

94 APR 6 09:23

e
COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

GUADALUPE P. MANGELONA,

Plaintiff,

v.

MARGARITA R. TENORIO,

Defendant.

Civil Action No. 93-1061

CORRECTION OF ORDER GRANTING
DEFENDANT'S MOTION FOR
WITHDRAWAL OF ADMISSIONS
AND DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

The Order entered on March 31, 1994, by this Court is hereby amended so that Page 3, Lines 7 - 11 read as follows:

The Court will consider the following issues: (1) whether an admitting party is entitled to withdraw or amend an admission obtained pursuant to Com. R. Civ. Pro. 36 where that party's counsel filed a late response to the request for admissions due to an office oversight; . . .

For the ease and convenience of counsel, an Amended Opinion reflecting these changes will accompany this Order.

So ORDERED this 5th day of April, 1994.

Marty W.K. Taylor
MARTY W.K. TAYLOR, Associate Judge

FILED

94 APR 6 9:23

Q
CLERK OF COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

GUADALUPE P. MANGLONA,)	Civil Action No. 93-1061
)	
Plaintiff,)	
)	<u>CORRECTED OPINION GRANTING</u>
v.)	<u>DEFENDANT'S MOTION FOR</u>
)	<u>WITHDRAWAL OF ADMISSIONS</u>
MARGARITA R. TENORIO,)	<u>AND DENYING PLAINTIFF'S MOTION</u>
)	<u>FOR SUMMARY JUDGMENT</u>
Defendant.)	
_____)	

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

FOR PUBLICATION

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

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

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

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

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

1 late response to Ms. Manglona's request for admissions. The
2 response admitted that although the Defendant had received
3 \$250,000.00 from Ms. Manglona, the sum of money was not a loan.
4 Ms. Tenorio denied all other allegations.

6 II. ISSUES

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

14 III. ANALYSIS

15 A. Summary Judgment Standard

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

26
27 ^{1/} An "admission on file" may arise by operation of court
28 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.

1 Civ. Pro. 56(c); Com. R. Civ. Pro. 36; 8 Wright and Miller,
2 *Federal Practice and Procedure* § 2264 (1970) [hereinafter *Federal*
3 *Practice and Procedure*]; see *Pleasant Hill Bank v. United States*,
4 60 F.R.D. 1, 3 (W.D. Mo. 1973) (although summary judgment could be
5 granted in light of the facts admitted by defendant, the court is
6 not required to do so).

7
8 **B. Effect of Late Response to Requests for Admissions Pursuant**
9 **to Com. R. Civ. Pro. 36**

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

19 Rule 36 of the Commonwealth Rules of Civil Procedure gives
20 the Court the discretion to allow the withdrawal or amendment of
21 admissions. The rule requires a two-pronged analysis. First,
22 withdrawal or amendment of the admissions is permitted "if it will
23 facilitate the presentation of the merits of the action"
24 Com. R. Civ. Pro. 36(b). Second, the Court must ascertain whether
25 the requesting party has shown, to the Court's satisfaction, that
26

27
28 ^{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).

1 such a ruling would prejudice his or her case. *Id.*; *St. Regis*
2 *Paper Co. v. Upgrade Corp.*, 86 F.R.D. 355, 357 (W.D. Mich. 1980).
3 The prejudice contemplated by Rule 36 concerns the "'difficulty a
4 party may face in proving its case' because of a sudden need to
5 obtain evidence required to prove the matter that had been
6 admitted." *Gutting v. Falstaff Brewing Corp.*, 710 F.2d 1309, 1314
7 (8th Cir. 1983) (citations omitted); see, e.g., *McClanahan v.*
8 *Aetna Life Ins. Co.*, 144 F.R.D. 316, 320 (W.D. Va. 1992) (no
9 prejudice shown where the party securing admissions failed to show
10 that it had foregone discovery in reliance on the admission or
11 that it could not now obtain key witnesses); *United States v.*
12 *Golden Acres, Inc.*, 684 F. Supp. 96, 98-99 (D. Del. 1988)
13 (permitting withdrawal on the eve of trial could unfairly disrupt
14 parties' preparation for trial).

15 This rule implicates two paramount concerns. On the one
16 hand, the courts are hesitant to automatically determine all the
17 issues in a lawsuit and grant summary judgment against a party
18 simply because a deadline is missed. *Handra v. Herman Blum*
19 *Consulting Eng'rs*, 74 F.R.D. 113, 114 (N.D. Tex. 1977); accord
20 *Szatanek v. McDonnell Douglas Corp.*, 109 F.R.D. 37 (W.D.N.Y.
21 1985). This concern is especially important where the requesting
22 party is not prejudiced by allowing untimely responses. *Handra*,
23 74 F.R.D. at 114, citing *French v. U.S.*, 416 F.2d 1149 (9th Cir.
24 1969). On the other hand, Rule 36 also serves the interest of
25 judicial economy by eliminating uncontested issues and by
26 expediting trial. *Id.*

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

1 effective, would render Ms. Tenorio liable for the repayment of
2 the alleged loan(s). If the Court treats the Defendant's
3 admissions as conclusively established and grants Plaintiff's
4 motion for summary judgment, any presentation on the merits would
5 be virtually, if not completely, eliminated; a final judgment on
6 the merits would be entered against the Defendant. *Ropfogel v.*
7 *U.S.*, 138 F.R.D. 579, 583 (D. Kan. 1991) and citations therein.
8 This result would clearly frustrate the purposes of Rule 36. See
9 *Federal Practice and Procedure* § 2257 In contrast if the Court
10 permits the Defendant to amend the admissions, the Plaintiff would
11 still be able to go forward with her claim and the Defendant would
12 have the opportunity to attempt to prove her assertion that no
13 such loan or loans were ever made to her. See *Declaration of*
14 *Defendant Margarita R. Tenorio* (Nov. 30, 1993). The latter
15 approach would, therefore, comport with the objectives of Rule
16 36(b).

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

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

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

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

21 Although the Court does not condone defense counsel's failure
22 to timely respond to Ms. Manglona's request for admissions, equity
23 dictates that the Defendant's motion to amend the admissions be
24

25
26
27 ^{3/} In so ruling, this Court seeks to avoid penalizing
28 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.

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

9
10 C. Motion to Strike Opposition Memorandum of Law Pursuant to
11 Com. R. Prac. 8(a)(2)

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

17 In the instant case, the opposition memorandum in question
18 was filed on December 9, 1993, for a hearing that was scheduled
19 for December 15, 1993. Given that December 8, 1993 was a C.N.M.I.
20 Government holiday, it cannot be counted in the computation of
21 time. See Com. R. Civ. Pro. 6(a). Defense counsel, therefore,
22

23 ^{4/} Despite the ruling in the instant case, the Court
24 strongly cautions Mr. Mitchell, that he should pay close attention
25 to the documents served upon his office. The Court is aware of at
26 least one other recent incident in which this attorney has used
27 the argument that his failure to act resulted from an office
28 "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.

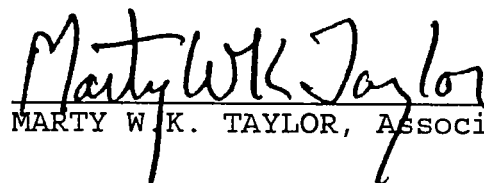
1 correctly notes that the Plaintiff should have filed the
2 opposition memorandum on December 7, 1993. Nonetheless, the Court
3 will exercise its discretion in deciding against striking the
4 untimely memorandum. *Ulloa v. Maratita*, Civil Action No. 91-365,
5 slip. at 2 (N.M.I. Super. Ct. Nov. 27, 1992) (citation omitted)
6 ("The courts generally do not favor motions to strike.").
7 Although the Defendant's motion to strike is DENIED, the Court
8 advises counsel for the Plaintiff to be mindful of Com. R. Prac.
9 8(a)(2) and Com R. Civ. Pro. 6(a) in the future.

10
11 **IV. CONCLUSION**

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

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

24 So ORDERED this 5th day of April, 1994.

25
26 
27 MARTY W.K. TAYLOR, Associate Judge
28