2011 IL App (2d) 110159-U
No. 2-11-0159
Order filed December 8, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

AMERICAN EXPRESS BANK, FSB,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-AR-273
	)	
KAREN RONEY,	)	Honorable
	)	Bruce R. Kelsey,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

ORDER

Held: Despite defendant's various objections, plaintiff's requests to admit were proper, such that defendant's failures to properly respond resulted in admissions sufficient to justify summary judgment for plaintiff.

¶ 1 Plaintiff, American Express Bank, FSB, sued defendant, Karen Roney, for the balance allegedly due on a credit card issued to her. Plaintiff propounded discovery materials, including requests to admit facts. Defendant filed three responses, objecting or incompletely answering most of the questions. Following the third response, the trial court deemed the facts admitted and granted

plaintiff summary judgment. Defendant appeals, contending that her answers and objections were proper. We disagree and affirm.

¶ 2 Plaintiff's complaint alleged that it issued defendant a credit card. She used the card, but failed to pay for all of the charges, leaving a balance of $21,026.84.

¶ 3 Plaintiff served defendant with discovery requests, including interrogatories, requests to produce, and, particularly relevant here, a request to admit facts. Defendant responded by objecting to every request. The trial court gave her 21 days to file detailed answers, but she merely repeated her previous responses. The court gave her 14 additional days to answer. She responded with a memorandum of law contending that the original responses were appropriate. The court held that the questions were sufficiently specific and gave her another 10 days to answer. Defendant then filed a third response, answering some questions but objecting to most of them.

¶ 4 Plaintiff moved to bar defendant from presenting evidence and for summary judgment. Following a hearing, the trial court granted the motion. The court's written order states that defendant's responses to discovery were deemed insufficient and, accordingly, the facts in the request to admit were deemed admitted. In the absence of any factual issues, summary judgment for plaintiff was appropriate. Defendant appeals.

¶ 5 Defendant contends that her responses to the request to admit were appropriate and, therefore, the trial court should not have deemed the facts admitted. Defendant further contends that summary judgment was improper because plaintiff produced no affirmative evidence is support of its summary judgment motion.

¶ 6 Although the rule authorizing requests to admit (Ill. S. Ct. R. 216 (eff. May 30, 2008)) is placed with the rules governing discovery, requests to admit differ from other discovery devices in

that they are designed not to produce evidence but to limit the issues at trial by withdrawing admitted facts from contention. *Ellis v. American Family Mutual Insurance Co.*, 322 Ill. App. 3d 1006, 1010 (2001). Proper use of requests to admit results in substantial savings of time and expense, both for the parties and for the court. *Szczeblewski v. Gossett*, 342 Ill. App. 3d 344, 349 (2003). When a party fails to respond properly to a request to admit facts, those facts are deemed judicial admissions that cannot later be controverted. Such an admission has the effect of withdrawing a fact from contention. *Moy v. Ng*, 371 Ill. App. 3d 957, 960-61 (2007). When a party gives evasive or unresponsive answers to a request to admit, the trial court may strike the response and deem the facts admitted. *Liepelt v. Norfolk & Western Ry. Co.*, 62 Ill. App. 3d 653, 666-68 (1978). The failure to respond appropriately to a request to admit may give rise to summary judgment. *P.R.S. International, Inc. v. Shred Pax Corp.*, 184 Ill. 2d 224, 239 (1998); *Zwicky v. Freightliner Custom Chassis Corp.*, 373 Ill. App. 3d 135, 140 (2007). Generally, a reviewing court will not disturb a trial court's ruling on discovery matters absent an abuse of discretion. *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505, 516 (2010). However, the specific question whether a request to admit is proper is a question of law that we review *de novo*. *P.R.S. International, Inc.*, 184 Ill. 2d at 233-34.

¶ 7 In her brief, defendant lists each of the 32 requests to admit along with her response and a brief explanation of why she believes the response was proper. We need not set forth each question and response individually here, because defendant's responses fall into several broad categories.

¶ 8 Defendant objected to a number of questions that used the phrase "and/or." Citing *In re Marriage of Lima*, 265 Ill. App. 3d 753 (1994), she contends that the use of "and/or" rendered the questions ambiguous. In that case, this court criticized the use of that phrase, calling it "purposefully

ambiguous" and "useful in its self-evident equivocality." *Lima*, 265 Ill. App. 3d at 757. Nevertheless, we did not hold that the phrase may never be used in a legal document or that its use in a request to admit automatically renders a question so ambiguous that it is incapable of being answered. Here, for example, defendant objected to the question, "You used the AMERICAN EXPRESS BANK, FSB credit card to purchase goods and/or services." Clearly, the question was capable of being answered. Defendant either purchased goods, purchased services, purchased both, or purchased neither.

¶ 9 Defendant responded to several other questions by stating that she did not remember. She contends that this was a truthful answer. As plaintiff points out, however, Rule 216(c) specifically states that the answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party tenders "a sworn statement *** setting forth in detail the reasons why he cannot truthfully admit or deny those matters." Ill. S. Ct. R. 216(c) (eff. May 30, 2008). Here, defendant's answer gave no indication that she consulted any available sources to provide further information. Because defendant insists that the card was used for business purposes, she presumably had business records that might have provided further information. In *Liepelt*, the defendant railroad stated that it had insufficient information to answer several requests. However, the reviewing court concluded that the defendant should have been able to locate the requested information merely by checking its own records. *Liepelt*, 62 Ill. App. 3d at 667-68.

¶ 10 Defendant objected to a number of questions asking whether she was "aware" of something. Defendant asserts that her awareness is not a fact that can be proven or disproven. We disagree. The obvious meaning of "aware" as used here is whether defendant "knew" a particular fact. "Facts" include "states of mind such as intentions and opinions." *Black's Law Dictionary* 628 (8th ed.

2004). The vast majority of criminal statutes require the State to prove a defendant's state of mind in order to obtain a conviction. Many require proof that a defendant knew a particular fact. See, *e.g.*, 720 ILCS 5/16-1(a)(4) (West 2010) (defendant commits theft where he or she "[o]btains control over stolen property knowing the property to have been stolen"). Moreover, whether defendant knew or was aware of a fact was clearly within her personal knowledge. For the same reasons, we reject defendant's argument that her awareness of a fact is a legal conclusion.

¶ 11 Defendant objected to several requests on the ground that they called for conclusions. However, as plaintiff notes, factual conclusions are permitted in requests to admit. Only legal conclusions are prohibited. *P.R.S. International, Inc.*, 184 Ill. 2d at 236-37, 239. The vast majority of questions to which defendant objected called for factual, rather than legal, conclusions. We agree with defendant that the penultimate question, "You have no defense to the repayment of this obligation ***," called for a legal conclusion. However, even without an admission to this request, plaintiff proved its case. The remaining requests established plaintiff's right to recover, and nothing in any of defendant's responses, or her other filings, established an affirmative defense.

¶ 12 Defendant complains that the trial court struck her responses and deemed the facts admitted even though no Supreme Court Rule 201(k) (eff. July 1, 2002) conference was ever held. That rule provides that every discovery motion "shall incorporate a statement that counsel responsible for trial of the case after personal consultation and reasonable attempts to resolve differences have been unable to reach an accord." Ill. S. Ct. R. 201(k) (eff. July 1, 2002). However, technical compliance with the rule is not required where the record shows that the parties were unable to reach an accord after reasonable attempts to resolve their differences. *Hartnett v. Stack*, 241 Ill. App. 3d 157, 174 (1993). Here, defendant had three opportunities to completely answer the requests. Each time,

plaintiff and the trial court pointed out the defects in the prior responses. Thus, the record shows that the parties attempted to resolve their differences but were unable to do so. Moreover, as defendant continued to insist that her initial objections were proper, it was reasonable to conclude that further attempts to negotiate a solution would have been futile.

¶ 13 Finally, defendant contends that the trial court erred by granting plaintiff summary judgment. Defendant complains that plaintiff presented no affirmative evidence in support of its right to judgment but instead required defendant to admit to factual conclusions and, in essence, prove plaintiff's case for it. However, as noted above, requests to admit may include factual conclusions, and may even relate to issues of ultimate fact. *P.R.S. International, Inc*., 184 Ill. 2d at 236-37, 239. Moreover, when a party does not respond appropriately to requests to admit, the facts are deemed admitted and may be the sole ground for summary judgment. *P.R.S. International, Inc.*, 184 Ill. 2d at 239. Here, plaintiff's requests appropriately related to ultimate facts. Once defendant failed to meaningfully respond and the trial court deemed the facts admitted, there was nothing further for plaintiff to do.

¶ 14 Summary judgment is appropriate where no genuine issue of material fact is present and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). Here, defendant's constructive admission of the facts left no issue of material fact. Plaintiff established that it issued defendant a credit card, that she knew of the cardholder agreement requiring her to pay all legitimate charges, that she did use the card, incurring charges as a result, and that she failed to pay. Thus, the trial court properly granted plaintiff summary judgment.

¶ 15 The judgment of the circuit court of Du Page County is affirmed.

¶ 16 Affirmed.