

Exam:

Exam Form:

C2502

Response

WILLIAMS & O'BRYANT, LLP
121 Spring Valley Drive
Columbia City, Columbia

TO: Julie Williams
FROM: Applicant
DATE: February 25, 2025
RE: Jamison v. Sunrise Ladder Co., Inc.

Good afternoon Ms. Williams,

Attached below is the letter you requested for Ms. Jamison which addresses whether she can obtain default judgement or other sanctions against Sunrise based on failure to preserve the loccks and whether she can bring an independent tort action against Advanced testing based on the destruction of the rung locks.

Dear Ms. Jamison,

I hope this letter finds you well.

I have looked into your current case in regards to the destruction and failure of preservation of the allegedly defective rung locks. I know you would like to know:

1. whether you can obtain a default judgement or any sanctions against sunrise based on their failure to preserve the alleged defective rung locks.
2. Whether you can bring an independent tort action against Advanced Testing based on its destruction of the rung locks?

I will address each question separately below.

I. Whether you can obtain a default judgement or any sanctions against sunrise based on their failure to preserve the alleged defective rung locks.

Default Judgment Issue

Default Judgement is a sanction devise that the courts use in which the court basically rules that you win your lawsuit and the other party loses. It should be kept into consideration that this is the most severe sanction available to a court against a defendant, and therefore should only be exercised where there is a showing of bad faith and where lesser sanctions will not suffice. (*Sabrina Brown v. Waldrop Truck Leasing Corp.*)

Here we are asking for default judgement based on the failure to preserve the alleged defective rung locks, as such we are asking for a sanction based on the spoliation of evidence. In Columbia the spoliation of evidence may warrant the imposition of sanctions.

Below are the factors the court must considers prior to imposing sanctions.**Sanctions**

In columbia in order to obtain sanctions the court has to consider a few things.

- (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;
- (5) the potential for abuse if testimony about the evidence is not excluded

(*Sabrina Brown v. Waldrop Truck Leasing Corp.*)

Here we would argue that we should be granted default judgement because we were prejudiced by the destruction of evidence by Advance Testing LLC. Who testified through Samuel Stein that they were instructed to destroy the evidence after his analysis (Samuel Stein Depo. Pg. 9). There is some importance to the evidence in regards that since the locks are destroyed our expert cannot examine them and there are no other copies. There is an argument to be made that Advance testing acted in bad faith and that there is a potential for abuse if the testimony regarding the condition of the locks is not excluded including Samuel Stein's statement that he could not rule out that your husband was at fault. However the applicable case law is not in our favor here. Please see below.

II. Applicable Law

In *Sabrina Brown v. Waldrop Truck Leasing Corp.* a wife also brought a suit against a defendant company whom her husband worked for because they destroyed the car he died in. In this case, the wife brought suit almost two years later, and the defendant had already paid for the car to be stored for 20 months prior to her lawsuit. The court ultimately denied her motion for default judgement and instead imposed a lesser sanction of instructing the jury that it may infer that the evidence at issue was unfavorable to Waldrop if it finds that Waldrop's decision to dispose of the evidence was made for an improper purpose.

Sabrina appealed and the court of appeals denied her appeal stating the trial court had ruled correctly since there was no finding of bad faith on part of the defendant.

III. Applicability to our case

I think we can distinguish our case from Brown's case and get a ruling for default judgement since we have Samuel on the stand saying he was instructed to destroy the evidence and not return it to them. I also think Brown's case was decided in part because she waited too long. Even if we do not get the default judgement the court could bring in a jury instruction similar to Brown which would also be beneficial to our case.

Q. 2.

I. Bringing an independent tort action against Advanced Testing based on its destruction of the rung locks?

Independent Tort action against Third Party

Generally in Columbia law the supreme court has said, "By definition, a third party is not a party to the action within which sanctions are sought and, as such, cannot be made to shoulder its burdens." (*Zubul v. Standard Motors Corporation*, Supreme Court of Columbia (2019) However recently this court ruled that they disagree that Columbia law does not authorize an independent tort action for spoliation of evidence. We hold that it does." (*Zubul v. Standard Motors Corporation*).

In our case I would like to bring to your attention that this change allows us to bring an independent action against Advanced Testing based on the destruction of their locks. Please see the applicable law below

II. Applicable Law

In *Zubul v. Standard Motors Corporation*, Zubul had borrowed his aunt's car and had driven drunk at a high speed. Zobul then decided to sue standard motors alleging that the brake defects were the reason for the accident and his injuries. After the crash, the aunt did not report it to her insurance but proceeded to immediately fix the car, and she refused to allow opposing counsel to see it and would immediately conceal it throughout the litigation. Thus, Standard Motors tried to sue her individually based on an independent tort action and they were not allowed to so they appealed.

The court in *Zubul v. Standard Motors Corporation* stated, Therefore hold that a duty to preserve evidence and not to destroy or alter it may arise in a third party only where a party to an action can establish the existence of some special relationship or obligation arising by reason of a statute, rule, contract, voluntary action, or other similar circumstance. Further, the third party must have actual knowledge of the pending or potential action."

III. Applicability to our case

In our case, I believe we can sue Advanced Testing Center based on their actions because they had a special duty to Sunrise Co. to keep the evidence in view of potentially spoiling it. Although there is no statute the court in Zubul stated that

for every "Absence an independent tort action would conflict with our policy of providing a remedy for every wrong and compensating victims of wrongful conduct".

We could use this to show we should be remedied for the wrong of them destroying evidence we needed.

However it is going to be difficult to prove that they had knowledge of our action based on Samuel Stein's deposition. When I questioned him regarding his knowledge of the litigation he stated that he did not know that Jamison had an accident.

Regardless, I believe we have a chance and should try to bring up these issues. I am available if you need to further discuss.

Respectfully yours,

Julie Williams

ID: 104253

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