

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>VFI ASSOCIATES, LLC, ET AL.,</b>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:08CV00014
	)	
<b>LOBO MACHINERY CORP.,</b>	)	
<b>ET AL.,</b>	)	
	)	
Defendants.	)	

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<b>TREADS USA, LLC, ET AL.,</b>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:08CV00027
	)	
<b>BOYD LP I, ET AL.,</b>	)	
	)	
Defendants.	)	

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<b>BURKE LP I, ET AL.,</b>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:10CV00038
	)	Bankr. No. 09-73241
	)	A/P No. 10-07021
<b>LUTHER HAROLD BOYD,</b>	)	
	)	
Defendant.	)	

## OPINION AND ORDER

*Thomas A. Leggette, Leggette Law Firm, PLC, Roanoke, Virginia, for Plaintiffs; Jay H. Steele, Lebanon, Virginia, for Defendants Lobo Machinery Corp., Lobo Power Tools, Inc., Robin Yuan and Esther Pei Fang Chang; Steven R. Minor and R. Lucas Hobbs, Elliott Lawson & Minor, Bristol, Virginia, for Defendants Teresa Colston-Boyd, Boyd LP I, and Creative Wood Works, Inc.; John M. Lamie, Browning, Lamie & Gifford, P.C., Abingdon, Virginia, for Defendant Luther Harold Boyd.*

In these regrettably long-pending cases there are several motions which must be resolved. Before doing so, a necessarily brief recitation of prior proceedings is appropriate.

In essence, these cases all involve claims by the plaintiffs, investors in a wood products business, that their business manager and his wife (and related entities) enlisted an unscrupulous supplier who sold equipment to the business at inflated prices and then paid kickbacks to the manager; they also claim that the manager lied to the investors about the financial situation of the business, mismanaged it, and stole from it.

The case styled *VFI Associates, LLC, et al., versus Lobo Machinery Corp., et al.*, No. 1:08CV00014, involves claims against the unscrupulous supplier, Lobo Machinery Corp., and Lobo Power Tools, Inc., and two individuals connected with those companies, Robin Yuan and his wife, Esther Pei Fang Chang. The court previously entered summary judgment against Lobo Machinery Corp., Lobo Power

Tools, Inc., and Robin Yuan as to liability, but denied summary judgment as to defendant Chang. (Order, ECF No. 263, Nov. 24, 2010.) The case was set for a bench trial as to liability as to Chang and as to damages as to the other defendants and thereafter the present motions were filed by the plaintiffs, including a motion seeking summary judgment as to damages. In order to further consider these motions, the trial was cancelled.

In the case styled *Treads USA, LLC, et al., versus Boyd LP I, et al.*, No. 1:08CV00027, the plaintiffs assert claims against the business manager's wife Teresa Colston-Boyd, and related entities, Boyd LP I and Creative Wood Works, Inc.<sup>1</sup> Summary judgment as to liability was granted against Teresa Colston-Boyd, Boyd LP I, and Creative Wood Works, Inc., and a jury trial scheduled as to damages. (Order, ECF No. 338, Nov. 24, 2010.) This trial was also cancelled because of the pending motions.

Finally, the case styled *Burke LP I, et al., versus Luther Harold Boyd*, No. 1:10CV00038, is a withdrawn adversary proceeding from the bankruptcy court that asserts against the business manager, Luther Harold Boyd, the same claims as

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<sup>1</sup> There were other defendants named in this case, but they are either subject to a bankruptcy stay (Clinch Mountain Hardwood Flooring, Inc., and Clinch Mountain Finishing & Logistics Corp.), have been voluntarily dismissed (Jessie Boyd), or are not a separate legal entity (Salvage Hardwood Flooring).

contained in Case No. 1:08CV00027. The court previously granted summary judgment and a default judgment as to liability against Luther Harold Boyd (Order, ECF No. 62, Nov. 24, 2010) and a jury trial was scheduled solely as to damages jointly with Case No. 1:08CV00027. That trial was cancelled for the same reason.

In a pending motion filed in each of the cases, the plaintiffs seek summary judgment as to damages as to each of the defendants (excluding defendant Chang, as to whom the court denied summary judgment on liability).<sup>2</sup> After careful consideration of the evidence presented, I find that there are still genuine issues of material fact as to such damages which must be resolved at trial.

As the defendants point out, there are multiple causes of action asserted against each of them. While each individual defendant (except Chang) is precluded at this point from contesting liability, the plaintiffs must still prove by a preponderance of the evidence the damages sustained by them proximately caused by each defendant. For example, Teresa Colston-Boyd denies that she was involved at all in some of the claims asserted. While a default has been entered against her because of her refusal of answer discovery questions after she had waived her Fifth Amendment rights by her prior conduct in the case, the plaintiffs will still be required to prove the damages

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<sup>2</sup> The plaintiffs style their motion as seeking “partial” summary judgment as to damages because it does not involve attorneys’ fees which they also seek but have not yet proved.

attributable to her as to the various claims. If they cannot prove any such damages caused by her as to a particular claim, no damages can be assessed as to that claim.

The plaintiffs have also filed in each case a motion in limine, seeking pretrial rulings on several evidentiary issues, as follows:

1. Can Teresa Colston-Boyd, Boyd LP I, Creative Wood Works, Inc., Luther Harold Boyd, or Esther Pei Fang Chang use Robin Yuan as a witness on certain matters at trial, either in person or if unavailable within the meaning of Federal Rule of Evidence 804(a), through his prior deposition?

Answer: In a prior order, Yuan was precluded, as a sanction, from “offering any defense, evidence, or argument as to the true cost to Yuan and [his] companies of finishing machines, the amount of any markup by Yuan or the companies in the sale of finishing machines, and whether any changes or upgrades were made to the machines that would have justified the price paid or the value of the machines.” *VFI Assocs., LLC v. Lobo Mach. Corp.*, No. 1:08CV00014, 2010 WL 4868110, at \*2 (W.D. Va. Nov. 22, 2010). However, there has been insufficient cause shown justifying the imposition of this sanction against the remaining defendants and they will not be so precluded from using Yuan’s relevant testimony, either in person, or if permitted by Rule 804, by deposition.

2. Similarly, can the other defendants use Esther Pei Fang Chang as a witness on certain matters at trial, either in person or if unavailable within the meaning of Federal Rule of Evidence 804(a), through her prior deposition?

Answer: Chang availed herself of her Fifth Amendment right not to answer any questions at a deposition and accordingly, I previously ruled that she was precluded from testifying at her trial. *VFI Assocs., LLC v. Lobo Mach. Corp.*, No. 1:08CV00014, 2010 WL 5557129, at \*1 (W.D. Va. Nov. 22, 2010). As with the previous question, however, I find insufficient cause shown justifying the imposition of this sanction against the remaining defendants and they will not be so precluded from using Chang's relevant testimony, either in person, or if permitted by Rule 804, by deposition.

3. Can the other defendants use Luther Harold Boyd or Teresa Colston-Boyd as witnesses on certain matters at trial, either in person or if unavailable within the meaning of Federal Rule of Evidence 804(a), through their prior depositions?

Answer: The court previously entered default judgments of liability as a sanction against Luther Harold Boyd and Teresa Colston-Boyd because of their refusal to answer questions at depositions, even though they had waived their Fifth Amendment rights by their prior testimony in the case. I find insufficient cause shown justifying the imposition of this sanction against the other defendants and they

will not be so precluded from using relevant testimony from Luther Harold Boyd or Teresa Colston-Boyd. Luther Harold Boyd and Teresa Colston-Boyd will be precluded as a sanction from testifying in person at their own trial, or from using their prior testimony. *See United States v. Bollin*, 264 F.3d 391, 413 (4th Cir. 2001) (holding that party who made himself unavailable by invoking Fifth Amendment cannot use his former testimony under the hearsay exception found in Rule 804(b)(1)). The other defendants will be able to use the prior testimony of Luther Harold Boyd and Teresa Colston-Boyd if such hearsay testimony meets the conditions of Rule 804.

4. Are the so-called Platinum computer disc and its printouts obtained from the Lobo defendants admissible as to all defendants?

Answer: Yes, for the reasons stated by the plaintiffs.

5. Will the court instruct the jury in the damages trial of Teresa Colston-Boyd, Boyd LP I, Creative Wood Works, Inc., and Luther Harold Boyd, that it may draw an adverse inference because of the refusal of Esther Pei Fang Chang to testify at her deposition?

Answer: No, an insufficient showing having been made to impose this sanction on the other defendants.

Accordingly, it is **ORDERED** as follows:

1. The Motion in Limine to Bar Testimony (ECF Nos. 273, 350, 72) is GRANTED IN PART AND DENIED IN PART as set forth herein;

2. The Motion for Partial Summary Judgment (ECF Nos. 274, 351, 73) is DENIED;

3. The clerk will schedule a joint four-day jury trial limited as to damages in *Treads USA, LLC, et al., versus Boyd LP I, et al.*, No. 1:08CV00027, and *Burke LP I, et al., versus Luther Harold Boyd*, No. 1:10CV00038;

4. The clerk will schedule a two-day nonjury trial limited as to damages against Lobo Machinery Corp., Lobo Power Tools, Inc., and Robin Yuan in *VFI Associates, LLC, et al., versus Lobo Machinery Corp., et al.*, No. 1:08CV00014; and

5. The clerk will schedule a separate two-day nonjury trial as to all issues against Esther Pei Fang Chang in *VFI Associates, LLC, et al., versus Lobo Machinery Corp., et al.*, No. 1:08CV00014.

ENTER: September 12, 2011

/s/ JAMES P. JONES

United States District Judge