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

GUADALUPE P. MANGLONA, Plaintiff, v. MARGARITA R. TENORIO, Defendant.	Civil Action No 93-1061 **ORDER GRANTING DEFENDANT'S MOTION FOR WITHDRAWAL OF ADMISSIONS AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

On December 15, 1993, this matter came on for a hearing on the motion of the Plaintiff, Guadalupe Manglona, for summary judgment pursuant to Rule 56 of the Commonwealth Rules of Civil Procedure. This motion is premised upon Defendant Margarita R. Tenorio's failure to timely respond to the Plaintiff's request for admissions within forty-five days after service of the request.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of a claim that Ms. Manglona gave one or

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more loans to Ms. Tenorio. *Guadalupe Manglona's Complaint*, ¶ 4 (Sept. 28, 1993) [hereinafter *"Complaint"*]. The Defendant unequivocally denies that the Plaintiff ever made any loan(s) to the Defendant. *Margarita Tenorio's Answer*, ¶ 2 (Oct. 19, 1993); *Declaration of Defendant Margarita R. Tenorio*, ¶¶ 3 - 6 (Nov. 30, 1993).

On September 29, 1993, the Plaintiff served the Defendant with a complaint, a summons and a request for admissions. *Complaint*, Exhibits 1 & 2 In the request for admissions, Ms. Manglona asked Ms. Tenorio to admit or deny several factual allegations going to the very heart of the present lawsuit. *Plaintiff's Request for Admissions* ¶¶ 1 - 6 (Sept. 28, 1993). The Defendant failed to respond on or before November 15, 1993, as required by Rule 36. *See* Com. R. Civ. Pro. 36(a) ("defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him.").

Shortly after the expiration of the time period, the Plaintiff filed her motion for summary judgment. Ms. Manglona posits that she is entitled to summary judgment because the admissions became effective by operation of Rule 36 as a result of the Defendant's failure to timely respond to the request.

Ms. Tenorio opposes the Plaintiff's motion and moves for an extension of time within which to respond to the request for admissions pursuant to Com. R. Civ. Pro. 6(b)(2). Alternatively, the Defendant moves to withdraw or amend the admissions based upon Com. R. Civ. Pro. 36(b).

Subsequently, on November 30, 1993, the Defendant filed a

late response to Ms. Manglona's request for admissions. The response admitted that although the Defendant had received $250,000.00 from Ms. Manglona, the sum of money was not a loan. Ms. Tenorio denied all other allegations.

II. ISSUES

The Court will consider the following issues: (1) whether an admitting party is entitled to withdrawal or amend an admission obtained pursuant to Com. R. Civ Pro 36 where that party s counsel filed a late response to the request due to an office oversight; and (2) whether a motion to strike a memorandum of law should be granted for untimeliness.

III. ANALYSIS

A. Summary Judgment Standard

Summary judgment is available "only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Ito v. Macro Energy, Inc. et al.*, slip. op. at 6 (N.M.I. Super. Ct. Dec. 17, 1990), *aff'd in part and rev'd in part on other grounds* in Appeal Nos. 92-020 & 92-022 (N.M.I. Oct. 26, 1993). The movant carries the initial burden of showing that no genuine issue of material fact exists. *Cabrera v. Heirs of Pilar de Castro*, 1 N.M.I. 172, 176 (1990). To that end, the movant may rely on a variety of materials, including "admissions on file"[1/] resulting from the use of Rule 36. Com.

[1/] An "admission on file" may arise by operation of court rule, by filing a formal admission on file, or by other informal means. *See* 10A Wright and Miller, *Federal Practice and Procedure* § 2722 (2d ed. 1983), and cases cited therein; *see also* Com. R. Civ. Pro. 56 and Com. R. Civ. Pro. 36.

R. Civ. Pro. 56(c); Com. R. Civ. Pro. 36; 8 Wright and Miller, *Federal Practice and Procedure* § 2264 (1970) [hereinafter *Federal Practice and Procedure*]; *see Pleasant Hill Bank v. United States*, 60 F.R.D. 1, 3 (W.D. Mo. 1973) (although summary judgment could be granted in light of the facts admitted by defendant, the court is not required to do so).

B. Effect of Late Response to Requests for Admissions Pursuant to Com. R. Civ. Pro. 36

The failure to timely respond to a request for admission is tantamount to an admission of the matters set forth therein. Com. R. Civ. Pro. 36. *See generally Rabil v. Swafford*, 128 F.R.D. 1 (D.D.C. 1989). Mr. Theodore Mitchell, counsel for Defendant Tenorio, neither disputes the legal effect of this rule of law nor denies the fact of the late response. Nonetheless, defense counsel seeks relief from the binding and conclusive effect of the admission by acknowledging that the late response resulted from an office oversight.[2/]

Rule 36 of the Commonwealth Rules of Civil Procedure gives the Court the discretion to allow the withdrawal or amendment of admissions. The rule requires a two-pronged analysis. First, withdrawal or amendment of the admissions is permitted "if it will facilitate the presentation of the merits of the action . . . ." Com. R. Civ. Pro. 36(b). Second, the Court must ascertain whether the requesting party has shown, to the Court's satisfaction, that

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[2/] *Defendant's Notice and Motion for Extension of Time Within Which to Respond to Request for Admissions, and in the Alternative, to Withdraw or Amend the Admissions*, Declaration of Theodore R. Mitchell (Nov. 30, 1993).

such a ruling would prejudice his or her case. *Id.*; *St. Regis Paper Co. v. Upgrade Corp.*, 86 F.R.D. 355, 357 (W.D. Mich. 1980). The prejudice contemplated by Rule 36 concerns the "'difficulty a party may face in proving its case' because of a sudden need to obtain evidence required to prove the matter that had been admitted." *Gutting v. Falstaff Brewing Corp.*, 710 F.2d 1309, 1314 (8th Cir. 1983) (citations omitted); *see, e.g., McClanahan v. Aetna Life Ins. Co.*, 144 F.R.D. 316, 320 (W.D. Va. 1992) (no prejudice shown where the party securing admissions failed to show that it had foregone discovery in reliance on the admission or that it could not now obtain key witnesses); *United States v. Golden Acres, Inc.*, 684 F. Supp. 96, 98-99 (D. Del. 1988) (permitting withdrawal on the eve of trial could unfairly disrupt parties' preparation for trial).

This rule implicates two paramount concerns. On the one hand, the courts are hesitant to automatically determine all the issues in a lawsuit and grant summary judgment against a party simply because a deadline is missed. *Handra v. Herman Blum Consulting Eng'rs*, 74 F.R.D. 113, 114 (N.D. Tex. 1977); *accord Szatanek v. McDonnell Douglas Corp.*, 109 F.R.D. 37 (W.D.N.Y. 1985). This concern is especially important where the requesting party is not prejudiced by allowing untimely responses. *Handra*, 74 F.R.D. at 114, citing *French v. U.S.*, 416 F.2d 1149 (9th Cir. 1969). On the other hand, Rule 36 also serves the interest of judicial economy by eliminating uncontested issues and by expediting trial. *Id.*

Here, Ms. Manglona seeks to secure admissions concerning key factual allegations which, if the admissions are deemed to be

effective, would render Ms. Tenorio liable for the repayment of the alleged loan(s). If the Court treats the Defendant's admissions as conclusively established and grants Plaintiff's motion for summary judgment, any presentation on the merits would be virtually, if not completely, eliminated; a final judgment on the merits would be entered against the Defendant. *Ropfogel v. U.S.*, 138 F.R.D. 579, 583 (D. Kan. 1991) and citations therein. This result would clearly frustrate the purposes of Rule 36. *See Federal Practice and Procedure* § 2257. In contrast, if the Court permits the Defendant to amend the admissions, the Plaintiff would still be able to go forward with her claim and the Defendant would have the opportunity to attempt to prove her assertion that no such loan or loans were ever made to her. *See Declaration of Defendant Margarita R. Tenorio* (Nov. 30, 1993). The latter approach would, therefore, comport with the objectives of Rule 36(b).

As to the second prong, the Plaintiff has failed to satisfy the Court that she would be prejudiced if the amendment of the admissions were permitted. Contrary to the Plaintiff's suggestion, prejudice does not result from the mere fact that the party who secured the loan would have to present evidence on matters already admitted. *See Ropfogel*, 138 F.R.D. at 583 (D. Kan. 1991) and citations therein. This is a necessary consequence each time an admitting party is permitted to withdraw or amend a Rule 36 admission. Therefore, the adoption of the Plaintiff's interpretation would effectively render the requirement of showing prejudice a nullity.

In the present case, the Court finds that Ms. Manglona would

not be prejudiced by permitting an amendment of the admissions for several reasons. In her answer, Defendant Tenorio admitted only that she had received a sum certain of money from Ms. Manglona and denied all other allegations. That should have put the Plaintiff on notice that Ms. Tenorio would be contesting her claims. *See Warren v. International Bhd. of Teamsters*, 544 F.2d 334, 339 (8th Cir. 1976). Further, Ms. Manglona apparently has not relied on the effectiveness of the admissions such that she would be precluded from conducting discovery. Finally, she has not even hinted at any difficulty facing her in obtaining vital witnesses. *See McClanahan*, 144 F.R.D. 316 and citations therein.

Ms. Manglona has only been injured to the extent that she incurred attorney's fees and costs in bringing the summary judgment motion. In an effort to cure this harm, Mr. Mitchell shall be responsible for reimbursing the Plaintiff for the reasonable fees and costs incurred by the Plaintiff in the filing of the summary judgment motion.[3/] *Cf. Szatanek*, 109 F.R.D. at 41 (court may award reasonable expenses to compensate a party who unsuccessfully seeks to secure admissions due to untimely response by admitting party).

Although the Court does not condone defense counsel's failure to timely respond to Ms. Manglona's request for admissions, equity dictates that the Defendant's motion to amend the admissions be

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[3/] In so ruling, this Court seeks to avoid penalizing either Ms. Manglona or Ms. Tenorio for the "office oversight" of the defense attorney. If, however, Ms. Tenorio *chooses* to reimburse the Plaintiff for such fees and costs, she may do so in lieu of Mr. Mitchell.

GRANTED.[4/] The *Defendant's Response to Request for Admissions* that was filed on November 30, 1993, thus constitutes the only admissions of record in the case at bar. *Szatanek*, 109 F.R.D. at 41 (permitting a late filing is equivalent to allowing a party to amend admissions pursuant to Rule 36(b)). The existence of the November 30th admissions prevents the Plaintiff from meeting her burden of proof for purposes of summary judgment. The Plaintiff's motion for summary judgment is thus DENIED.

C. **Motion to Strike Opposition Memorandum of Law Pursuant to Com. R. Prac. 8(a)(2)**

The Defendant moves to strike the *Plaintiff's Opposition to the Defendant's Motion for Extension of Time* on the basis that Com. R. Prac. 8(a)(2) requires that the opposition be filed and served "not later than five (5) days preceding the noticed date of hearing, . . ."

In the instant case, the opposition memorandum in question was filed on December 9, 1993, for a hearing that was scheduled for December 15, 1993. Given that December 8, 1993 was a C.N.M.I. Government holiday, it cannot be counted in the computation of time. *See* Com. R. Civ. Pro. 6(a). Defense counsel, therefore,

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[4/] Despite the ruling in the instant case, the Court *strongly* cautions Mr. Mitchell, that he should pay close attention to the documents served upon his office. The Court is aware of *at least* one other *recent* incident in which this attorney has used the argument that his failure to act resulted from an office "oversight." *See Milne v. Hillblom*, Civil Action No. 93-448 (N.M.I. Super. Ct. Apr. 7, 1993) (failure to respond to subpoena). The Court may not be very receptive to such excuses in the future.

Also, in light of the Court's holding, the Court need not address the Defendant's alternative motion to enlarge time as the Defendant will obtain the relief requested under his motion to amend the admission.

correctly notes that the Plaintiff should have filed the opposition memorandum on December 7, 1993. Nonetheless, the Court will exercise its discretion in deciding against striking the untimely memorandum. *Ulloa v. Maratita*, Civil Action No. 91-365, slip. at 2 (N.M.I. Super. Ct. Nov. 27, 1992) (citation omitted) ("The courts generally do not favor motions to strike."). Although the Defendant's motion to strike is DENIED, the Court advises counsel for the Plaintiff to be mindful of Com. R. Prac. 8(a)(2) and Com. R Civ Pro 6(a) in the future

IV. CONCLUSION

For the foregoing reasons, the Defendant's motion to amend the admission obtained due to a failure to timely respond to the request for admissions is GRANTED. The Court, therefore, DENIES the Plaintiff's motion for summary judgment.

Additionally, Mr. Mitchell is hereby ORDERED to reimburse the Plaintiff for her reasonable attorney's fees and costs resulting from the filing of the summary judgment motion. Within fifteen days from the entry of this Opinion and Order, the Plaintiff shall submit a detailed account of the attorney's fees and costs she incurred. Following the submission, the Court will, in its discretion, award reasonable attorney's fees and costs to the Plaintiff.

So ORDERED this 31ST day of March, 1994.

Marty W.K. Taylor

MARTY W.K. TAYLOR, Associate Judge