FOR PUBLICATION

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

PARK, KYUNG HEE,	)	**CIVIL ACTION NO. 02-0652B**
Plaintiff,	)	
v.	)	**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF PARK, KYUNG HEE'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT KIM, DONG HYEN**
KIM, DONG HYEN and KIM, JEONG TEAK,	)	
Defendants.	)	

THIS MATTER came before the Court for a hearing on August 2, 2004, at 9:00 a.m. in courtroom 220A to consider Plaintiff Park, Kyung Hee's MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT KIM DONG HYEN (hereinafter "MOTION"). Plaintiff Park, Kyung Hee (hereinafter "Park") appeared personally with counsel Joseph A. Arriola, Esq., and Defendant Kim, Dong Hyen ("Dong Hyen") appeared personally with counsel Reynaldo O. Yana, Esq.

I. Facts and Procedural Background

By her COMPLAINT in this action, Plaintiff Park alleged that Defendant Dong Hyen and Defendant Kim, Jeong Teak (hereinafter "Jeong Teak") are jointly and severally liable for breach of contract and wrongful conversion of an automobile. Park's Complaint alleges that Defendant Jeong Teak purchased a 2002 Mitsubishi Montero (hereinafter "the vehicle") on or about June 3, 2002, from the Triple J car dealership in Saipan. Park states that the total purchase price of the vehicle was $28,062.00, and that Jeong Teak paid a $18,264.00 down payment on the vehicle. However, Park alleges that, because of Defendant Jeong Teak's status as a "tourist," Jeong Teak

could not procure a bank loan to finance the remainder of the balance owed on the total price of the vehicle, and so Dong Hyen agreed to sign as a borrower on the loan contract with First Hawaiian Bank. According to Park, there was an agreement between Dong Hyen and Jeong Teak that, although Dong Hyen was listed as the borrower, Jeong Teak would be responsible for making payments on the car loan with First Hawaiian Bank, and Jeong Teak would take possession of the vehicle. Jeong Teak and Dong Hyen signed the contract for the sale of the vehicle as co-buyers. These facts are undisputed by Defendant Dong Hyen.

However, Park further alleges that on or about August 26, 2002, Dong Hyen was "aware" and "did concur with Defendant Kim, Jeong Teak's decision to sell the Subject Vehicle to Plaintiff in the amount of $10,000.00, and that Plaintiff would take over payment of the remaining balance to First Hawaiian Bank." Park also alleges that sometime in October of 2002, Jeong Teak returned to Korea. Park further alleges that sometime in the first week of November of 2002, Dong Hyen reported to the police that the vehicle had been stolen by Park, and that the police subsequently took the vehicle and transferred its possession to Dong Hyen. In his ANSWER, Dong Hyen denies Park's allegation that he concurred with Jeong Teak for the sale of the vehicle to Park. Dong Hyen's sole "Affirmative Defense" consists of the statements that he did not know of any contract between Park and Jeong Teak, and that Park has no claim against Dong Hyen for transactions made with Jeong Teak.

The instant MOTION seeks summary judgment on the claims for breach of contract and conversion only as to Defendant Dong Hyen. The MOTION is premised on Dong Hyen's failure to respond to certain requests for admission submitted by Park to Dong Hyen's former counsel on December 10, 2003. Dong Hyen did not respond to those requests within 30 days as required by Com. R. Civ. P. 36. On January 27, 2004, Dong Hyen requested a three-week extension of time in which to file responses to the requests for admission, which Park granted. Despite the extension of

time, Dong Hyen failed to respond to the requests for admission, and Dong Hyen's former attorney later moved to be withdrawn as his counsel, citing continued difficulties in making contact with Dong Hyen. *See generally,* DECLARATION OF COUNSEL IN SUPPORT OF MOTION TO WITHDRAW. Dong Hyen's former counsel's MOTION TO WITHDRAW was granted by this Court in a hearing conducted on May 24, 2004. Dong Hyen subsequently retained Reynaldo Yana, Esq. as his counsel in this case.

II. Issue

Whether Plaintiff Park is entitled to summary judgment on her claims for breach of contract and/or conversion.

III. Analysis

A. Jurisdiction and Standard of Review

Jurisdiction is vested in this Court pursuant to N.M.I. Const. art. IV, § 2. Plaintiff Park has moved for summary judgment pursuant to Com. R. Civ. P. 56(b). Summary judgment is appropriate where the materials submitted to the Court demonstrate "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Com. R. Civ. P. 56(c); *see, e.g., In re Estate of Roberto*, 2002 MP 23 ¶14. "In deciding a summary judgment motion, a court will construe the evidence and inferences drawn therefrom in favor of the non-moving party." *Santos v. Santos*, 4 N.M.I. 206, 209 (1994) (*citing Rios v. Marianas Pub. Land Corp*., 3 N.M.I. 512, 518 (1993)).

> A moving party bears the "initial and the ultimate" burden of establishing its entitlement to summary judgment. *Lopez v. Corporacion Azucarera de Puerto Rico*, 938 F.2d 1510, 1516 (1st Cir. 1991). If a moving party is the plaintiff, he or she must prove that the undisputed facts establish every element of the presented ***claim.*** *Id*. If a movant is the defendant, he or she has the correlative duty of showing that the undisputed facts establish every element of an asserted affirmative ***defense***. *Id*. Upon satisfying this burden, the non-moving party must establish that there exists a genuine issue of material fact. *Bais v. Advantage Int'l, Inc.*, 905 F.2d 1558, 1561 (D.C. Cir. 1990).

Id. at 210 (emphasis added). A "genuine" dispute exists "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Eurotex (Saipan), Inc. v. Muna*, 4 N.M.I. 280, 283-84 (1995) (citations omitted). A non-moving party "may not rest upon the mere allegations or

denials" of the moving party's pleading, but must "set forth specific facts showing that there is a genuine issue for trial." Com. R. Civ. P. 56(e); *see, e.g., Eurotex v. Muna*, 4 N.M.I. 280 (1995).

B. Park's Requests for Admission

Under the Commonwealth Rules of Civil Procedure, each matter of which a request for admission is requested is deemed admitted,

> unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

Com. R. Civ. P. 36(a) ("Request for Admission"); *see also Reyes v. Ebeteur*, 2 N.M.I. 418 (1992) (the Commonwealth Supreme Court held that the Superior Court's striking of untimely answers to a Rule 36 request for admission was not an abuse of discretion). Because Dong Hyen did not respond to Park's Requests for Admission within 30 days of service of those requests, nor within the time period stipulated to by the parties, this Court shall deem all of the requests admitted. The Requests for Admission (hereinafter "RFA") that were submitted to Dong Hyen include the following:

> **REQUEST NO. 1:** Do You admit or deny that You were aware that Defendant Kim, Jeong Teak was interested in purchasing the Subject Vehicle for the benefit of Defendant Kim, Jeong Teak.
>
> **REQUEST NO. 2:** Do You admit or deny that Defendant Kim, Jeong Teak made a cash down payment, in the sum of $18,264.00 (total price sale of Subject Vehicle was $28,062.00), towards the purchase of the Subject Vehicle, with the balance amount to be financed by First Hawaiian Bank at 13.5%.
>
> **REQUEST NO. 3:** Do You admit or deny that You and Defendant Kim, Jeong Teak agreed, with the concurrence and understanding of saleswoman Kim Sam Ye, that You would use Your name as a borrower, and that Defendant Kim, Jeong Teak, having paid $18,264.00 cash down payment, would be responsible with the monthly car payments to First Hawaiian Bank.

REQUEST NO. 4: Do You admit or deny that Defendant Kim, Jeong Teak took possession, custody and control of the Subject Vehicle, as well as possession, custody and control of the First Hawaiian Bank Payment Coupon Book.

REQUEST NO. 5: Do You admit or deny that on or about August 26, 2002, You were aware and You did concur with Defendant Kim, Jeong Teak's decision to sell the Subject Vehicle to Plaintiff in the amount of $10,000.00, and that Plaintiff would take over payment of the remaining balance to First Hawaiian Bank.

REQUEST NO. 6: Do You admit or deny that You were aware and had personal knowledge that Plaintiff paid Kim, Jeong Teak the sum of $10,000 and took possession, custody and control of the Subject Vehicle, as well as possession, custody and control of the First Hawaiian Bank Payment Coupon Book.

REQUEST NO. 7: Do You admit or deny that You falsely and wrongfully reported to the police that Plaintiff had stolen the Subject Vehicle.

REQUEST NO. 8: Do You admit or deny that You did in fact fraudulently and wrongfully converted [sic] the use and possession of the Subject Vehicle.

Pl.'s Ex. C to MOTION ("Plaintiff's Request for Admission to Defendant Kim Dong Hyen") at 2-3. Park contends that, accepting the RFAs as admitted, no genuine issue of material fact remains to be tried in this action, and that Park is therefore entitled to Summary Judgment on her claims for breach of contract and conversion against Dong Hyen. Dong Hyen does not request that the default admissions be withdrawn, but contends that, even accepting those matters as admitted, Park is not entitled to summary judgment.[1]

By failing to respond to the RFAs, Dong Hyen has admitted, among other things, that Dong Hyen concurred with Jeong Teak's decision to sell the vehicle to Park for $10,000.00, with the understanding that Park would take over the monthly payments of the amount remaining owed to First Hawaiian Bank; that Dong Hyen was aware that Park had purchased the vehicle from Jeong Teak for $10,000.00; that Park had taken possession of the First Hawaiian Bank Payment Coupon

[1] In a footnote on page 3 of the Opposition to the Motion, Dong Hyen states that "the presumption of admission based on the defendant's failure to answer the said request should not be given much weight." The Court notes that the admission of a request for admission ordinarily does not in itself involve issues of *weight*: generally, admitted requests are treated as admissions, and they are afforded the same weight in every instance.

Book, and that Park had taken possession, custody and control of the vehicle; that Dong Hyen reported to the police that Park had stolen the vehicle; and that Dong Hyen fraudulently and wrongfully converted the use of the Subject Vehicle.

C. Park's Claim for Breach of Contract

The Court first considers whether these admissions, together with the undisputed facts in this case, entitle Park to summary judgment on her claim for breach of contract. The Court notes that Park did not explain in her MOTION exactly how these admissions satisfy the legal elements of a breach of contract claim, having failed to lay out the legal authority. Nevertheless, the Court finds that the admitted RFAs support a claim for breach of contract, insofar as they establish the existence of an offer, an acceptance, consideration, and also a failure to perform on Dong Hyen's part.[2] *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 13 (*citing* RESTATEMENT (SECOND) OF CONTRACTS § 17 (1981)) (stating that "[t]he essential elements of a contract are offer, acceptance, and consideration"); *Skinner v. Maritz, Inc.* 253 F.3d 337, 340 (8th Cir. 2001)). In the hearing on this matter, Dong Hyen argued that, even accepting the RFAs admitted, there was a failure of consideration, because these admissions establish only that Defendant *Jeong Teak* was paid $10,000.00, and do not establish that Dong Hyen received any benefit. Section 71 of the RESTATEMENT (SECOND) OF CONTRACTS describes what constitutes valid consideration:

> (1) To constitute consideration, a performance or a return promise must be bargained for.
>
> (2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.
>
> (3) The performance may consist of
>
> (a) an act other than a promise, or

[2] Non-performance of a duty owed under a contract constitutes a breach of contract. *Reyes v. Ebeteur*, 2 N.M.I. 418, 429 (1992) (*quoting* RESTATEMENT (SECOND) OF CONTRACTS § 235(2) (1981) ("when performance of a duty under a contract is due any non-performance is a breach")).

(b) a forbearance, or
(c) the creation, modification, or destruction of a legal relation.

(4) The performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.

RESTATEMENT (SECOND) OF CONTRACTS § 71 (1981). Section 79 of the RESTATEMENT (SECOND) OF CONTRACTS further provides that so long as there is a mutual exchange of promises, there is no additional requirement that a gain, advantage or benefit be conferred. In this case, there was valid consideration for the contract between Jeong Teak, Dong Hyen and Park, because the admission of RFA No. 5 in particular establishes that there was a bargained-for exchange of promises between the parties. The mere facts that Dong Hyen bargained for the benefit of Park's performance to be given to Jeong Teak, and that Dong Hyen did not personally benefit, do not invalidate either Dong Hyen's promise, or Park's performance. Accordingly, this Court finds that a contract exists between the parties.

Dong Hyen argued that Jeong Teak, prior to the August contract between Park and the parties, gave all his rights and interest in the vehicle to Dong Hyen, and therefore, Jeong Teak had nothing to give to Park. Even if this Court were to accept this assertion as true, it does not change the effect of Dong Hyen's admission that he concurred with Jeong Teak's sale of the vehicle to Park. Therefore, this allegation does not create a genuine issue of material fact as to Park's claims.

At the hearing on the Motion for Summary Judgment, Park admitted that her contract with Defendants Jeong Teak and Dong Hyen was an *oral* contract that was never reduced to writing. The Statute of Frauds provision under the Uniform Commercial Code-Sales, 5 CMC §§ 2101, *et seq.*, concerns contracts for the sale of goods, and states at subsection (1):

> Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more **is not enforceable** by way of action or defense **unless there is some writing** sufficient to indicate that a contract for sale has been made

between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.[3]

5 CMC § 2201(1) (emphasis added). There is nothing in writing before this Court to indicate that a contract for the sale of the vehicle to Park was ever made, and it would appear that Park's claim for breach of contract was therefore in violation of the Statute of Frauds. However, 5 CMC § 2201 includes certain exceptions to the rule stated above, and provides at subsection (3)(b):

> (3) A contract which does not satisfy the requirements of subsection (1) of this section but which is valid in other respects **is enforceable**:
>
> . . . .
>
> (b) **If the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made**, but the contract is not enforceable under this provision beyond the quantity of goods admitted

5 CMC § 2201(3)(b) (emphasis added). Due to Dong Hyen's default admission that a contract for the sale of the vehicle was made, the Statute of Frauds does not bar Park's claim for breach of that contract.

Once Park established a prima facie case for recovery under the theory of breach of contract, the burden shifted to Dong Hyen, to point out to the Court the existence of a genuine issue of material fact that remains to be tried. Dong Hyen argues in his OPPOSITION that Jeong Teak had no right to sell the vehicle to Park, because Jeong Teak previously gave his ownership rights in the vehicle to Dong Hyen. Dong Hyen also contends that, if there *was* a binding contract between he and Park, then Park breached that contract first, and he was, for that reason, entitled to repossess the vehicle. Specifically, Dong Hyen argues that Park failed to perform her part of the contract by failing to make payments on the balance owed to First Hawaiian Bank. In support of the OPPOSITION, Dong Hyen submitted a Declaration wherein he declares under penalty of perjury that

[3] The expression "goods" is defined at 5 CMC § 2105(1) as "all things (including specially manufactured goods) which are moveable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (division 8 . . .) and things in action." The vehicle at issue qualifies as "goods" within this definition, and the contract for the sale of the vehicle was for a price that exceeded the sum of $500.00.

he made payments in the amount of $408.00 per month to First Hawaiian Bank beginning at the end of May of 2002, almost six months before he took possession of the vehicle from Park. Attached to Dong Hyen's Declaration are photocopies of receipts from First Hawaiian Bank, although the earliest of those receipts only goes back to December 4, 2002. In her COMPLAINT, as well as in her RFAs from Dong Hyen, Park acknowledges that, in return for the ownership and possession of the vehicle, she not only agreed to pay $10,000.00 to Jeong Teak, but she also incurred a contractual duty to make payments on the outstanding balance owed to First Hawaiian Bank. In her REPLY, Park relies entirely on the admissions in the RFAs, which have no bearing on whether or not Park breached the contract prior to Dong Hyen's repossession of the vehicle. By raising an issue as to whether Park breached the contract with Dong Hyen by failing to make payments on the balance owed to First Hawaiian Bank during the time period that Park had possession of the vehicle, and by supporting that contention with a sworn Declaration, Dong Hyen has gone beyond the allegations of his pleadings and met his burden of demonstrating that a genuine issue of material fact remains for trial. For this reason, the Court concludes that a genuine issue of material fact remains to be tried with respect to the allegation that Park breached the contract before Dong Hyen took the vehicle, and Park's MOTION FOR SUMMARY JUDGMENT therefore must be denied with respect to her claim against Dong Hyen for breach of contract.

D. Park's Claim for Conversion of the Vehicle

Park also seeks summary judgment on her claim for conversion. Here again, Park has failed to offer any description of the legal elements of her asserted claim, and has likewise failed to explain how the facts alleged in this case satisfy those legal elements. Nevertheless, this Court finds that conversion is defined as "'an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.'" *Rosario v. Camacho*, 2001 MP 3 ¶ 105 (*quoting*

RESTATEMENT (SECOND) OF TORTS § 222A(1) (1965)). Because a genuine issue of material fact remains as to whether Park breached the contract for the sale of the vehicle prior to her dispossession, but for the admission of Park's RFAs, a genuine issue would also remain as to whether Park had a right of control to the vehicle when it was taken by Dong Hyen.

However, at the hearing on this matter, Park argued that because Dong Hyen failed to respond to RFA No.8, by default he has admitted that he "did in fact fraudulently and wrongfully convert[ ] the use and possession of the Subject Vehicle." Park contends that this admission is sufficient for the Court to conclude as a matter of law that a conversion occurred, and thus, that no genuine issue of material fact remains as to this claim. Dong Hyen argues in response, that a party cannot admit to a legal conclusion by way of a RFA, and that, for that reason, RFA No. 8 was improper.

Commonwealth Rule of Civil Procedure 36 ("Request for Admission") provides that:

> A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request **that relate to statements or opinions of fact or of the application of law to fact**, including the genuineness of any documents described in the request.

Com. R. Civ. P. 36 (emphasis added). Thus, a request for admission may request an admission of any discoverable matter that relates to the "application of law to fact." Rule 36 does not, however, permit a request for the admission of a *pure* matter of law. Commonwealth Rule 36 is based upon Federal Rule of Civil Procedure 36 and the Interpretive Notes and Decisions, Note 11 to FED. R. CIV. P. 36 states, a "[r]equests to admit pure matter of law is improper under FRCP 36." *See also,* 8A CHARLES ALAN WRIGHT, ET AL.FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2255 (2nd ed. 1994) (*citing, with respect to requests for admission relating to pure matters of law, Reliance Ins. Co. v. Marathon LeTourneau Co.*, 152 F.R.D. 524, 525 n.2 (D.C. W. Va. 1994); *Currie v. United States*, 111 F.R.D. 56, 59 n.5 (D.C. M.D.N.C. 1986)).[4]

[4] Commonwealth Rule of Civil Procedure 36 is nearly identical to the Federal Rule of Civil Procedure 36, and so a review of the history of the Federal rule may shed light on the significance of its language. *See In re Adoption of Magofna*, 1 N.M.I. 449, 454 (1990) (interpretations of similar Federal rules are helpful in interpreting Commonwealth rules). Prior to 1970, FED. R. CIV. P. 36(a) permitted only requests for admission of "relevant matters of fact," and for that reason, the majority of courts at that time held that only matters of fact were proper subjects for requests for admission, and most courts held that requests about facts in dispute in the case were improper. *See* 8A CHARLES ALAN WRIGHT, ET AL.FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D §§ 2255, 2256 (2nd ed. 1994). The amendment to Federal Rule of Civil Procedure 36 in 1970 deleted the "relevant matters of fact" language and replaced it with text identical to that of the Commonwealth Rule quoted above, which authorizes requests for admission that "relate to

Accordingly, the issue before the Court is whether the admission that Park bases her claim of entitlement to summary judgment upon with respect to the claim of conversion (RFA No. 8) relates to purely legal matters, or to the application of law to facts in this case. Park's RFA No. 8 asks, "[d]o You admit or deny that You did in fact fraudulently and wrongfully converted [sic] the use and possession of the Subject Vehicle." Pl.'s Ex. C to MOTION. Although this request asks Dong Hyen to admit to legal conclusions, those conclusions relate to the facts of the case: namely, Dong Hyen's repossession of the vehicle. Therefore, this request for admission appears to fall within the Rule 36 provision for requests concerning matters relating to "the application of law to fact." A review of relevant case law confirms that Park's RFA No. 8 is not of the kind that is ordinarily struck as a request for a "pure" admission of law. *See Currie*, 111 F.R.D. 56, 59 (M.D.N.C. 1986) (holding that a request for an admission that the respondent owed a *legal duty* was improper); *La Forte v. Horner*, 833 F.2d 977, 982 (Fed. Cir. 1987) (holding a request for the admission of a particular *statutory interpretation* to be improper); *Ransom v. United States*, 8 Cl.Ct. 646, 648 (Ct. Cl. 1985) (holding a request for an admission that a court had *jurisdiction* to be improper, insofar as it failed to relate that request to any particular facts). For the reasons stated, the Court finds that RFA No. 8 was proper under Com. R. Civ. P. 36, and that, due to Dong Hyen's failure to respond within the time allotted under the rule or within the time extension granted by Park, RFA No. 8 is deemed admitted.

As a District Court noted in *Williams v. Krieger*, 61 F.R.D. 142 (S.D.N.Y.), a "failure to respond to a request for admissions will permit this Court to enter summary judgment against the offending party **if the facts then deemed 'admitted' are dispositive of the case**." *Id*. at 144 (emphasis added); *see also Casey v. Albertson's Inc*., 362 F.3d 1254, 1256 (9th Cir. 2004) (affirming a District Court's award of summary judgment on the basis of a plaintiff's failure to respond to requests for admission). Commonwealth Rule of Civil Procedure 36(b) provides that "[a]ny matter admitted under [Rule 36] is **conclusively established** unless the court **on motion** permits withdrawal

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statements or opinions of fact **or of the application of law to fact**." Com. R. Civ. P. 36(a) and FED. R. CIV. P. 36(a). The 1970 amendment also added the provision in 36(a) that a party may not object to a request for admission solely on the ground that it presents a genuine issue for trial. Given the express language of Com. R. Civ. P. 36, and given that the Federal Rule on which the Commonwealth rule is based was amended specifically to allow for requests as to matters relating to the application of law to fact, it appears that (contrary to Defendant Dong Hyen's argument) a party may request that another admit to a legal conclusion, so long as the request applies to the facts of the case.

or amendment of the admission." Com. R. Civ. P. 36(b) (emphasis added). After admitting to a request for admission, "the defendant cannot then deny liability on the ground that there is evidence that the admission was mistaken." *Murrey v. United States*, 73 F.3d 1448, 1455 (7th Cir. 1996) (citations omitted).

The Utah case of *Jensen v. Pioneer Dodge Center, Inc.*, 702 P.2d 98 (Utah 1985) involved facts similar to the present case, and resulted in a similar outcome. In *Jensen*, the defendant failed to respond in time to a request for admission that the defendant had "willfully and unlawfully converted plaintiff's property." *Id.* at 101. The Utah Supreme Court reversed the trial court's decision to not treat the matters requested as admitted and conclusive, stating that under Utah R. Civ. P. 36(b), "matters deemed admitted are conclusively established as true unless the trial court, on motion by the defendant, permits withdrawal or amendment of the admissions." *Id.* at 100. The Utah Court also reversed the trial court's denial of plaintiff's motion for summary judgment that was based on the defendant's failure to respond to the matters contained in plaintiff's request for admissions. *Id.* at 99, 101. The *Jensen* court did not address the issue of whether the requested matters involved the "application of law to fact" or pure legal matters, but concluded that "even if a request is objectionable, if a party fails to object and fails to respond to the request, that party should be held to have admitted the matter." *Id.* at 100-01.[5]

In this case, Defendant Dong Hyen never moved for this Court to withdraw or amend the default admissions, and therefore the admissions are conclusively established. Although the admission of Park's requests is insufficient to establish that no genuine issue of material fact remains as to Park's claim for breach of contract, this Court concludes that RFA No. 8 does conclusively dispose of the question of whether Dong Hyen wrongfully converted the vehicle. As the Seventh Circuit Court of Appeals has stated,

> [i]f the answer to a complaint or to a request for admissions admits liability, the defendant cannot then deny liability on the ground that there is evidence that the admission was mistaken. A judicial admission trumps evidence. This is the basis of the principle that a plaintiff can plead himself out of court.

Murrey, 73 F.3d at 1455 (internal citations omitted).

[5] *Jensen v. Pioneer Dodge Center, Inc.*, 702 P.2d 98 (Utah 1985) is slightly distinguishable from the instant case in that the defendant in *Jensen* not only failed to timely respond to the plaintiff's requests for admission, but also failed to oppose the plaintiff's Motion for Summary Judgment and go beyond the allegations of his pleadings with admissible evidence to demonstrate that a genuine issue of material fact existed to preclude summary judgment.

For the foregoing reasons, this Court concludes that Park has established that there is an absence of a genuine issue of material fact with respect to her claim for wrongful conversion since Dong Hyen's failure to respond to RFA No. 8 has resulted in the requests being deemed admitted, which conclusively establishes Dong Hyen's liability to Park for conversion.

IV. Conclusion

For the foregoing reasons, Plaintiff Park, Kyung Hee's Motion for Summary Judgment is GRANTED with respect to her claim for conversion, but DENIED with respect to her claim for breach of contract. Although these results may appear incongruent, both stem directly from the language of the different requests for admission under the different legal theories asserted. As demonstrated in this case, a party who fails to respond to a request for admission within the time period provided under Rule 36 always runs the risk of having the matters contained in the request deemed admitted.

Accordingly, this Court enters judgment in favor of Plaintiff Park, Kyung Hee and against Defendant Kim, Dong Hyen in the principal sum of $10,000.00, plus costs of suit. Plaintiff Park shall file her claim for costs within ten working days, which shall be added to the principal amount. The total judgment shall accrue interest at nine percent (9%) from the date of this order and judgment. Plaintiff's request for pre-judgment interest and attorney's fees is denied.

SO ORDERED this 11th day of August 2004.

/s/
RAMONA V. MANGLONA, Associate Judge