certified copy of the policy is attached as Exhibit "A" to the First Amended Complaint For Declaratory Judgment With Exhibits And Praeipce Annexed, filed by Victoria Specialty Insurance Company on February 29, 2012. The First Amended Complaint named Sam Skourlis, Christopher Skourlis (aka Christo Skourlis) and Anton Sarossy-

The policy, under "INSURED PERSONS' DUTIES AFTER AN ACCIDENT OR LOSS" reads in relevant part that "[t]he insured will *** 4. Submit to separate examinations under oath as often as reasonably requested by us."² Sam Skourlis, as "[t]he "policyholder" [or] the named insured under [the] policy" or "YOU", and therefore, "one who is described as entitled to protection under" the AUTO LIABILITY coverage of the policy³ had a contractual duty to submit to an EUO by Plaintiff.

In Defendant's Motion, Defendant Anton-Sarossy-Christon ("Defendant") argues that the EUO must be struck and not considered for purposes of Plaintiff's motion for summary judgment because: A.) the EUO is inadmissible as evidence under Civ. R. 56;⁴ (B) the Interpreter was never qualified as required by Evid. R. 604 and O.R.C. 2311.14;⁵ and (C) the EUO is not a verified or certified transcript in accordance with Civ. R. 30(E) and (F).⁶

THE ADMISSIBILITY OF THE EUO UNDER CIV. R. 56(C).

Defendant contends that an EUO is not one of the seven types of evidence listed in Civ. R. 56(C)⁷ and therefore, the EUO of Sam Skourlis cannot be considered as evidence for purposes of Plaintiff's summary judgment motion. Defendant is correct in his citations to Ohio case law for the proposition that the list of seven types of evidence is exclusive and if an objection is

Christon, Individually and as Administrator Of the Estate of Tibor Sarossy, Deceased, as Defendants. See First Amended Complaint ¶ 2, and Defendant Anton Sarossy Christon's Amended Answer To First Amended Complaint, ¶ 2. A copy of the Complaint filed in Case No. CV 11 746712 is attached as Exhibit "B" to Plaintiff's First Amended Complaint.

² The policy, at page 1.

³ The policy, under **DEFINITIONS**, ¶1, 2 and 5, at page 1; and AUTO LIABILITY COVERAGE AGREEMENT, at page 6.

⁴ Defendant's Motion, at pages 2-3.

⁵ *Id.*, at pages 3-6.

⁶ *Id.*, at pages 6-7.

⁷ Pursuant to Civ. R. 56(C): "Summary judgment shall be rendered forthwith if the **pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact**, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule." (Emphasis added.)

made any other evidence cannot be considered by the court in ruling on a summary judgment motion.⁸ According to the Eighth District Court of Appeals, “[i]f a document does not fall within one of the listed categories, it can only be introduced as proper evidentiary material when it is incorporated by reference in an affidavit.” *Bass-Fineberg Leasing, Inc. v. Keller* (8th Dist. No. 96107), 2011 Ohio 3989, ¶11, citing *Biskupich v. Westbay Manor Nursing Home* (1986), 33 Ohio App.3d 220, 515 N.E.2d 632.

This Court finds that the EUO is proper evidence for purposes of Plaintiff’s summary judgment motion. The transcribed statements or declarations made by Sam Skourlis contained in the EUO were made under oath and without notice to the adverse party, making the EUO in effect an “affidavit”.⁹ Indeed, this Court agrees with Plaintiff’s contention that “the sworn Examination Under Oath has the same or more force than a sworn Affidavit.”¹⁰ Even if the EUO technically is not an affidavit, it was properly authenticated by the sworn testimonies of Nayann B. Pazyniak and Ronald Rawlin, set forth in their affidavits and discussed below, for purposes of Civ. R. 56(C).

⁸ *Brown v. Ohio Casualty Ins. Co.* (1978), 63 Ohio App.2d 87, 90-91, 409 N.E.2d 253 (citing *Morris v. First Natl. Bank & Trust Co.* (1968), 15 Ohio St.2d 184, 239 N.E.2d 94, for the proposition that the list of documents contained in the summary judgment rule is exclusive, but where the Court found that because neither party objected to the other’s use of unverified documents to support the summary judgment motions, the trial court did not err in considering the documents); and *The State ex rel. The V Companies v. Marshall, Ct. Aud.* (1998), 81 Ohio St.3d 467, 473, 692 N.E.2d 198, 204. See, also, *Green v. B.F. Goodrich Company* (1993), 85 Ohio App.3d 223, 228, 619 N.E.2d 497.

⁹ See *Brown v. Ohio Casualty Ins. Co.*, 63 Ohio App.2d 87, 90. See, also, *Babal v. Babal* (8th Dist. No. 63044), 1992 WL 136500, at *5 (where the Court found that the transcribed recorded interview of a witness taken by an insurance claims representative and authenticated by the affidavit of that claims representative was properly considered by the trial court in compliance with Civ. R. 56(C) and (E)). In Defendant’s Reply, Defendant asserts that in *Babal v. Babal*, *supra*, it was an EUO “supported by a proper affidavit” that the Court ruled was properly considered by the trial court in ruling on a summary judgment motion. (Defendant’s Reply, at page 2.) This is inaccurate. It was not an EUO at issue in *Babal*, but a recorded statement of a witness – not testimony taken or given under oath – that was transcribed and authenticated via an affidavit by the claims representative who took the recorded statement.

¹⁰ Plaintiff’s Brief, at page 2.

Attached to Plaintiff's Brief is an Affidavit of Nayann B. Pazyniak, testifying that she has personal knowledge of the matters contained therein, and establishing in relevant part that: she is a notary public in and for the State of Ohio, a member in good standing of the National Court Reporters Association ("NCRA") and a Registered Professional Reporter and Certified Realtime Reporter as tested and certified by NCRA;¹¹ she personally reported the testimony of Sam Skourlis in his EUO taken on September 22, 2011;¹² Greek interpreter Michael Sosiadis from International Services was present for the EUO;¹³ Pazyniak administered the following oath to interpreter Michael Sosiadis: "Do you solemnly swear that you will truly and accurately translate the testimony given in this matter from English to Greek and from Greek to English to the best of your ability, so help you God?";¹⁴ she gave the oath for sworn testimony to Sam Skourlis prior to his questioning;¹⁵ she took down all of the proceedings had in the transcript of the EUO and transcribed all stenotype notes into typewritten form as appears in the EUO transcript;¹⁶ the EUO transcript is the complete form of the proceedings had and constitutes a true and correct transcript therein as certified by Pazyniak at page 28 of the EUO;¹⁷ upon preparation of the transcript, a letter dated September 23, 2011 advising Sam Skourlis of his right to review, read and sign the transcript within 30 days was mailed via United States Postal Service to the residence of Sam Skourlis;¹⁸ and at no time during the 30 day period or any time thereafter as of March 15, 2013 was she or her office contacted to make arrangements for

¹¹ Exhibit "A" attached to Plaintiff's Brief, ¶ 2.

¹² *Id.* ¶ 3.

¹³ *Id.* ¶ 4.

¹⁴ *Id.* ¶ 5.

¹⁵ *Id.* ¶ 6.

¹⁶ *Id.* ¶ 7.

¹⁷ *Id.* ¶ 8.

¹⁸ *Id.* ¶ 9.

reading and signing the transcript.¹⁹ In the Affidavit included with Exhibit "B" attached to Plaintiff's Brief, is sworn testimony by Ronald V. Rawlin that he personally witnessed Pazyniak administer the oath to Sam Skourlis at the time of his EUO.²⁰

Defendant's citation to *Mitchell v. Ross*, 14 Ohio App.3d 76, 76, 470 N.E.2d 245 (8th Dist. 1984) in support of his argument that the EUO cannot be considered by this Court for purposes of Plaintiff's summary judgment motion is misplaced. In *Mitchell*, the appellant had attached a single page of appellee's deposition which had not been authenticated and was part of a deposition that was not filed with the court. Therefore, the Eighth District held that the trial court was not required to consider it in ruling on the appellees' summary judgment motion. By contrast, Mr. Skourlis' EUO constitutes or consists of his sworn testimony as certified by the court reporter that recorded and transcribed it.

THE APPLICABILITY OF O.R.C. § 2311.14 TO THE EUO

In Defendant's Motion, Defendant argues that the testimony of Sam Skourlis' son, John, that English is Sam Skourlis' second language and a cursory review of the EUO, demonstrates that Sam Skourlis lacked the capacity to testify without the assistance of an interpreter and was entitled to the benefit of a qualified interpreter to assist him in any legal proceeding pursuant to R.C. 2311.14. In relevant part, Defendant quotes the language of O.R.C. § 2311.14(A)(1)²¹ and cites the Sixth District Court of Appeals decision in *Pheils v. Palmer* (1993), 1993 WL 155641 for the proposition that the statute applies to all legal proceedings, to include the EUO taken of Sam Skourlis.

¹⁹ *Id.* ¶10.

²⁰ Affidavit of Ronald V. Rawlin, attached as part of Exhibit "B" to Plaintiff's Brief, at ¶6.

²¹ O.R.C. § 2311.41(A)(1) reads: "[w]hen because of a hearing, speech, or other impairment a party to or witness in a legal proceeding cannot readily understand or communicate, the court shall appoint a qualified interpreter to assist such person." (Emphasis added.)

While O.R.C. § 2311.14(A)(1) does use the phrase “a legal proceeding”, the last phrase thereof, specifically “the court shall appoint a qualified interpreter to assist such person” indicates that this section applies in instances where a court has the authority to appoint interpreters, i.e., legal proceedings before a judge in a courtroom.

In *Pheils v. Palmer*, the Sixth District Court of Appeals found that the trial court had abused its discretion in *sua sponte* reconsidering and granting the motion to withdraw as counsel filed by the appellant’s attorney’s, granting the motion after a partial settlement was reached while the appellant was without representation, and requiring the appellant to proceed to trial the next day on the unsettled claims as a *pro se* litigant without an interpreter, and concluded that the settlement agreement reached under these conditions was unfair and void. The Court relied upon and quoted from O.R.C. 2311.14 for the proposition that “a litigant with an impediment to understanding or communicating in the English language is entitled to the assistance of a qualified interpreter.”²² Further, the Court explained:

In this case, while the trial judge permitted appellant Ok Sun Palmer’s daughter to sit with her at the table **during the courtroom proceedings**, there is no showing that the daughter was capable of acting as an interpreter, nor were the proper procedures followed for the appointment of a qualified interpreter. The unfair advantage held by appellees because of appellant Ok Sun Palmer’s lack of an attorney and lack of an interpreter was fostered in part by the trial court’s actions, which, when viewed in the context of this case, were unreasonable, arbitrary and unconscionable, constituting an abuse of discretion. [Citation omitted.]²³

Thus, in this Court’s opinion O.R.C. § 2311.14 does not apply to have required this court to have appointed a qualified interpreter for purposes of the EUO of Sam Skourlis and

²² (Emphasis added.) *Pheils v. Palmer*, *id.* at *4.

²³ (Emphasis added.) *Id.*

therefore, it cannot serve as a basis to preclude use of the EUO for purposes of Plaintiff's summary judgment motion.

Moreover, in this case, there has been a showing that Michael Sosiadis was capable of acting as a Greek interpreter and did act as a Greek interpreter. The EUO itself demonstrates that Mr. Sosiadis acted as a Greek interpreter for Mr. Skourlis, after the court reporter had administered the oath to him to truly and accurately translate the testimony given from English to Greek and from Greek to English.

Also, attached to Plaintiff's Brief as part of Exhibit "B" is a resume of Michael Sosiadis listing his "Experience" as a "Translator: International Services Center 2010-2012", "Qualifications" as "Certified court interpreter in the State of New York", and "Skills" as "Speak, read, and write fluently in both English and Greek." In the Affidavit of Ronald V. Rawlin included therewith, Mr. Rawlin testified that the information contained therein is based upon his personal knowledge and establishes that: he personally retained the services of Michael Sosiadis from International Services as a Greek Interpreter of International Services for the EUO of Sam Skourlis;²⁴ and he personally received the resume of Michael Sosiadis marked as Exhibit B.²⁵

Mr. Rawlin also testified by way of his Affidavit that he "personally verified with Interpreter Michael Sosiadis that he had been qualified as an Interpreter in Court Hearings prior to his retention,²⁶ and that "he was proficient both in English and in Greek and had acted

²⁴ Exhibit "B", Affidavit of Ronald V. Rawlin, at paragraph 2.

²⁵ *Id.* at paragraph 3.

²⁶ *Id.* at paragraph 4.

as a translator for the International Services Center prior to his retention by [Mr. Rawlin].”²⁷ However, “personal knowledge” has been defined as “[k]nowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.” *Bass-Fineberg Leasing, Inc. v. Keller, supra*, 2011 Ohio 3989 at ¶15, quoting *Bonacorsi v. Wheeling & Lake Erie Ry. Co.* 95 Ohio St.3d 314, 2002 Ohio 2220, 767 N.E.2d 707, ¶26, quoting Black’s Law dictionary (7th Ed. 1999). In this Court’s opinion, it is unlikely that Mr. Rawlin has personal knowledge of these facts gained through firsthand observation. By the very nature of these averments contained in his Affidavit, it appears that he gained these beliefs based upon what Mr. Sosiadis told him. Accordingly, these two assertions of fact have not been considered for purposes of deciding Defendant’s Motion.

THE APPLICABILITY OF CIV. R. 30 AND CIV. R. 27

Although Defendant has argued that the EUO is not admissible Civ.R. 56(C) evidence because it does not qualify as one of the seven types of evidence listed therein, including a deposition, nonetheless Defendant also argues that it is a deposition subject to Civ. R. 30(E) and (F), and Civ. R. 27(A)(4), titled “Perpetuation of testimony – depositions before action or pending appeal”, that Plaintiff did not comply with those rules and therefore, the EUO is not admissible for purposes of considering Plaintiff’s summary judgment motion. Aside from the fact that there was compliance with Civ. R. 30(E) and (F),²⁸ the Court rejects this argument, finding that the EUO is not a deposition. Indeed, counsel for Defendant took the deposition of Sam Skourlis, but has chosen not to file it or use it to oppose Plaintiff’s summary judgment motion.

²⁷ *Id.* at paragraph 5.

²⁸ Affidavit, attached as Exhibit “A” to Plaintiff’s Brief, at ¶9,10.

For the foregoing reasons, Defendant's Motion to Strike is DENIED.

Pamela A. Barker 4-4-13
JUDGE PAMELA A. BARKER DATED

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APR 04 2013

GUYAHOGA COUNTY
CLERK OF COURTS
By: [Signature] Deputy