

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY**

NISSAN NORTH AMERICA, INC., )  
)  
Plaintiff, )

vs. )

No. 16-883-BC

WEST COVINA NISSAN, LLC; )  
UNIVERSAL CITY NISSAN, INC.; )  
GLENDALE NISSAN/INFINITI, INC.; )  
MICHAEL SCHRAGE; ALEXIS )  
SCHRAGE, THE NAMED EXECUTOR )  
OF THE ESTATE OF JOSEPH SCHRAGE;) )  
STACY STEPHENS; JEFF HESS; and )  
LEONARD SCHRAGE, )  
Defendants. )

---

WEST COVINA NISSAN, LLC, )  
Third- Party Plaintiff, )

vs. )

KEITH JACOBS, )  
Third-Party Defendant. )

**MEMORANDUM AND ORDER EXCUSING MICHAEL SCHRAGE FROM  
IN-PERSON ATTENDANCE AT TRIAL AND GRANTING TESTIMONY  
AT TRIAL OF DEFENDANT MICHAEL SCHRAGE BY CONTEMPORANEOUS  
AUDIO-VISUAL MEANS**

It is ORDERED that the *Motion for Defendant Michael Schrage to Participate in Trial Electronically* is granted with the following specifications.

Defendant Michael Schrage has requested and the request is granted that he is excused from attending the trial of this case in-person. In addition Michael Schrage will

not be provided electronic viewing of the trial. Defendant Michael Schrage's participation in the trial shall be limited to testifying electronically when he is called to testify by another party. In addition, after being called to testify by another party and the party completing its examination, Defendant Michael Schrage will be provided an opportunity for his Counsel to question him to provide a responsive examination limited to the subject matter of the direct examination as permitted under Rule 611 of the Tennessee Rules of Evidence. Also after the Plaintiff rests its proof, if Defendant Michael Schrage elects to present his defense of the case with his testimony he will be allowed to testify electronically in response to questions from his Counsel.

Counsel for Michael Schrage shall attend the trial in person and may participate fully in all aspects of the trial.

With respect to providing appropriate safeguards, the Court will require Defendant Michael Schrage at the beginning of his testimony to verify his identification by displaying on the screen a photographic official identification such as a driver's license, to turn off his cell phone and to be administered the following oath, "Do you solemnly swear or affirm that the testimony you are about to give in this case is the truth, the whole truth and nothing but the truth so help you God. Do you solemnly swear or affirm that you are not consulting any outside sources or information such as cell phone, smartphone, computer, the internet, any text or instant messaging service, e-mail, any chat room, blog, or website such as Facebook, Myspace, LinkedIn, YouTube, or Twitter to communicate with anyone or to obtain any information or consultation in conjunction with your testimony."

The above ruling is issued pursuant to Tennessee Civil Procedure Rule 43.01. This Rule allows for presentation of testimony in open court by contemporaneous audio-visual means if three conditions exist (1) good cause, (2) compelling circumstances, (3) adequate safeguards. *See* TENN. R. CIV. P. 43.01 Advisory Comm. Cmt. The Court finds that the above ruling addresses and satisfies the adequate safeguards criterion. As to good cause and compelling circumstances, the Court finds and reasons as follows.

There is no opposition by the other parties to Defendant Michael Schrage testifying by electronic means: Counsel for the represented parties have confirmed they do not oppose the request, and *pro se* Defendants Jeff Hess and Keith Jacobs have not responded to inquiries by Counsel.

In addition, the lawsuit has been designated by the Tennessee Supreme Court to be part of the Tennessee Business Court Pilot Project for the development of streamlined and modernized techniques for commercial litigation. Allowing Defendant Michael Schrage to testify electronically fits these parameters of the Project.

Further, for the past year during the course of the COVID-19 pandemic this and other courts have developed safeguards, protocols and technology for better achieving, when testimony is presented electronically, the values cited by the Tennessee Supreme Court seven years ago in *Kelly v. Kelly*, 445 S.W.3d 685, 694 (Tenn. 2014) of in-person testimony: “(1) assists the trier of fact in evaluating the witness’s credibility by allowing his or her demeanor to be observed first-hand; (2) helps establish the identity of the witness; (3) impresses upon the witness the seriousness of the occasion; (4) assures that the witness is not being coached or influenced during testimony; (5) assures that the witness is not

referring to documents improperly; and (6) in cases where required, provides for the right of confrontation of witness.”

The *Declaration of Michael Schrage*, filed June 18, 2021, establishes that he does not have the financial means to pay his attorneys or to pay expenses for a three to four week trial in Nashville. Lack of funds to travel, alone, may not be sufficient grounds under Tennessee Civil Procedure Rule 43.01. *See State ex rel. Malmquist v. Malmquist*, No. W2017-00893-COA-R3-JV, 2018 WL 6261863, at \*4 (Tenn. Ct. App. 2018) (Audio/telephone testimony was disallowed with the explanation, in part, that the “bare assertion that she [the witness] lacked the necessary funds to travel . . . was insufficient” to satisfy the good cause element under Rule 43.01). The foregoing findings and reasoning, however, in conjunction with the lack of funds, and that Defendant Michael Schrage’s testimony will be presented not by telephone but by both audio and visual, are sufficient, the Court concludes, to permit Defendant Michael Schrage to testify by contemporaneous audio-visual means.

s/ Ellen Hobbs Lyle  
ELLEN HOBBS LYLE  
CHANCELLOR  
BUSINESS COURT DOCKET  
PILOT PROJECT

cc by U.S. Mail, fax, or efile as applicable to:

Eugene N. Bulso, Jr.  
Paul Krog  
Eric W. Smith  
Attorneys for Nissan North America, Inc.

Jeff Hess  
*Pro Se* Defendant

Keith Jacobs  
*Pro Se* Defendant

Mark T. Freeman  
Attorney for Stacy Stephens

Steven A. Riley  
Milton S. McGee, III  
David Thomas Bartels  
Attorneys for Michael Schrage and Alexis Schrage, the Named Executor of  
the Estate of Joseph Schrage

Byron R. Trauger  
Paul W. Ambrosius  
Kathryn A. Stephenson  
Steven M. Goldberg  
Kishan H. Barot  
Edward S. Zusman  
Attorneys for Leonard Schrage

Edward S. Zusman  
Steven M. Goldberg  
Charles Cook III  
Ori Samuel Blumenfeld  
Attorneys for the Receiver