

STATE OF VERMONT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No. 23-CV-02848

JOHN DURKEE, EXECUTOR OF)
THE ESTATE OF KENNETH H.)
BLAISDELL, JR.,)
Plaintiff,)
v.)
TRINI BRASSARD, COURTNEY)
BRASSARD, BRIAN FALZO, DANIEL)
BRASSARD, AND BRASSARD)
SUGARWORKS AND MAPLE)
SUPPLY, LLC,)
Defendants.)

**PLAINTIFF’S OBJECTION TO
DEFENDANTS DANIEL BRASSARD AND
BRASSARD SUGARWORKS AND MAPLE SUPPLY, LLC’S
JOINT MOTION TO HAVE REQUESTS FOR ADMISSION DEEMED ADMITTED**

NOW COMES Plaintiff JOHN DURKEE, EXECUTOR OF THE ESTATE OF KENNETH H. BLAISDELL, JR., (“Estate”), by and through counsel PRIMMER PIPER EGGLESTON & CRAMER PC, and pursuant to V.R.C.P. 26 and 36, hereby OBJECTS to Defendants Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC’s (“Defendants”) Joint Motion to Have Requests for Admission Deemed Admitted and MOVES this Honorable Court for a PROTECTIVE ORDER to enlarge the Rule 36 deadline to file responses to Defendants’ Request to Admit. Plaintiff submits the legal memorandum below in further support.

Legal Standard

V.R.C.P. 36 prescribes the procedure parties must follow to serve a party with requests for admission as well as when the answering party must respond. V.R.C.P. 36. “The matter is

admitted unless, within 30 days after service of the request, or within such shorter or longer time as a Superior Judge may allow, the party to whom the request is directed serves ... a written answer...” *Id.* A request for admission is made to establish “the truth of any matters within the scope of Rule 26(b)... that relate to statements or opinions of fact or the application of law to fact...” *Id.* Requests for admission are categorized as one of the six “Discovery Methods” outlined by Rule 26. V.R.C.P. 26(a). As such, any dispute about the procedure for answering a request to admit is governed by Rule 26. “Counsel have the obligation to make good faith efforts among themselves to resolve or reduce all differences relating to discovery procedures and to avoid filing unnecessary motions.” V.R.C.P. 26(h). A party is entitled to a protective order “when justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense ...” V.R.C.P. 26(c).

Factual Background

On September 24, 2024, Plaintiff was served with requests for admission along with interrogatories and request to produce. See Defendants Interrogatories, Requests to Produce and Requests to Admit to Plaintiff John Durkee, Executor of the Estate of Decedent Kenneth Blaisdell, Jr., attached hereto as **Exhibit A**. On January 9, 2025, Defendant Daniel Brassard sent an email asking when responses would be provided. See January 9, 2025 Email from D. Brassard, attached hereto as **Exhibit B**. Plaintiff served Defendants with written responses to all discovery propounded, including Defendants’ requests for admissions, on January 24, 2025. See John Durkee, Executor of the Estate of Kenneth H. Blaisdell, Jr.’s Response to Defendant Daniel Brassard’s First Set of Interrogatories and Request to Produce, dated January 24, 2025, attached hereto as **Exhibit C**.

Legal Argument

Defendants' motion should be denied, because it fails to state any basis to void served written responses to his requests for admissions. This request, sought while Defendants' own discovery responses are almost fifteen months tardy, is a thinly veiled attempt to penalize Plaintiff and nothing more. "The purpose of discovery is to provide for the fair and open exchange of relevant information between the parties in a reasonable and efficient manner." *Smith v. Cent. Vermont Hosp., Inc.*, 177 Vt. 640, 644 (2004). Yet, Defendant has failed to cooperate in the fair and open exchange of relevant information, while Plaintiff has complied with Defendant's requests. "[T]he purpose of liberal discovery rules is the prevention of surprise to one's opponents." 177 Vt. at 668-69.

Defendants' assertion that tardy responses are deemed admitted is misplaced. While it is true that requests may be admitted, it is entirely at the discretion of the court. V.R.C.P. 36(b). For example, in *Gallipo v City of Rutland* plaintiff never responded to requests for admission for years, and only responded after a motion for summary judgment was filed by defendant. *Gallipo v. City of Rutland*, 178 Vt. 244, 247-48 (2005). Conversely, Defendants served Plaintiff with requests for admissions on September 24, 2024 and received Plaintiff's written responses on January 24, 2025. Compared with the plaintiff in *Gallipo*, the delay in providing a written response here was minor, and has not prejudiced Defendants. Plaintiff understands that this response was ninety days late, but this delay did not cause Defendants any hardship. Unlike the defendant in *Gallipo* who relied upon those admissions for years, and used those admissions to file summary judgment motions after discovery had been closed; the case at bar is still in the discovery phase and no dispositive motions have been filed. *Id.*

Moreover, Defendants failed to adhere to the proper procedure prescribed in Rule 26, to be reasonable and attempt to resolve discovery disputes about procedure without the need for court intervention. *See* V.R.C.P. 26. In fact, Defendants emailed these requests, and never followed-up until January 9, 2024, at which time Plaintiff promptly completed these requests along with the other discovery requests Defendants propounded.

In addition, the majority of Defendants' request for admission are improper, because they either do not relate to the pending action, seek a legal conclusion, or seek information about a genuine issue for trial. Defendants' First Request to Admit at ¶¶ 1-5 and 7-13 do not relate to the pending action, but rather relate to the Probate Division matter¹. *See* **Exhibit C**. Requests for admission are permitted "for purposes of the pending action only." V.R.C.P. 36. Defendants' requests for admission do not relate to Plaintiff's claims against Defendants, but rather are issues Defendants believes are relevant to the Decedent's estate. These admissions are improper under Rule 36.

Further, Defendants' First Request to Admit at ¶ 3 seeks a legal opinion. *See* **Exhibit C**. This specific type of requests is not permitted under Rule 36. The Reporter's Note from V.R.C.P. 26 provides the following guidance: "the first sentence of Rule 36(a)...now expressly provides that admissions may be requested as to 'statements or opinions of fact'... This language aids the issue-narrowing function of admissions ... and the applicability of the rule to mixed questions of law and fact." V.R.C.P. 26 Reporter's Note. However, issues as to liability are improper. *Id.*

Finally, Defendants motion seeks to create a contradictory record in that the motion is seeking to admit facts that are known to be untrue as indicated in Plaintiff's responses. "The

¹ *In re: Estate of Kenneth H. Blaisdell, Jr.* Orange Unit, Docket No. 21-PR-04895.

court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits.” *Gallipo v. City of Rutland*, 178 Vt. 254. Defendants’ First Request to Admit at ¶¶ 1 and 6 cite to specific documents produced by Plaintiff that disprove the related request for admission. See **Exhibit C**. Defendants’ First Request to Admit at ¶ 1 seeks an admission about the substance of a tax return that Plaintiff had previously produced to all defendants in this case. Defendants are now attempting to gain admission of a fact that is false based on the plain reading of that same tax return. Compare **Exhibit C** with 2021 U.S. Individual Income Tax Return, attached hereto as **Exhibit D**. Defendants’ First Request to Admit at ¶ 6, seeks admission about communications between Plaintiff and Defendant Dan Brassard attempting to establish no communication took place between these two parties about agricultural businesses owned by the Decedent. **Exhibit C**. If Defendants’ motion prevails, this admission would contradict previously produced email communications between these parties that establish this request for admission is false. See, 2022 Email communications between D. Brassard and J. Durkee, attached hereto as **Exhibit E**.

Discovery, including request for admissions, are relied upon to support “the desirability of resolving litigation on the merits,” and creating a blanket admission of certain facts that are proven untrue by other discovery documents is inapposite to that purpose. *In re Appeal of Bren*, 2007 WL 6970411 (Vt. Env. Ct. 2007) citing, *Desjarlias v. Gilman*, 143 Vt. 154, 159 (1983). Defendants not only seek to circumvent that purpose in their pending motion, but do so while being fully cognizant that their request would seek to create false narratives for the pending case. Request to admit are a valuable discovery tool, but are not intended to be used as a form of

gotcha gamesmanship. “Rule 36 serves two vital purposes: to narrow the issues for trial by eliminating issues with respect to which there is no dispute, and to facilitate the proof at trial with respect to issues that cannot be eliminated from the case.” *Meyers v. Town of Putney (in re Corp. of Windham Coll.)*, 34 B.R. 408, 411 (Bankr. D. Vt. 1983).

In summary, Defendants filed a motion seeking to void written responses to their request for admission, for no reason other than a deadline in Rule 36. Defendants have not indicated how the tardy responses have prejudiced them. Defendants have not argued how granting their requested relief would advance resolution of the case. Defendants fail to inform the court that they are more than fifteen months delinquent in their own responses to Plaintiffs’ discovery requests. Essentially, Defendants are seeking to sanction Plaintiff without any legitimate basis. Rule 36 allows Superior Judges discretion to prescribe a shorter or longer time to serve answers for request for admission. “Rule 36(b) gives courts discretion when assessing whether a failure to respond to a request to admit should be treated as an admission.” *In re Shader*, 2011 WL 6739581 (Bank. D.Vt. 2011). In the *Shader* case, defendant failed to provide written responses to request for admission and ten months later plaintiff relied upon these admissions in their summary judgment motion. *Id.* However, even in that circumstance defendant was afforded additional time to provide written responses to plaintiff’s request for admission, because “[h]aving more clarity about the facts related to the causes of action set out in the complaint, will aid in the litigation of the merits, and may well narrow the issues for the ...trial.” *Id.*

While the facts before the court are dissimilar to the *Gallipo* and *Shader* cases, the result should be the same because should Defendants’ motion prevail facts will be muddled, issues at trial will unduly confuse any trier of fact, and issues will not be narrowed. These results are the opposite of the rationale to employ a request for admission. Defendants are not prejudiced

should their motion fail, in fact Defendants' own delays in providing discovery has ensured this fact is true where the discovery schedule has been amended twice in this case to accommodate their tardy discovery responses.

WHEREFORE, Plaintiff asks that the Court DENY Defendants' motion and further seeks a PROTECTIVE ORDER to extend the prescribed deadline to response to requests to admit under Rule 36 from 30 days to 90 days, to allow for these responses; and further request all such other relief as this Honorable Court deems just and appropriate under the circumstances.

DATED at Woodstock, Vermont this 14TH day of February, 2024.

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