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Should the Court have admitted:

1. The photocopy of the advertisement

In order to be admissible evidence must be both logically relevant and legally relevant.

Logical Relevance

Evidence is logically relevant if it has a tendency to prove or disprove a material fact.

Here, Pedro ("P") P will argue that the photocopy of the advertisement is logically relevant to prove that the Gallery ("G") advertised the painting as being valued at \$200k, a fact that is now in dispute, thus the photocopy is logically relevant.

The photocopy is logically relevant.

Legal Relevance

Evidence is legally relevant if its probative value is not substantially outweighed by the danger of unfair prejudice. Unfair prejudice includes confusion of the issues, delay of case and confusion of the jury.

Here, P will argue that the probative value is not substantially outweighed by the danger of unfair prejudice because this is a fraud case and the photocopy is being offered to demonstrate the advertisement that P relied upon when purchasing the painting.

The photocopy is legally relevant.

Documents

In order to be admitted into evidence documents must be authenticated and satisfy the best evidence rule.

Authentication

Authentication occurs when a document is authenticated by someone with personal knowledge of the document.

Here, G will argue that P does not have personal knowledge of the advertisement because he was not an employee of G nor did he place the advertisement. Additionally, G will argue that P could have fabricated the document to further his case against G. P will argue that he has personal knowledge of the advertisement because he relied on the advertisement that bore G's logo stating that the painting was the only painting by a noted 17th century artist available for sale in the world and relied on the advertisement to purchase the painting.

The court will likely find that P has personal knowledge of the advertising.

Best Evidence Rule: Photocopy/Document

Under the best evidence rule, in order for a document to be admitted it must be the original or a photocopy duplicate is acceptable if the original is shown to be unavailable.

Here, P will argue that he does not have the original advertisement because it is in the possession of G. Further, P will argue that a photocopy suffices because it is an exact copy of the advertisement that bears G's logo and that he relied upon when purchasing the painting. Additionally a photocopy is allowed since P does not have access to the original advertisement. P will argue that the photocopy contains the exact information including the stating that the painting was the only painting by a noted 17th century artist available for sale in the world. There is no indication in the facts that the original was not available however the court may still admit the photocopy

The court properly admitted the photocopy.

2. Pedro's Testimony About the Value of the Painting

Logical Relevance: see rule above. Here, the testimony is logically relevant because it proves the appraised value of the painting.

Legal Relevance: see rule above.

Hearsay

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay is generally inadmissible unless it meets a hearsay exception or exemption.

Non Hearsay Personal Knowledge

Statements made in court, from personal knowledge are generally not hearsay and will be admitted. Here P testified that the painting was only worth 10k because it was a reproduction of the original and that he based his valuation on the average of 3 appraisals of the painting by art dealers. Although P's statements regarding the value of the painting may not be hearsay, the information provided to him by the appraisers may be hearsay because he is offering it to prove the truth of the matter that the painting is not worth 200k but rather the painting is worth only 10k.

Hearsay within Hearsay

In order to be admissible both layers of hearsay must be admissible. Here, P will argue that this is not hearsay within hearsay because he has personal knowledge to the facts that he is testifying about. Additionally, P will argue that he is just relaying information that was provided to him by the appraisers. There is not indication in the facts that P provided the appraisals thus unless they statements of the appraisals meet an exception or exemption, they may not be admissible.

Present Sense Impression About the Appraisals

One exception to hearsay, is the present sense impression meaning the person is describing an event as it was perceived. Here, P will argue that he is presenting in his testimony his impression of the information provided to him by the appraisers. Additionally P will argue that he personally observed the information provided by the appraisers and thus it is a present sense

impression because it is his impressions and recollections of what he was told by the appraisers thus is not hearsay.

G will argue that this statement is hearsay because it is being offered to prove that the painting is a reproduction of the original and the valuation is based on the average of 3 appraisals thus being offered to prove P's case and prove the truth of the matter asserted. G will further argue that P has not made the appraisers available for cross examination and thus they will be biased by the admission of these statements nor has P provided the appraisals that he is testifying to.

The court did not err in admitting the testimony regarding the perceived value however did err in admitting the evidence regarding the painting being a replica, absent the availability of the appraisals or appraisers.

3. Rex's Testimony About the Age of the Painting

Logical Relevance: see rule above

Legal Relevance: see rule above

Hearsay

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay is generally inadmissible unless it meets a hearsay exception or exemption. Expert testimony is not considered hearsay if the foundation of the expert and testimony is established.

Expert Testimony

In order to be designated as an expert the expert must possess specific, technical knowledge in the field that they are called to testify about. Additionally there must be a qualification done that include the experience and technical training that the expert has to qualify the person as an expert. Lastly, the expert must demonstrate what methods were used to obtain the expert findings in the specific matter.

Here, P will argue that Rex ("R") is an expert because he is a chemistry professor who has been retained by 4 art galleries to determine the age of paintings. Additionally, P will argue that R has demonstrated the methods used because R has provided that he used the XYZ technique on P's painting to arrive at his conclusion. P will further argue that R has technical knowledge because he uses the XYZ on testing on paintings of known ages and that the results correspond with their known age and R testified that the painting had been painted in the last 50 and was a painted reproduction of the original painting. Lastly P will argue that R's methods are reliable in his field because R has testified that the technique was reliable and used by most experts to determine the ages of paintings. R was available for cross examination and was cross examined and excused.

G will likely argue that R's testimony is not reliable because there has been a published article written by R that states that the XYZ method is unreliable for determining the works of art and thus his testimony is not reliable.

The court properly admitted R's testimony.

4. The Excerpt from "The Science of Dating Works of Art"

Logical Relevance: see rule above

Legal Relevance: see rule above

Expert Qualifications

In order to be designated as an expert the expert must possess specific, technical knowledge in the field that they are called to testify about. Additionally there must be a qualification done that include the experience and technical training that the expert has to qualify the person as an expert. Lastly, the expert must demonstrate what methods were used to obtain the expert findings in the specific matter.

Here, the parties have stipulated that Marie ("M") was an expert in the community of dating works of art.

Treatises Relied Upon by Experts and the Community

An expert may rely on specific treatises used in the community that are reliable when testifying. The treatises may be read into evidence by the expert but is not admissible as an exhibit on its own. Here P will argue that the treatises should not have been admitted because it was a book and the treatises should have been read into evidence instead by the expert M.

G will argue that the treatise is a reliable source because it has been authenticated by the expert M and thus is admissible and that "The Science of Dating Works of Art" is generally recognized in the field of dating works of art as a reliable source.

Excerpts from Treatises

Excerpts from reliable treatises may be read into evidence by a designated expert in the field.

Here, G will argue that M properly read the expert that quoted and asserted the XYZ technique is not reliable for determining the age of works of art because she is an expert as stipulated by the parties and the treatise is a reliable source. P will argue that the excerpt nor the the treatise should have been allowed to be read because there is not way to cross examine the author of the treatise regarding the statements about the XYZ method.

The court improperly admitted the treatise into evidence but properly admitted the excerpt read by M the expert.

5. Rex's Journal Article

Logical Relevance: see rule above

Legal Relevance: see rule above

Hearsay

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay is generally inadmissible unless it meets a hearsay exception or exemption.

Here, P will argue that the excerpt from the journal regarding the XYZ technique authored by R

should not be admitted because it is hearsay.

Publication: Self Authenticating

A publication that is published is not considered hearsay because it is self authenticating.

Here, P will argue that the journal article should not have been admitted because it is hearsay not within any exception or exemption. G will argue that the journal article is self authenticating because it is in a published journal and thus self authenticating. Additionally, G will further argue that R was available for cross examination and can be brought back to court to contradict the facts written by him namely that the XYZ technique is not reliable for determining works of art and the article directly contradicts his testimony.

The court properly admitted the journal article authored by Rex.

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