

STATE OF VERMONT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Case No. 23-CV-02848

JOHN DURKEE, EXECUTOR OF THE
ESTATE OF DECEDENT [KENNETH] H.
BLAISDELL, JR.,
Plaintiff,

v.

TRINI BRASSARD, COURTNEY BRASSARD,
BRIAN FALZO, DANIEL BRASSARD, AND
BRASSARD SUGARWORKS AND MAPLE
SUPPLY, LLC,
Defendants.

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

Defendants, Daniel Brassard ("Mr. Brassard"), and Brassard Sugarworks and Maple Supply, LLC ("Brassard Sugarworks") hereby submit this reply to *Plaintiff's Objection to Defendants Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC's Joint Motion to Have Requests for Admission Deemed Admitted*, filed February 14, 2025 (hereinafter, "Plaintiff's Objection"). The Court should grant *Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC's Joint Motion to Have Requests for Admission Deemed Admitted*, filed

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February 14, 2025 (hereinafter, “Defendants’ Motion”), because (1) the plain language of V.R.C.P. Rule 36 makes clear that the facts contained Defendants’ requests for admission are admitted by virtue of Plaintiff’s failure to produce timely responses, and it is Plaintiff’s burden to demonstrate the admissions should be amended or withdrawn; (2) Plaintiff has failed to show his delay in responding to Defendants’ requests for admission in accordance with the Court’s procedural rules was the product of excusable neglect; and (3) the case law cited in support of Plaintiff’s objection is inapposite to and readily distinguishable from the matter at hand. In further support of their joint motion, Mr. Brassard and Brassard Sugarworks state as follows:

1. Initially, Plaintiff misstates the law with respect to the admission of the facts contained in unanswered (and/or untimely answered) requests to admit. Plaintiff’s Objection at pg. 3.
2. While the Court may, in its discretion and pursuant to V.R.C.P. Rule 36(b), “permit[] withdrawal or amendment of [an] admission[,]” V.R.C.P. Rule 36(a) clearly states, “[t]he matter is admitted” unless a party serves their responses to the requests to admit within 30 days after service, (emphasis added), and the case law cited by Plaintiff wholly contradicts his argument. *See, e.g., In re Shader*, 2011 Bankr. LEXIS 5127, *5, 2011 WL 6739581 (Bank.

D. Vt. 2011) (“Since the Defendant did not respond within 30 days...Rule 36 would require a finding that the Defendant has admitted the facts set forth...unless, upon motion, the Court determines there are circumstances which warrant permitting the Defendant to withdraw or amend the admissions.”) (emphasis added).

3. Further, Plaintiff readily admits his responses to Defendants’ discovery requests were produced long after the deadline to respond had passed, Plaintiff’s Objection at pg. 3, and, as previously noted, Plaintiff never requested an extension of the deadline from either Defendants or the Court prior to producing his responses. *Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC’s Joint Motion to Have Requests for Admission Deemed Admitted*, filed February 14, 2025 at ¶ 2 (hereinafter, “Defendants’ Motion”). In fact, Plaintiff only sought a formal extension after Defendants moved to have their requests for admission formally deemed admitted by the Court.
4. To that point, the Court should deem admitted the facts contained in Defendants’ requests for admission, because Plaintiff has failed to demonstrate his failure to produce timely responses was the product of excusable neglect. See, V.R.C.P. Rule 6(b)(1)(B) (“When an act...must be done

within a specified time, the court may, for good cause, extend the time...on motion made after the time has expired if the party failed to act because of excusable neglect.") (emphasis added).

5. The Supreme Court has established a four-factor test for evaluating a claim for excusable neglect, including (1) the danger of prejudice to the non-moving party; (2) the length of the delay and its impact on judicial proceedings; (3) the reason for the delay and whether it was within the movant's reasonable control; and (4) whether the moving party acted in good faith, *In re Town of Killington*, 176 Vt. 60, 68 (2003), but "the appropriate focus is on the third factor: the reason for delay, including whether it was within the reasonable control of the movant." *Id.* Further, the "excusable neglect standard is a strict one," and does not include simple mistakes made by a party's counsel. *State v. Felix*, 153 Vt. 170, 171 (1989) (an attorney's failure to file an appeal was not excusable neglect).
6. Here, Plaintiff provides no explanation or justification for his failure to abide by the Court's procedural rules, and, instead, argues simply that his delay in responding "was minor" and "has not prejudiced Defendants." Plaintiff's Objection at pg. 3. Indeed, the total lack of any argument concerning the reason for Plaintiff's failure to produce timely responses

makes clear Plaintiff's failure was not excusable neglect, but, more likely, the product of inattention, and, as such, the Court should grant Defendants' Motion. *See Town of Killington*, 176 Vt. at 69 (an internal office procedure breakdown that resulted in the failure to calendar an appeal deadline was not excusable neglect); *see also, In re von Turkovich*, 2018 VT 57, ¶ 5, 207 Vt. 545, 191 A.3d 974 (“[A] party generally will not show excusable neglect if...as the result of some minor neglect, compliance was not achieved.” (internal quotation and citation omitted); *In re Lund*, 2004 VT 55, ¶ 5, 177 Vt. 465, 857 A.2d 279 (inattention to detail rarely constitutes excusable neglect); *Bergeron v. Boyle*, 2003 VT 89, ¶ 22, 176 Vt. 78, 838 A.3d 918 (“Plaintiff's excuse that an attorney's vacation and a related breakdown in internal office procedures resulted in the late filing is insufficient to warrant a finding of excusable neglect.”).

7. Moreover, Plaintiff's arguments concerning the creation of “a contradictory record[,]” based on the admissions not only attempts to obfuscate Plaintiff's failure to abide by Court rules, but also actively misrepresents the content of the requests for admission and the exhibits filed with Plaintiff's Objection.

8. By way of example, Defendants requested Plaintiff “[a]dmit that you have not once had a one-on-one conversation of the role I played in my grandfather’s haying operation from 2013-2021.” *Exhibit C* to Plaintiff’s Objection, at pg. 7 (emphasis added). Plaintiff argues “this admission would contradict previously produced email communications between these parties that establish this request for admission is false[,]” and cites to Exhibit E. Plaintiff’s Objection, at pg. 5. However, Exhibit E, which consists of emails exchanged between Plaintiff and Mr. Brassard during April and May of 2022 regarding hay sales for those months does nothing to disprove the truth of the facts contained in Defendants’ request to admit. Further, if Plaintiff believes he could have denied one or more of the requests to admit because of contradictory evidence, then he should have done so in accordance with Rule 36 (and, if the Court grants Defendants’ Motion to deem the relevant facts admitted, the Plaintiff should be prohibited from introducing evidence which he contends contradicts any prior admissions).
9. Finally, the case law Plaintiff relies upon in support, like *In re Shader*, 2011 Bankr. LEXIS 5127, 2011 WL 6739581 (Bank. D. Vt. 2011), is unavailing, as it is readily distinguishable from the present matter. Importantly, the party seeking to withdraw the admissions was proceeding *pro se*, and the Court

has repeatedly recognized that “pro se litigants receive [] leeway from the courts[,]” that represented parties are not afforded, *Zorn v. Smith*, 2011 VT 10, ¶ 22, 189 Vt. 219, 19 A.3d 112; *see also, Vahlteich v. Knott*, 139 Vt. 588, 591 (1981), because the Court will not “permit unfair imposition or unconscionable advantage to be taken of one who acts as his own attorney.” *State Highway Board v. Sharrow*, 125 Vt. 163, 164 (1965).

10. In stark contrast, Plaintiff has been represented by two (2) attorneys since the inception of this litigation and should not be afforded the same “leeway” afforded to *pro se* litigants. Instead, the Court should apply its procedural rules as written and hold that the facts contained in the Defendants’ requests for admission be admitted for the purposes of trial in this matter.

WHEREFORE, Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC, respectfully request this Honorable Court enter orders:

- A. Granting *Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC’s Joint Motion to Have Requests for Admission Deemed Admitted*, filed February 14, 2025; and
- B. Granting such other relief as is deemed fair and just.

Dated at East Randolph, Vermont, this 28th day of February, 2025.

Respectfully submitted,

DANIEL BRASSARD and BRASSARD
SUGARWORKS AND MAPLE SUPPLY,
LLC

A handwritten signature in black ink, appearing to read 'Daniel Brassard', written over a horizontal line.

capacity

Daniel Brassard, individually and in his
as Manager of Brassard Sugarworks and
Maple Supply, LLC