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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

WON BAE SHON, **Plaintiff,** **v.** **HEE JONG CHOO, SOO WOAN JUN, YAN HUA LI, JING ZHU SUN, LAN LAN WANG, and DOES One to Five,** **Defendants.**	**CIVIL ACTION NO. 15-0018** **ORDER DENYING DEFENDANT WANG'S MOTION FOR RECONSIDERATION ON RULING OF ADMISSIBILITY OF WANG'S EXHIBIT 1**

I. INTRODUCTION

BEFORE THIS COURT is Defendant Lan Lan Wang's ("Wang") Bench Motion for Reconsideration and Brief on Ruling of Admissibility of Wang Exhibit 1 (the "Motion for Reconsideration" or "Motion"). Plaintiff Won Bae Shon ("Plaintiff") and Defendant Yan Hua Li ("Li") both filed oppositions to the Motion.

Based upon a review of the arguments, filings, and relevant law, and for the reasons stated herein, Wang's Motion for Reconsideration is **DENIED**.

II. RELEVANT BACKGROUND

A bench trial in this case commenced on January 30, 2023 and was continued to August 2023. During the bench trial, Wang sought to have admitted into evidence a letter, dated January 17, 2014, written by Samuel Mok – Defendant Soo Woan Jun's attorney at the time – and sent to her husband ("Wang's Exhibit 1"). Wang argued that the letter contained an admission by Defendant Jun, an opposing party, and that it was therefore admissible as non-hearsay.

Plaintiff and Li both objected to the admission of Wang's Exhibit 1 on the basis of hearsay and relevance. At trial, Jun admitted to hiring Mr. Mok but testified that he was

unfamiliar with the contents of the letter and did not recall expressly authorizing Mr. Mok to make the statements contained therein. The Court sustained the objections and ruled that the letter was inadmissible as hearsay.

III. LEGAL STANDARD

A party's request for reconsideration of a court order must be based upon (1) a need to correct clear error or prevent manifest injustice, (2) the availability of new evidence not previously attainable, or (3) an intervening change of controlling law. *See Commonwealth v. Guerrero*, 2014 MP 2 ¶ 2 (citing *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7); *Camacho v. J.C. Tenorio Enterprises*, 2 NMI 407, 413-14.

IV. DISCUSSION

Wang's Motion is based on the need to correct clear error. Citing NMI R. Evid. 801(d)(2) – the rule of evidence outlining types of statements that are not hearsay – Wang argues that it was erroneous of the Court to not admit attorney Mok's letter because it constitutes an "opposing party's statement" which "must be considered" pursuant to Rule 801(d)(2). According to Wang, courts have readily admitted statements of a party's attorney into evidence because "[a]n attorney is an agent of his clients and his statements [are] made within the scope of that relationship[.]" Mot. at 5.

Shon and Li oppose Wang's characterization of Mr. Mok's letter as constituting a statement made by an opposing party (here, Jun). They contend, among other things, that there is no foundation in the record that Jun authorized the contents of the letter and that Jun's testimony during trial directly contradicts the notion that he had authorized the contents of the letter. *See* Shon's Opp. at 4. They further argue that the contents of the letter more accurately reflect Mr. Mok's own opinions and/or artful advocacy rather than any actual factual admission by Jun. *Id*. at 3; *see also* Li's Opp. at 2.

Rule 801(d)(2) provides:

> **(d) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:
>
> > (2) *An Opposing Party's Statement*. The statement is offered against an opposing party and:

> (A) was made by the party in an individual or representative capacity;
>
> (B) is one the party manifested that it adopted or believed to be true;
>
> (C) was made by a person whom the party authorized to make a statement on the subject;
>
> (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
>
> (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

NMI R. Evid. 801(d)(2).

Wang is correct that a statement by one's attorney is frequently admitted as an admission by a party-opponent under Rule 801(d)(2). It has commonly been admitted as a statement by a person authorized by the party to make a statement concerning the subject pursuant to Rule 801(d)(2)(C). And it has also commonly been admitted as a statement by the party's agent concerning a matter within the scope of the agency made during the existence of the relationship pursuant to Rule 801(d)(2)(D).

However, "not every out-of-court statement by an attorney constitutes an admission which may be used against his or her client." *Lightning Lube v. Witco Corp.*, 4 F.3d 1153, 1198 (3rd Cir. 1993); *Bensen v. American Ultramar*, 1996 U.S. Dist. LEXIS 10647, *33 (S.D.N.Y. 1996) ("[A]ttorneys do not have authority to make admissions for their clients in all circumstances."). An attorney has authority to bind the client only with respect to statements "directly related to the management of the litigation." *Lightning Lube*, 4 F.3d at 1198; *United States v. Dolleris*, 408 F.2d 918, 921 (6th Cir. 1969) ("[A]n attorney, merely because of his employment in connection with litigation, does not have the authority to make out-of-court admissions for his client, except those which are directly related to the management of that litigation."), *cert. denied*, 395 U.S. 943 (1969).

Moreover, "courts should be reluctant to consider attorneys' statements as party admissions 'in the absence of [a showing that the client gave the attorney] express authority' to make the statement." *Bensen*, 1996 U.S. Dist. LEXIS 10647, *31 (citation omitted); *see also Headman v. Berman Leasing Co.*, 352 F. Supp. 211, 213 (E.D. Pa. 1972) (noting that "it would be an intolerable rule if it were to be held that the rights of clients

could be divested by loose expressions of their attorneys"). If the alleged admissions are made out of court and not in the presence of the client, "authority to make them or knowledge or assent of the client thereto must be shown." *Headman*, 352 F. Supp. at 213.

Ultimately, although a trial court has "broad discretion" regarding the admission of evidence, "[t]he unique nature of the attorney-client relationship . . . demands that a trial court exercise caution in admitting statements that are the product of this relationship." *United States v. Jung*, 473 F.3d 837, 841 (7th Cir. 2007).

In the instant case, the statements contained in attorney Mok's letter to Mr. Wang were not directly related to the management of litigation. In fact, there was no ongoing litigation at the time Mr. Mok wrote and sent the letter. The letter appears to simply be a notice of Mr. Mok's "intention to conduct an investigation" into a defect in the chain of title for Lot No. 045 A 182. *See* Li's Opp. at 2. Such an out-of-court statement not made in the regular course of litigation cannot be admitted into evidence as an "opposing party's statement" under Rule 801(d)(2). *Cf. Purgess v. Sharrock*, 33 F.3d 134, 144 (2d Cir. 1994) (holding that counsel's statement of fact in legal brief, subject to penalty of sanctions, constituted party admission); *Olitsky v. Spencer Gifts, Inc.*, 964 F.2d 1471, 1476-77 (5th Cir. 1992) (holding that a party's position statement to the EEOC was admissible as evidence).

Additionally, there is no evidence that Jun expressly authorized Mr. Mok to make the statements contained in the letter. To the contrary, Jun testified at trial that he was unfamiliar with the contents of the letter and did not recall authorizing Mr. Mok to make the statements contained therein. In the absence of a showing that Jun gave Mr. Mok express authority to make the statements contained in the letter, the letter cannot be admitted into evidence as an "opposing party's statement" under Rule 801(d)(2). *See, e.g.*, *Conrad's Estate*, 333 Pa. 561, 564 (1931) ("The letter of the attorney without proof of his authority, is neither competent nor adequate to show failure of consideration. While an attorney has power to bind his client by his admissions and acts in . . . the regular course of litigation, his statements or admissions out of court and not [made] in the conduct of

litigation are generally not binding upon his client in the absence of express authority."); *Southern Stone Co. v. Singer*, 665 F.2d 698, 702-03 (5th Cir. 1982) (letter by party's lawyer purporting to state what party told lawyer should not have been admitted because even if the party's statement was an admission, the letter was inadmissible hearsay).

In sum, Wang's Exhibit 1 – containing statements that were neither made in the course of litigation nor expressly authorized by the party they are sought to be used against – is not sufficiently trustworthy to prompt this Court to allow it to be introduced into evidence. Because the Court finds no clear error with its prior ruling as to the inadmissibility of Wang's Exhibit 1, Wang's Motion for Reconsideration is **DENIED**.

V. CONCLUSION

THEREFORE, for the reasons stated above, the Court **DENIES** Defendant Wang's Motion for Reconsideration.

IT IS SO ORDERED this 27th day of December, 2023.

/s/
ROBERTO C. NARAJA, Presiding Judge