IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MINKA LIGHTING, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:13-CV-1323-N
	§	
CRAFTMADE INTERNATIONAL INC., *et al*,	§	
	§	
Defendants.	§	

ORDER

This Order addresses Defendants Craftmade International, Inc. and Litex Industries, Limited's motion to strike the errata sheet for deposition of Martin Shepherd [Doc. 43]. The Court denies the motion.[1]

Defendants deposed Martin Shepherd, National Sales Manager for a division of Plaintiff Minka Lighting, Inc. ("Minka"), on April 17, 2014. Shepherd later signed and returned an errata sheet to the court reporting company. The errata sheet contained 32 total corrections to the deposition testimony, 22 of which relate to this motion. Defendants now move to strike this errata sheet.

The Federal Rules of Civil Procedure allow changes to deposition testimony. According to Rule 30(e):

[1]The Court denies Defendants' request for oral argument [44] as moot.

> On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:
>
> **(A)** to review the transcript or recording; and
>
> **(B)** if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

FED. R. CIV. P. 30(e). There appears to be no meaningful dispute that the errata sheets comply with the procedural requirements of the Rule. Although Defendants apparently initially took issue with the fact that they did not receive the errata sheets until August 25, 2014, they appear to have abandoned that contention in their reply. Minka delivered the errata sheets to Defendants' chosen court reporting service within thirty days of receiving the transcript.

"The Fifth Circuit has not addressed the scope of permissible substantive corrections to a deposition under Rule 30(e). Other circuit courts and federal district courts, including courts within the Fifth Circuit, have varied in their approaches to allowing deposition corrections pursuant to Rule 30(e)."[2] *Poole v. Gorthon Lines AB*, 908 F. Supp. 2d 778, 785 (W.D. La. 2012). "Under the majority approach, a witness is free to make changes of 'substance,' not only changing but even contradicting the transcript. Under this approach, '[i]t is not necessary for the court to examine the sufficiency, reasonableness, or legitimacy of the reasons.'" *E.E.O.C. v. J.H. Walker, Inc.*, 2007 WL 172626, at *11 (S.D. Tex. 2007)

[2]Although the Fifth Circuit has not directly addressed the scope of deposition corrections under Rule 30(e), in one unpublished case, the Fifth Circuit did note that the requirements of the rule must be strictly followed. *See Reed v. Hernandez*, 114 F. App'x 609, 611 (5th Cir. 2004).

(quoting *Foutz v. Town of Vinton, Virginia*, 211 F.R.D. 293, 296 (W.D. Va. 2002)). District courts in the Fifth Circuit have generally adopted the majority "broad interpretation" of Rule 30(e). *See, e.g.*, *Poole*, 908 F. Supp. 2d at 787 ("This court will apply a broad interpretation of Rule 30(e)."); *Betts v. Gen. Motors Corp.*, 2008 WL 2789524, at *2 (N.D. Miss. 2008) ("The court is persuaded by the fact that the majority of federal courts addressing this Rule 30(e) issue have interpreted the language of the rules of federal civil procedure as literally as possible and have allowed any form of change to a deposition."); *Reilly v. TXU Corp.*, 230 F.R.D. 486, 490 (N.D. Tex. 2005) (Ramirez, M.J.) ("After thorough consideration of the different approaches courts have used in considering motions to strike substantive deposition changes, the Court is persuaded by the reasoning of the cases applying a broad interpretation of Rule 30(e).") (cited with approval by *Atlin v. Mendes*, 2009 WL 306173, at *2 (N.D. Tex. 2009)).

Given compliance with the procedural requirements of the Rule, the Court declines to strike the errata sheets. *See Global Mach. Tech. v. Thomas C. Wilson, Inc.*, 2003 WL 25676467, at *6 (S.D. Tex. 2003) ("[T]he court finds no authority within the rule to deny a deponent the opportunity to make such changes, provided proper procedures were followed."). It is the trier of fact, not this Court, that determines the credibility and weight of the evidence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge[.]"). As another district court within the Fifth Circuit has noted, "Defendant[s are] left to find solace in the inherent impeachment

value of the amended testimony." *Global Mach. Tech.*, 2003 WL 25676467, at *6. Additionally, having determined that Shepherd properly amended his deposition under Rule 30(e), the Court declines to categorize the errata sheet as a sham affidavit.

As alternative relief, Defendants request the Court order Shepherd's deposition be reopened. The Court finds the use of the original deposition testimony as impeachment evidence a sufficient remedy on these facts, and denies the request. Accordingly, the Court denies Defendants' motion in its entirety.

Signed December 9, 2014

David C. Godbey
United States District Judge