

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

VELOCITY INVESTMENTS, LLC.)	C.A. No. U508-09-0080
)	
Plaintiff,)	
)	
v.)	
)	
DENENE RICHARDSON and)	
JUDAS RICHARDSON)	
)	
Defendants.)	

RESERVED DECISION AFTER MOTION FOR SUMMARY JUDGMENT

Submitted: November 23, 2009

Decided: January 6, 2010

Patrick Scanlon, Esquire, 203 NE Front Street, Suite 101, Milford, DE 19963, Attorney
for the Plaintiff.

Denene Richardson and Judas Richardson, 205 Gravely Branch Road, Clayton, DE
19938, *Pro Se*.

Reigle, J.

Procedural Posture

This civil suit was filed in the Court of Common Pleas on September 12, 2008 by the plaintiff filing a *Complaint, Praecipe and Summons for Service* on both defendants. The plaintiff alleged that it was the original owner of an account owned by American Finco Financial Services who had loaned \$7,252.95 to the defendants to purchase a water softener system for their house. The *Complaint* asked for judgment in that amount plus pre-judgment interest, post-judgment interest and costs.

Both of the defendants were served on February 22, 2009. Defendant, Denene Richardson, submitted an *Answer* on March 9, 2009 and denied the allegations.

On April 3, 2009, a *Request for Admissions, Set of Interrogatories and Request for Production* was served on both defendants by the plaintiff.

On June 15, 2009, the plaintiff filed a *Motion for Summary Judgment* on the grounds that there were no material facts in dispute and the case should be resolved as a matter of law, pursuant to Court of Common Pleas Civil Rule 56. The plaintiff argued that there were no factual disputes because the defendants failed to deny the *Request for Admissions* filed by the plaintiff within the thirty day deadline and that failure would be considered to be an admission to all of the allegations. Once all of the facts were considered admitted – there would be no material issue of fact and the matter could be decided by summary judgment.

On June 19, 2009, the plaintiff filed a *Motion to Compel Responses to Interrogatories and Request for Production* arguing that despite service and a subsequent letter by the plaintiff's attorney, defendants had failed to file answers or a response.

On July 6, 2009, a *Pre-Trial Conference* was held. Both the *Motion to Compel* and the *Motion for Summary Judgment* were also scheduled for argument that day.

The defendants appeared and addressed the Court. They stated that they were not represented by counsel and that they did not understand the pleadings filed by the plaintiff. When it was brought to their attention that the defendant, Judas Richardson, had failed to file an answer, they explained that they did not understand that each defendant must respond separately. Both defendants also asserted a defense on the grounds that money had been loaned to them to purchase a water softener system by Atlantic Water Company for their home and that it was defective. There were also some vague assertions that a “slick” salesman had altered or made misrepresentations on loan documents. However, the defendants failed to articulate any remedial steps that they had taken regarding the alleged false documents or defective water softener. Rather, the defendants asserted that it did not work and they therefore stopped payment. They did not return the water softener and could not document any correspondence to the company regarding their claims. Since the plaintiff was not the company that sold the water system or installed it, but merely the company who financed the purchase, the plaintiff’s counsel was unable to respond to the assertions of a defense.

At the end of the hearing and arguments on the motions, the Court ruled that Mr. Richardson must file an *Answer* to the *Complaint* within thirty days or by August 6, 2009. On the *Motion to Compel*, the Court granted the motion and instructed both defendants to answer the *Interrogatories* and respond to the *Requests for Production* within thirty days. On the *Motion for Summary Judgment*, the Court gave the defendants an additional thirty days to respond to the *Request for Admissions* and ordered the motion

continued until September 14, 2009. The *Pre-Trial Conference* was also continued until September 14, 2009, to allow parties to complete discovery and a *Pre-trial Conference Worksheet* before proceeding with the conference.

It should be noted that the plaintiff filed a *Pretrial Conference Worksheet* with the Court, on June 24, 2009, prior to the *Pre-Trials Conference*, but that Defendants failed to file their *Worksheet*, despite being mailed notice to do so by the Court.

On July 6, 2009, Mr. Richardson filed his *Answer to the Complaint* with the Court. He denied all of the allegations except his address.

On July 31, 2009, a joint set of *Answers to Interrogatories* was filed by the defendants with the Court. By the August 6, 2009 deadline given at the *Pre-trial Conference* however, no *Response to Production of Documents* or *Response to Request for Admissions* were filed by either of the defendants.

On August 12, 2009, the plaintiff filed a *Second Notice of Service of Interrogatories and Request for Production to the Defendants*.

On September 4, 2009, a joint *Pre-Trial Conference Worksheet*, which was signed by both sides, was filed with the Court. It was expressly stated in the worksheet that discovery was still outstanding and that the plaintiff anticipated filing additional motions regarding the lack of discovery.

On September 10, 2009, the defendants responded to the *Second Set of Interrogatories* but the September 12, 2009 deadline passed for *Response to the Second Request for Production of Documents*. No additional responses, answers, letters or filings were submitted by the defendants.

On September 14, 2009, the *Second Pre-trial Conference* was heard. The defendants appeared *pro se*. The plaintiff's counsel renewed his *Motion for Summary Judgment* on the grounds that the defendants had failed to answer the *Request for Admissions*. He submitted that this failure constituted an admission of each fact set forth in the *Request for Admissions*. He also submitted that the defendants had failed to respond to the *First and Second Requests for Productions* and failed to answer either set of *Interrogatories* in a manner which would properly advise the plaintiff of the defenses in a meaningful way that would allow the plaintiff to properly prepare for trial. It was asserted that the plaintiff was thereby unfairly prejudiced under the guidance of Court of Common Pleas Civil Rule 26(b)(1).

The Court reserved decision following the *Motion for Summary Judgment* and subsequently requested each side to present written submissions specifically addressing *Court of Common Pleas Civil Rule 26(b)(1)* and the holding of *Bryant v. Bayhealth Medical Center*, 937 A.2d 118 (Del. 2007). The plaintiff's attorney submitted letters, but the defendants did not. The decision follows.

Discovery

Discovery is governed by Court of Common Pleas Rule of Civil Procedure 26, which states, in applicable part:

- (b) *Discovery scope and limits*. Unless otherwise limited by order of the Court in accordance with these Rules, the scope of discovery is as follows:
 - (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of person having knowledge of any discoverable matter. It is not ground for objection that the information sought

will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence

C.C.P. Civ. Rule 26(b)(1).

It was asserted by the plaintiff that the defendants failed to provide discovery in the form of *Responses to Production of Documents*. Two *Requests* were properly made under Court of Common Pleas Rule of Civil Procedure 34. *Responses* must be made within 30 days of service. Rule 34(b). The defendants failed to respond or object within the deadlines. It was also asserted by the plaintiff that the defendants failed to *properly* answer either set of *Interrogatories*. The *Interrogatories* were properly filed under Court of Common Pleas of Civil Procedure Rule 33. *Answers* must be made within 30 days of service. Rule 33(a)(3). Evasive or incomplete answers are treated as a failure to answer under Rule 37(a)(3).

The plaintiff properly filed a *Motion to Compel Discovery* under Court of Common Pleas Rule of Civil Procedure 37(a). Argument was heard on the motion by the Court at the first *Pre-trial Conference*. The motion was granted and the defendants were ordered to provide *Responses to the First Request for Production* and *Answers to the First Set of Interrogatories*. The defendants are in violation of this Court's order for failing to response to the *Request for Production* and for failing to completely and appropriately answer the *Interrogatories*. At this point, however, the plaintiff has not requested sanctions under Rule 37(b)(2); instead relying on the premise that *Summary Judgment* is appropriate to resolve the case in its entirety.

Request for Admissions

Request for Admissions are governed by the Court of Common Pleas Rule of Civil Procedure 36. The rule provides in pertinent parts:

(a) *Request for admissions.* A party may serve upon any other party a written request for admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) [General Provisions governing discovery – *Discovery scope and limits*] set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney

C.C.P. Civil Rule 36(a) emphasis added.

In this case, a Notice of Service was filed with the Court on April 3, 2009 denoting that *Request for Admissions* had been made to the defendants. The defendants failed to respond within the thirty day period set forth in Rule 36(a). On July 6, 2009, at the first *Pre-trial Conference*, the defendants were specifically directed by the Court to respond to the *Request for Admissions* within thirty days or by August 6, 2009. On September 4, 2009, a *Pre-trial Conference Worksheet* was filed with the Court by the plaintiff. It alleged that *Request for Admissions* and other discovery matters were outstanding. That form was signed by the defendants. On September 14, 2009, the date of the second *Pre-Trial Conference*, which was rescheduled to give defendants additional time to file a response, *Responses to Request for Admissions* had still not been filed by defendants.

It is the opinion of this Court that the defendants have had sufficient time to respond properly under Rule 36(b) and their failure to respond has prejudiced the plaintiff. Compounding the lack of response to the *Request for Admissions* is the aggravating factor that the defendants have failed to sufficiently respond to

other discovery requests from the plaintiff. The *First and Second Set of Interrogatory Answers* are so limited as to be non-responsive. No response was filed to either the first or second *Request for Production*. In addition, neither *Answer to the Complaint* filed by either defendant sets forth any affirmative defenses. Finally, all of the assertions made by defendants at each *Pre-trial Conference* are directed to the Atlantic Water Company, who is not a party to this action. This matter is merely a collection of a debt for a loan made by Velocity Investments, L.L.C., who did not sell, install or warranty the water system. Although broad denials of liability were made to the plaintiff, no defenses were sufficiently articulated or asserted by the defendants regarding the debt itself.

The Court agrees with plaintiff's assertion that the defendants' failure to deny the *Request for Admissions* results in an admission of each assertion. The time period provided under the rule has run and additional explanation, extensions of time and orders provided by this Court to the defendants has not resulted in a response.

Summary Judgment

The plaintiff has moved for *Summary Judgment* on the grounds that there are no material facts in issue and the case can be decided as a matter of law.

The applicable provisions of the Court of Common Pleas Civil Rule 56, regarding *Summary Judgment*, state:

- (a) *For claimant.* A party seeking to recover upon a claim . . . may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment and at any time prior to the marking of the case for trial, move, with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof

(c) *Motion and proceedings thereon.* The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law

C.C.P. Civ. Rule 56(a)(c).

The plaintiff contends once each of the *Request for Admissions* is deemed admitted by the non-response, there are no material issues of fact that remain in dispute. Specifically, in its letter to the Court, the plaintiff submits, that by not responding, defendants each made the following admissions:

- (1) Defendants purchased a water system from Atlantic Water Products on January 31, 2007 and financed it through Atlantic Finco Financial Services, LLC.
- (2) Defendants' account number was accurate.
- (3) Defendants' application was a true copy.
- (4) Defendants' signatures were authentic.
- (5) The contract terms stated an interest rate of 17.99 percent and 26.99 percent in the event of default.
- (6) The amount financed was \$5,980.00.
- (7) Defendants made no payments after August 4, 2007 and the account was in default for non-payment.
- (8) The account was sold to the plaintiffs by American Finco Financial Services by attached Assignment and Bill of Sale.
- (9) The balance due on account as of assignment was accurate.
- (10) The statement was accurate as of January of 2008.
- (11) The amount owed was \$7,252.95 plus interest at 11.25 percent.

All of these admissions are factual in nature. The complaint asserts a cause of action by Velocity Investments, LLC for an outstanding debt against Denene Richardson and Judas Richardson. No affirmative defense was set forth in either defendants' *Answer*. Once items number 1 through 11 set forth above are admitted, there are no factual issues. Clearly, the debt is owed, the amount is correct, the interest is set forth accurately, the defendants owe the debt and the defendants have not paid it.

The case of *Bryant v. Bayhealth Medical Center* is distinguishable from this case because *Bryant* addressed admissions as to legal conclusions. This court can therefore, under its rules, grant a *Motion for Summary Judgment* based upon the non-responses to factual admissions.

Decision

The *Motion for Summary Judgment* is granted on the grounds that there are no material facts in dispute and it is appropriate to award judgment as a matter of law. The plaintiff is awarded \$7,252.95 on the original debt, interest at the contract rate of 11.25% from the date of default, August 8, 2008, until satisfaction of the judgment and court costs.

IT IS SO ORDERED.



THE HONORABLE ANNE HARTNETT REIGLE