2001 WL 1906273
Only the Westlaw citation is currently available.
United States District Court, W.D. Tennessee, Western Division.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
v.
RENT–A–CENTER, INC., Defendant.

No. 99–2427 GV (Ml). | Nov. 30, 2001.

Opinion

ORDER DENYING PLAINTIFFS' MOTION FOR DEFAULTED ADMISSIONS

VESCOVO, Magistrate J.

***1** The plaintiff, the Equal Opportunity Employment Commission (EEOC), filed this motion on October 30, 2001, seeking defaulted admissions pursuant to Federal Rule of Civil Procedure 36 due to the defendant Rent–A–Center, Inc.'s untimely responses to the EEOC'S requests for admission. Specifically, the EEOC requests that Rent–A–Center's failure to file responses to its third set of requests for admissions in a timely fashion result in a ruling to admit by default the requests that were unanswered within the thirty-day time period prescribed by Rule 36. The EEOC contends that Rent–A–Center's mistaken assumption that requests for admissions were a discovery device and hence restricted by the scheduling order's time frame allows the requests to be admitted by default, thus resolving the merits of the case in its favor. This motion was referred to the United States Magistrate Judge for determination and is presently before this court.

The EEOC filed suit against Rent–A–Center on May 14, 1999 on behalf of Sheila Harford, Edith Ruby, Tequila Burse and LaDonna Fason, as well as a class of women, all alleging sex discrimination in the employment process. Originally, the late Judge Turner presided over this case and set a scheduling order calling for a discovery deadline of April 30, 2001. This deadline was subsequently moved on joint motion of the parties to October 1, 2001. The EEOC served its third set of requests for admission on Rent–A–Center on September 20, 2001, by mail. Rent–A–Center responded to the admissions on October 22, 2001, by objecting to the requests as untimely because the thirty-day time period allotted by Rule 36 in which to respond to requests for admissions continued well past the discovery cut-off date of October 1, 2001.[1] After receiving the objections, the EEOC, on October 25th, faxed a letter to Rent–A–Center, notifying it of the EEOC's intent to seek to have the responses admitted by default because requests for admissions are not a form of discovery and are therefore not subject to the discovery cut-off date. The following day, October 26th, counsel for the parties discussed the requests and objections but could not resolve the issue. On Monday, October 29, 2001, Rent–A–Center faxed supplemental responses and objections to the EEOC's third set of requests for admission, objecting to two of the requests as too vague, but admitting or denying the remainder. The following day, the EEOC filed the instant motion.

[1] Specifically, Rent–A–Center objected to each request in the following manner: "Defendant objects to the foregoing Request on the basis that the Request was served in violation of the Court's Scheduling Order in this matter."

The EEOC contends that Rent–A–Center's failure to respond properly to the requests in a timely fashion should justify the defaulted admission of all of the requests. It further argues that Rent–A–Center should have properly apprised itself of the applicable law governing requests for admission. It maintains that the law regarding requests for admission is clear and that Rent–A–Center should not be allowed to supplement its responses without asking the Court's permission. Last, the EEOC argues that if Rent–A–Center is allowed to withdraw the defaulted admissions or to file an amendment, it would prejudice the EEOC.

***2** Rent–A–Center, in response, contends that the law is far from clear on the issue of requests for admission and their classification as a discovery device. Additionally, Rent–A–Center points out that the EEOC has not stated in what capacity it would be prejudiced in allowing Rent–A–Center to amend or withdraw its responses. It further contends that it submitted *objections* to the requests in a timely manner, which is permitted under Rule 36.

According to Rule 36, "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Fed.R.Civ.P. 36(b). A court, exercising discretion, may grant a party's motion to amend or withdraw defaulted admissions to assist in the "normal, orderly presentation of the case" absent a showing of prejudice by the other party. *St. Regis Paper Co. v. Upgrade Corp.,* 86 F.R.D. 355, 357 (W.D.Mich.1980). In other words, the court may allow a party to amend or withdraw its responses when (1) it would be beneficial to the presentation of the merits of the case and (2) it would result in no prejudice to the party obtaining the admission in its claims or defenses.

See Fed.R.Civ.P. 36(b); *O'Neill v. Medad,* 166 F.R.D. 19, 22 (E.D.Mich.1996).

Under the first prong of the test regarding the benefit to the presentation of the case, if this court allowed the defaulted admissions to stand, the defendant will have admitted to disparate treatment of women and the merits of the case would be easily established. According to the unpublished case cited by the EEOC, *Lovejoy v. Owens,* 1996 WL 287261 No. 94–4224 at *2 (6th Cir. May 28, 1996), the first prong is satisfied when the admissions would "practically eliminate" the presentation of the contested issues by the parties. This prong, therefore, would be satisfied by allowing the defaulted admissions to stand.

The second prong is only satisfied, however, if the EEOC can show that it would suffer prejudice in the event the court allowed Rent–A–Center to amend or withdraw its responses. The EEOC directs this court's attention to several cases where other courts have affirmed defaulted admissions and urges this court to follow suit. The factual situations in these cases, however, have little to do with the facts of the case at bar. In one case cited by the EEOC, *O'Neill v. Medad,* 166 F.R.D. 19, 22–23 (E.D.Mich.1996), the defendant willfully failed to respond to the requests altogether. In the present case, Rent–A–Center, unlike Medad, made a good faith effort to respond within the thirty-day time period with objections to the requests, which Rule 36 expressly allows.

As the EEOC has pointed out, however, Rent–A–Center's objections were not based on the applicable law in the Sixth Circuit, but this alone does not justify defaulting the admissions in the EEOC's favor. Prejudice must still be shown. As both parties are aware, the discovery deadline has passed. Depositions have been taken, interrogatories and other discovery devices have been propounded and responses have been filed. The requests for admissions, filed late in the game, did not and cannot influence the EEOC in its decisions in discovery, i.e., decisions based on what depositions to take or what interrogatories to propound. All matters on the scheduling order, save the trial itself, have been completed. The case is set for trial in March of 2002, and the EEOC has not articulated any prejudice, such as proof problems due to the unavailability of witnesses, for example, that may result if the defaulted admissions are withdrawn. Moreover, Rent–A–Center moved quickly to supplement its responses upon learning that its objections lacked merit. The supplemental responses were only six days late.

***3** The only prejudice the EEOC asserts it will suffer is that it will now have to prove the merits of its case rather than simply relying on the defaulted admissions to establish its claims of discrimination. While this argument applies to the first prong of the inquiry, there is no prejudice in requiring the EEOC to perform the tasks that it originally set out to fulfill by bringing this lawsuit. Absent the defaulted admissions, the EEOC would be bound to prove its case and attempt to prevail on the merits—surely this requirement is the most fundamental one for a plaintiff and cannot be considered prejudicial under any circumstance.

Additionally, the EEOC argues that the law regarding requests for admission is well-established and that Rent–A–Center should have been aware that requests for admissions were not considered a discovery device and therefore not subject to the discovery cutoff. Several decisions conflict with this assertion, however, indicating a split among the circuits and dissension among the district courts.[2] In addition, the cases cited by the EEOC are not entirely enlightening in the matter. For the proposition that the law in this circuit is clear that requests for admissions are not subject to the discovery deadline, the EEOC relies primarily on the Sixth Circuit case of *Misco, Inc. v. Unites States Steel Corp.,* 784 F.2d 198, 205–06 (6th Cir.1986), quoting, "[r]equests for admissions are not a general discovery device." The *Misco* court makes no mention, however, as to whether requests for admissions are affected by discovery deadlines in scheduling orders. Further, other courts have noted that it is by no coincidence that Rule 36 is located under the heading of "Depositions and Discovery" in the Federal Rules of Civil Procedure.[3] While district courts within the Sixth Circuit have decided that requests for admissions are not discovery devices subject to discovery deadlines, this area of the law is not quite as settled as the EEOC would have this court believe. Irrespective of the Sixth Circuit's position on requests for admissions and their relation to discovery deadlines, the basic showing that the EEOC must make to have the admissions affirmed lies in the two-pronged test discussed above.

2 *See, e.g., Jarvis v. Wal–Mart Stores, Inc.,* 161 F.R.D. 337, 339 (N.D.Miss.1995) (distinguishing its case from the Fifth Circuit's opinion in *Pickens v. Equitable Life Assurance Society,* 413 F.2d 1390 (5th Cir.1969), stating that the Fifth Circuit did not decide whether Rule 36 requests were subject to the procedures governing discovery); *Epling v. UCB Films, Inc.,* No. 00–4062–RDR, 2001 WL 584355 (D. Kan. April 2, 2001) (finding magistrate judge's decision that requests served after discovery deadline were untimely was not clearly erroneous); 8A C. Wright, A. Miller et al, Federal Practice and Procedure § 2257 at p. 539 n. 1 (noting that Rule 36 requests were not "purely" discovery devices but that only one case has directly held that as such, they are not subject to the discovery deadlines of a scheduling order). *Cf. Kershner v. Beloit Corp.,* 106 F.R.D. 498, 499–500 (D.Me.1985) (explaining that parties must respond to requests filed even if it extends past the discovery deadline); *Hurt v. Coyne Cylinder Co.,* 124 F.R.D. 614, 615 (W.D.Tenn.1989) (holding that requests for admissions

are not discovery devices and are not subject to discovery deadlines); *O'Neill v. Medad,* 166 F.R.D. 19, 21 (E.D.Mich.1996) (same).

[3] *Jarvis v. Wal–Mart Stores, Inc.,* 161 F.R.D. 337, 339 (N.D.Miss.1995) (assigning weight to the fact that Rule 36 was placed in the discovery section of the Rules).

The court finds that the EEOC would not be prejudiced in any capacity by allowing Rent–A–Center to withdraw the defaulted admissions and therefore denies the EEOC's request to order the defaulted admissions affirmed. Due to the lack of prejudice to the EEOC, the court will allow Rent–A–Center to amend and supplement its responses to the EEOC's third set of requests for admissions. Rent–A–Center's supplemental responses and objections to the EEOC's third set of requests are hereby accepted as filed. Each party will bear its own expenses and attorney fees incurred by it with respect to the motion.