

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

EDWARD CASTLE, JR. and
THE FILTER DEPOT, LLC,

Plaintiffs,

vs.

Case No. 2014-3568-CB

MARCIA SHOHAM, JONATHAN
SHOHAM and MIDWEST AIR
FILTER, INC.,

Defendants.

OPINION AND ORDER

Defendants have filed a motion in limine to exclude evidence of Defendant Marcia Shoham's past plea of nolo contendere to a charge of hacking. Plaintiff has filed a response and requests that the motion be denied.

I. Arguments and Analysis

The issue before the court is whether Plaintiffs may introduce evidence that Marcia Shoham entered a plea of nolo contendere for impeachment purposes under MRE 609. MRE 609 provides:

- (a) General Rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross examination, and
 - (1) The crime contained an element of dishonesty or false statement, or
 - (2) The crime contained an element of theft, and
 - (A) The crime was punishable by imprisonment in excess of one year or death under the law under which the witness was convicted, and

- (B) The court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect.

As a preliminary matter, MRE 609 permits use of certain convictions for impeachment purposes, regardless of whether the specific conviction followed a guilty plea, a no-contest plea, or a not-guilty plea. *Shuler v Michigan Physicians Mut Liability Co*, 260 Mich App 492; 679 NW2d 106 (2004). Consequently, the fact that Ms. Shoham was convicted via a no contest plea rather than a guilty plea or conviction after trial is of no consequence.

Defendants also contend that the charge Ms. Shoham was convicted of was not a charge that involves an element of dishonesty or false statement, that the charge was not punishable by more than one year, and that as a result evidence of the conviction is not admissible under MRE 609(a). Plaintiffs do not contest Defendants' position that the charge Ms. Shoham was convicted of was not a charge involving an element of dishonesty or false statement. Accordingly, in order to use a conviction for impeachment purposes the conviction, the conviction must be for a crime punishable by imprisonment in excess of one year. MRE 609(a)(2)(A).

In this case, Ms. Shoham was convicted a misdemeanor punishable by no more than one year in prison. See MCL 752.794, MCL 752.795; Defendants' Exhibit A. As a result, Ms. Shoham's conviction may not be used for impeachment purposes under MRE 609. Consequently, Defendants' motion must be granted.

II. Conclusion

For the reasons discussed above, Defendant's motion in limine to exclude evidence of Defendant Marcia Shoham's past plea of nolo contendere to a charge of

hacking is GRANTED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

DATED: **APR 29 2016**

Kathryn A. Viviano
Hon. Kathryn A. Viviano
Circuit Judge

Cc: