UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, *et al.*,	Case No. 09-50026 (MG)
Debtors.	(Jointly Administered)
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	Adversary Proceeding
	Case No. 09-00504 (MG)
Plaintiff,	
vs.	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for various lenders party to the Term Loan Agreement described herein, *et al.*,	
Defendants.	

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF JAMES S. MARQUARDT

Before the Court is the *Notice of Motion in Limine to Exclude the Expert Report and Testimony of James M. Marquardt* (the "Motion," ECF Doc. # 864). The Trust has also filed a *Memorandum of Law in Support of Plaintiff's Motion in Limine to Exclude the Expert Report and Testimony of James M. Marquardt* (the "Memo," ECF Doc. # 865). The Memo is supported by the (corrected) *Declaration of Eric B. Fisher in Support of Plaintiff's Motion in Limine to Exclude the Expert Report and Testimony of James M. Marquardt* (the "Fisher Decl.," ECF Doc. # 867.) The Motion is opposed by the Term Lenders, who have filed the *Term Lenders' Memorandum in Opposition to Avoidance Trust's Motion in Limine to Exclude the Expert Report and Testimony of James M. Marquardt* (the "Opposition," ECF Doc. # 893). The Opposition is

supported by the *Declaration of S. Christopher Szczerban* (the "Szcerban Decl.," ECF Doc. # 894). The Trust filed a reply, the *Reply to Motion in Limine to Exclude the Expert Report and Testimony of James M. Marquardt* (the "Reply," ECF Doc. # 909). The Reply is supported by the *Declaration of Eric B. Fisher in Connection with Plaintiff's Reply Memorandum in Support of Motion in Limine to Exclude the Expert Report and Testimony of James M. Marquardt* (the "Reply Decl.," ECF Doc. # 910). The Expert Report is ECF Doc. # 866–3, Ex. C.

The Motion seeks to exclude Marquardt's testimony and Expert Report that offer two expert opinions (described below). For the reasons explained below, the Motion is **GRANTED IN PART** and **DENIED IN PART.**

I. BACKGROUND

Marquardt's Expert Report and proposed testimony relate to the UCC-1 fixture filing recorded in Eaton County, MI (the "Eaton County Fixture Filing"). The fixture filing includes a metes-and-bounds description and street address *identifying the vacant parcel* across the road from the Lansing Delta Township Assembly Plant and Lansing Regional Stamping Plan (the "Lansing Plants"). Defendants' contend that the Eaton County Fixture Filing provides constructive notice of a lien against fixtures at the Lansing Plants. (Memo at 2.) The Term Loan Lenders argue that Marquardt's testimony will establish that a title search would find the Eaton County Fixture Filing and put a potential purchaser or secured lender on notice of a lien against the fixtures at the Lansing Plants. (Opp'n at 1.) The Trust disputes this contention.

Marquardt proffers two opinions: first, that a title search he conducted at the Eaton County Register of Deeds would have identified the Eaton County Fixture Filing and put a potential purchaser or lender on notice of a lien against the fixtures at the Lansing Plants (the "First Opinion,"); and, second, that the GM facilities known as "MFD Pontiac" and "Powertrain

Engineering Pontiac" were "related," as they were situated upon land that was identified by a single tax parcel number and transferred three times using a single deed of conveyance in each instance (the "Second Opinion") (Opp'n at 5).

II. LEGAL STANDARD

A. Rule 702

Rule 702 of the Federal Rules of Evidence permits opinion testimony from a "witness who is qualified as an expert by knowledge, skill, experience, training, or education." FED. R. EVID. 702. As the Supreme Court has explained, expert testimony admissible under Rule 702 "rests on a reliable foundation and is relevant to the task at hand." *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993). The standard in *Daubert* applies to all expert testimony. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999). Testimony must be reliable, meaning that the court must perform "a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the facts in issue." *Daubert*, 509 U.S. at 592–93. In assessing reliability, "the district court should consider the indicia of reliability identified in Rule 702, namely, (1) that the testimony is grounded on sufficient facts or data; (2) that the testimony is the product of reliable principles and methods; and (3) that the witness has applied the principles and methods reliably to the facts of the case." *United States v. Williams*, 506 F.3d 151, 160 (2d Cir. 2007). Testimony must also be relevant, that is, the expert's testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue." *Id.* at 591-92. Still, the inquiry is a flexible one and it is not necessary to evaluate every specific factor in every case. *Id.*

The party seeking to admit an expert bears the burden of demonstrating admissibility by a preponderance of the evidence. *See Id.* 506 F.3d. at 160–61.

B. Motions in Limine

"The purpose of an in limine motion is to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial." *Highland Capital Mgmt., L.P. v. Schneider*, 379 F. Supp. 2d 461, 467 (S.D.N.Y. 2005) (quoting *Palmieri v. Defaria*, 88 F.3d 136, 141 (2d Cir.1996)). "However, evidence should be excluded on a motion in limine only when the evidence is clearly inadmissible on all potential grounds." *MBIA Ins. Corp. v. Patriarch Partners VIII, LLC*, No. 09 CIV. 3255, 2012 WL 2568972, at *2 (S.D.N.Y. July 3, 2012) (internal quotation marks and citations omitted). Further, the Court may reserve judgment on the motion until the appropriate factual context is developed at trial. *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. L.E. Myers Co. Grp.*, 937 F. Supp. 276, 287 (S.D.N.Y. 1996).

III. DISCUSSION

As an initial matter, the Court finds that Marquardt is qualified as an expert to offer testimony about whether the Eaton County Fixture Filing would have been identified for inclusion by a real-property searcher searching for liens or encumbrances against the Lansing Plants. Mr. Marquardt has nearly 40 years of experience as a title searcher and manager of a title company. (Szczerban Decl. Ex. A (Marquardt Report) at ¶¶ 1-4.) The Court finds this experience relevant to Marquardt's expertise. The Trust does not seriously argue that Marquardt lacks the necessary expertise to testify as an expert.

The First Opinion is an opinion that could not be offered by a layperson, and so, plainly meets the standard for expert testimony. The Court finds that the First Opinion, relying on a title search that Marquardt performed himself, is relevant; it sufficiently describes the process and

facts that went into performing the title search and in reaching his First Opinion. The First Opinion is the product of reliable principles and methods. The Expert Report identifies basic considerations, including a preliminary review of the assessor's records, how the grantor-grantee index is used, and how potentially relevant documents are examined. Finally, the results are applied to the facts of this case, and the Expert Report details how Marquardt did so, including the documents he requested and the results that appeared. Marquardt explains, in paragraph 53 of the Expert Report, how ambiguities would result, and what a title searcher would do when faced with those ambiguities. Marquardt asserts that a title searcher would be put on notice that the Fixtures in the Lansing Plants may be encumbered.

Marquardt cannot testify to the standard required under Michigan law, but he can offer relevant testimony whether a secured lender or purchaser would be on notice that the fixtures in the Lansing Plants were encumbered by a lien. Relevancy is a relatively low bar; it need only be helpful to assist this court in understanding and evaluating the evidence. *See* FED. R. EVID. 401; *see also Am. Home Assur. Co. v. Merck & Co.*, 462 F. Supp. 2d 435, 450 (S.D.N.Y. 2006) (rejecting opponent's contention that testimony is speculative and irrelevant merely because the expert could not with certainty testify whether vaccines were unfit due to freezing in transit).

The Trust argues that Marquardt's testimony fails the relevance test because he will only testify that a purchaser *may* have been on notice based on what his title search revealed. The Court disagrees. Marquardt's testimony is relevant; the Trust's challenge to the testimony goes to its weight rather than admissibility.

The Court will permit Marquardt's Second Opinion but only in part. Marquardt may offer opinion testimony that GM's facilities known as "MFD Pontiac" and "Powertrain Engineering Pontiac" are situated upon land identified by a single parcel number and were

transferred three times using a single deed of conveyance in each instance. But, the portion of Marquardt's Second Opinion that concludes that the facilities were "related," will be excluded. Whether the facilities are "related," in a legal sense, requires the Court to reach a legal conclusion that the Court is capable of deciding for itself. The Term Loan Lenders fail to meet their burden of showing why this conclusion is beyond the ability of a non-expert to reach. *See In re Rezulin Prod. Liab. Litig.*, 309 F. Supp. 2d 531, 551 (S.D.N.Y. 2004) (excluding in part expert testimony because the testimony was "merely a 'narrative of the case which a juror is equally capable of understanding'") (internal citation omitted); *Primavera Familienstifung v. Askin*, 130 F. Supp. 2d 450, 530 (S.D.N.Y. 2001) (concluding that expert who offers factual conclusions dependent on his own interpretation of deposition testimony "does no more than counsel for the [plaintiff] will do in argument, i.e., propound a particular interpretation of [the defendant's] conduct").

To be clear, this Order deals only with admissibility of the evidence—the Court will determine at the appropriate time what weight the opinions should be given. Because this is a bench trial, the Court will not create a blackline striking the portions of testimony to be excluded. In considering the evidence, the Court will disregard those portions of the Expert Reports that are not properly admitted in evidence.

IT IS SO ORDERED.

Dated: April 7, 2017
New York, New York

Martin Glenn

MARTIN GLENN
United States Bankruptcy Judge