

Exam:

Exam Form:

C2502

Response

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Dear Mrs. Valerie Jamison

You can obtain a default judgment or other sanctions against Sunrise, based on its failure to preserve the allegedly defective rung locks.

The first issue we would like to explain is whether you can obtain a default judgment or other sanctions against Sunrise, based on its failure to preserve the allegedly defective rung locks.

According to Columbia law, spoliation of evidence may warrant the imposition of sanctions. In considering whether sanctions are warranted, the court must consider: (1) whether the party moving for sanctions was prejudiced as a result of the destruction, alteration, or non-preservation of the evidence; (2) whether the prejudice could be cured; (3) the practical importance of the evidence; (4) whether the party responsible for the destruction, alteration, or non preservation acted in good faith or bad faith; and (5) the potential for abuse if testimony about the evidence is not excluded. As sanctions for spoliation, courts may dismiss a case in its entirety against a plaintiff or enter a default against a defendant, exclude expert or other testimony concerning the evidence, or impose a jury instruction on spoliation of evidence that raises a presumption against the spoiler.

In a case called "Sabrina" if destroying the evidence is intended to prevent unfair prejudice to litigants and to ensure the integrity of the discovery process. Default represents the most severe sanction available to a court against a defendant, and therefore should only be exercised where there is a showing of improper bad faith.

In your case, Sunrise is prejudiced as a result of the destruction because they intentionally instructed Mr. Sten to not to retune the rung locks. the prejudice could be cured because the rung locks are no longer available. The rung locks is paticularly important evidence because it is the ladder that might be defectod product. Without the product, it is extremely diffecult to establish a product liability case. Sunrise is responsible for the destruction of the evidence because they instructed Advanced Testing and Dr. Sten personally recalled they informed no to return it. There is the potential for abuse if the testimony is not excluded.

Therefore, you can obtain sanctions against Sunrise, based on its failure to preserve the allegedly defuncting rung locks.

You can't bring an independent tort action against Advanced Testing based on its destruction of the rung locks.

Next question is whether you can bring an independent tort action against Advanced Testing based on its destruction of the rung locks. Although the court allowed to bring an independent tort action against the party who are not in the accident, there must be bad faith on the party. In your case, we cannot find bad faith from Dr. Sten's deposition.

Under the Columbia law, "Spoliation" refers to the destruction, alteration, or non-preservation of evidence in pending or reasonably foreseeable litigation. Moreover, Columbia law does not authorize an independent tort action for spoliation of evidence.

According to the case of Zubul, when a third party destroys, alters, or fails to preserve evidence, a party to an action who is injured by any wrongful conduct or fails to preserve evidence, the third party must have bad faith.

Moreover, sanctions based on spoliation of evidence, as the Court of Appeal stated in Brown v. Waldrop Truck Leasing Corp. (Col. Ct. App., 2015), based on its "inherent power to manage its own affairs and to achieve the orderly and expeditious disposition of cases."

In Zubul, the plaintiff was not allowed to bring an independent torts lawsuit because the third party lacks of bad faith. They destroyed the evidence before they learned any litigation began. Although, the third party might have some responsibility to preserve the evidence, without knowledge of the litigation, they have possession to the item; thus, they are allowed to destroy, alter, or even trash it. The third party must have actual knowledge of the pending or potential action. In Zubul, the third party did not have such knowledge of potential lawsuit.

In your case, like Zubul, the third party, Advanced Testing, did not have prior knowledge of upcoming law suit between you and Sunrise. There is no bad faith or critical purpose for them to destroy the evidence. It is their normal procedure to destroy or get rid of the items because there is not enough space for them to keep everything they received.

Because the court focused on the apparent lack of bad faith on the third party, we have to prove that Mr. Sten at Advanced Testing acted in bad faith. Based on our deposition with him, he specified that he was instructed to not keep the ladder. Moreover, Sunrise did not offer to pay for the storage fee. Because Advanced Testing has a limited space, they had to make a quick decision, just like the third party in Zubul.

Although you may argue it is a public policy to be responsible any third party to destroy the evidence, which might lead to put saction on Advanced Testing, this argument is a bit weak; because we are not allowed to file a demand of sanction to Testing since they did not have knowledge about this case. Thus, they were able to control their own items.

Therefore, you cannot bring an independent tort action against Advanced Testing based on its destruction of the rung locks.

If you have any questions, please do not hesitage to contact us.

Best,
Appricant

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the court focused on the apparent lack of bad faith on the part of Waldrop. In particular, the court noted that the police gave Waldrop only 24 hours to remove the