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Order on Defendants' Motion to Strike (Millenium
Partners _ Shailendra)

Alice D. Bonner
Superior Court Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

MILLENIUM PARTNERS, LLC,)
RAHIM SABADIA and NAFEES EL)
BATOOL, Co-Trustees of the)
SABADIA FAMILY TRUST, and)
ISHTAQ A. KHAN)

Plaintiffs,)

v.)

M. SHAILENDRA, a/k/a SHI)
SHAILENDRA, SHAILENDRA)
GROUP, LLC, SG CONSULTING, LLC,)
and KIRAN SHAILENDRA)

Defendants.)



Civil Action File No.
2011-CV-195604

bvs l

**ORDER ON DEFENDANTS' MOTION TO
STRIKE AFFIDAVIT OF CARLENE KIKUGAWA**

This matter is before the Court on the Motion to Strike Affidavit of Carlene Kikugawa of Defendants M. Shailendra ("Shailendra"), Shailendra Group, LLC, SG Consulting, LLC, and Kiran Shailendra (collectively, "Defendants"). Upon consideration of the motion, the briefs submitted on the motion and the record of the case, this Court finds as follows:

This case involves a dispute between tenants in common over the management of a real property investment located in Pasco County, Florida. Shailendra served as manager of the property. Plaintiffs Ishtaq A. Khan ("Khan") and Raheem Sabadia and Nafees El Batool, as Co-Trustees of the Sabadia Family Trust, both owned an interest in the tenancy in common, which was later assigned to Millenium Partners, LLC.

Carlene Kikugawa (“Ms. Kikugawa”) is a CPA hired to conduct a forensic accounting of the tenancy in common, among other investments. Plaintiffs submitted Ms. Kikugawa’s affidavit on May 30, 2012, in opposition to Defendants’ Motion for Summary Judgment.

Defendants move to strike Ms. Kikugawa’s affidavit on the basis that Plaintiffs indicated that Ms. Kikugawa would not be a testifying expert in this case and that certain of her materials and opinions have not been disclosed to them. Plaintiffs argue that Ms. Kikugawa will not be called to provide expert testimony. Rather, she will merely testify as a fact witness regarding her meeting with Shailendra in February 2010, a written report presented to Defendant Shailendra on June 1, 2010, her factual findings as to Defendant Shailendra’s use of the bank account of the tenancy in common and the reconciliation of her written report with the report prepared by the Court-ordered accountants, Frazier & Deeter. Moreover, Plaintiffs point out that Defendants had an opportunity to depose Ms. Kikugawa and chose to cancel her deposition.

Trial judges possess broad discretionary powers to control discovery, including the ability to impose sanctions, and an appellate court will not reverse a trial court’s decision regarding discovery unless there has been a clear abuse of discretion. Collins v. Dickman, 295 Ga. App. 60, 603 (2008). These sanctions can include excluding or striking testimony, including expert testimony. Gill v. Spivey, 264 Ga. App. 723 (2003).

Here, the Court finds that Plaintiffs will be held to their representation that Ms. Kikugawa will be a non-testifying expert. As such, her testimony will be limited to the matters appropriate for a fact witness, and she is prohibited from providing expert opinion testimony. Because her affidavit contains opinions based on reports not timely produced to Defendants, the Court hereby **GRANTS** Defendants’ motion to strike Ms.

Kikugawa's affidavit, and it will not be considered in the Court's decision on the motion for summary judgment in opposition to which Plaintiffs have submitted it. Additionally, if they wish, Defendants are permitted to depose Ms. Kikugawa prior to the trial of this case.

SO ORDERED this 18th day of June, 2012.

Alice D. Bonner

ALICE D. BONNER, Senior Judge
 Superior Court of Fulton County
 Atlanta Judicial Circuit

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