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2017 IL App (3d) 160558-U

Order filed July 12, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

JOHN JAMES,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellee,)	Kankakee County, Illinois.
)	
v.)	Appeal No. 3-16-0558
)	Circuit No. 12-L-161
SURINDER KALRA,)	
)	Honorable Kendall Wenzelman,
Defendant-Appellant.)	Honorable Adrienne W. Albrecht,
)	Judges, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Holdridge and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by granting plaintiff's motion to deem facts as having been admitted.

¶ 2 In July 2014, plaintiff, John James, filed an amended three-count complaint against defendant, Surinder Kalra, alleging breach of contract, common law fraud, and consumer fraud and deceptive business practices regarding a \$50,000 contract between the two. In October 2014, plaintiff served upon defendant a request to admit facts. Plaintiff did not respond to the request. In December 2014, plaintiff served upon defendant an amended request to admit facts,

which was fundamentally the same as the first request. Plaintiff did not respond to this request either. In May 2015, the trial court granted plaintiff's motion to deem facts admitted. Following a December 2015 trial, the court entered judgment in favor of plaintiff and against defendant for \$45,000. Defendant appeals, asserting the court erred by granting plaintiff's amended motion to deem facts admitted. We affirm.

¶ 3

FACTS

¶ 4

The record discloses the following facts relevant to this appeal. In July 2014, plaintiff filed an amended complaint against defendant, alleging breach of contract, common law fraud, and consumer fraud and deceptive business practices regarding a \$50,000 contract between the two. The agreement at issue, which was attached to the complaint, provided that plaintiff would invest \$50,000 in the sale of gasoline at a gas station operated by defendant, and that plaintiff would be paid all profits from the sale of gasoline. The agreement allowed either party to terminate the contract by giving 30 days' written notice to the other party, and it required that defendant return plaintiff's \$50,000 investment within 30 days of the written notice. Regarding the breach-of-contract claim, plaintiff asserted he had demanded payment from defendant in the amount of \$45,000, but that defendant had refused to pay. Defendant had returned \$5000. Accordingly, plaintiff sought a judgment in his favor in the amount of \$45,000 plus costs. The remaining claims were based on allegations that plaintiff was induced to enter into the contract based upon deceptive and fraudulent representations made by defendant.

¶ 5

In August 2014, Judge Kendall Wenzelman entered a case management order requiring, in part, the parties to complete written discovery by November 4, 2014.

¶ 6

In October 2014, plaintiff served upon defendant a request to admit facts. Defendant never responded to this request.

¶ 7 Defendant's counsel failed to appear at a November 19, 2014, status hearing during which plaintiff's counsel was allowed to withdraw from the case for medical reasons. A few days later, plaintiff's new counsel entered his appearance.

¶ 8 On December 12, 2014, plaintiff served upon defendant an amended request to admit facts, which was substantially the same as the original request to admit fact. Specifically, the request directed defendant to admit or deny the following statements within 28 days:

“1. You entered into an agreement on or about December 20, 2011[,] with John James.

2. Pursuant to said agreement plaintiff paid the defendant \$50,000.00.

3. That check #1092, #1093, #1094, #1095, and #1096 in the individual amounts of \$5,000.00 were signed by defendant prior to the date of the agreement.

4. That said checks were drawn upon a closed account and were invalid when the checks were rendered to the plaintiff.

5. That the total defendant has repaid to plaintiff is the sum of \$5,000.00 towards the \$50,000.00 that plaintiff paid to defendant.”

¶ 9 Defendant's counsel failed to appear for the status hearing on December 18, 2014, and he failed to respond to plaintiff's amended request to admit facts.

¶ 10 On January 28, 2015, plaintiff filed a motion for summary judgment, asserting that defendant's failure to respond to the amended request to admit facts resulted in each fact being admitted. Accordingly, plaintiff maintained no genuine issues of material fact remained and

sought summary judgment in his favor in the amount of \$45,000, plus costs. At the February 5, 2015, status hearing, defendant was given 28 days to respond to the plaintiff's motion for summary judgment.

¶ 11 On March 23, 2015, more than 100 days after the amended request to admit facts was propounded, counsel for defendant filed a response that was neither verified, nor signed under oath by defendant. At the same time, counsel filed a motion to dismiss plaintiff's motion for summary judgment, asserting he did not timely respond to plaintiff's amended request to admit facts because the request was sent to the wrong address.

¶ 12 On April 1, 2015, plaintiff filed a motion to deem facts as having been admitted, asserting that he had served the amended request to admit facts on defendant's attorney at the address contained in the court file. In addition, plaintiff maintained that the response to the amended request to admit facts was inadequate as a matter of law.

¶ 13 On April 20, 2015, defendant filed a motion to dismiss plaintiff's motion to deem facts as having been admitted. In his motion, defendant asserted that the amended motion to admit facts was sent after the November 2014 cutoff date for discovery, and that the trial court had not granted any extensions for discovery.

¶ 14 On May 18, 2015, the trial court held a hearing on all pending motions. During the hearing, counsel for defendant acknowledged that he had changed his address during the course of the proceedings, but he did immediately file a change of address with the court or inform plaintiff's attorney of the change in his address. Evidence was presented that showed counsel for defendant failed to show up to 9 of the 17 scheduled court dates in the case. On the merits of his motion to dismiss plaintiff's motion to deem facts as having been admitted, defendant's counsel argued that he acted in good faith in not responding to the amended motion to admit facts

because the request was issued after the discovery deadline had passed. According to counsel, plaintiff could not issue the amended request to admit facts without permission from the court. However, counsel was unable to cite any authority to support his proposition. Thereafter, the court granted plaintiff's motion to deem facts admitted, but it denied plaintiff's motion for summary judgment. The court also entered an amended case management order requiring written discovery to be completed by July 15, 2015.

¶ 15 In December 2015, attorney Brian Hiatt substituted as defendant's counsel. The case proceeded to trial in February 2016 before Judge Adrienne Albrecht. At trial, copies of the agreement and the checks referenced in plaintiff's amended complaint and in his amended request to admit facts were admitted into evidence as a result of the court's prior order deeming the facts admitted. Defendant testified as an adverse witness, acknowledging that he entered into the agreement with plaintiff and that he issued the five postdated checks to plaintiff in December 2011. According to defendant, the checks were drawn on a business account that he closed in September or November 2012. Defendant further testified that he received a written request from plaintiff requesting payment of \$50,000 on September 28, 2012, but that he did not make any payments to plaintiff after that date. On his own behalf, defendant made an offer of proof that he made two cash payments to plaintiff in March 2012, one for \$40,000, and the other for \$5000. Following arguments, the court entered judgment in favor of plaintiff and against defendant for \$45,000. Defendant filed a motion to reconsider which the court denied.

¶ 16 This appeal followed.

¶ 17 ANALYSIS

¶ 18 On appeal, defendant asserts the trial court erred by granting plaintiff's amended motion to deem facts admitted.

¶ 19 We review the trial court’s grant of a motion to deem facts admitted for an abuse of discretion. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 345 (2007).

¶ 20 Illinois Supreme Court Rule 216 governs requests to admit facts. It allows “[a] party [to] serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.” Ill. S. Ct. R. 216 (eff. July 1, 2014). The Rule further provides, in pertinent part, as follows:

“(c) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.” *Id.*

Thus, under Rule 216, the party receiving the request to admit facts must respond within 28 days or the facts will be deemed admitted.

¶ 21 With that said, Illinois Supreme Court Rule 183 allows the trial court, “for good cause shown on motion after notice to the opposite party, [to] extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time.” Ill. S. Ct. R. 183 (eff. Feb. 16, 2011). The trial

court's discretion to allow a late response to a request to admit facts, however, "does not come into play under the rule unless the responding party can first show good cause for the extension." *Bright v. Dicke*, 166 Ill. 2d 204, 209 (1995). While our supreme court has declined "to specifically define what constitutes good cause within this context, as that determination is fact-dependent and rests within the sound discretion of the [trial] court," it has explained that the trial court may "consider all objective, relevant evidence presented by the delinquent party with respect to why there is good cause for its failure to comply with the original deadline and why an extension of time should now be granted[,]" including "whether the party's original delinquency was caused by mistake, inadvertence, or attorney neglect." *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007).

¶ 22 In this case, defendant argues that he had good cause for not timely responding to the amended motion to admit facts and that he should have been allowed to file a late response as a result. In support of his contention, defendant relies on Illinois Supreme Court Rule 218 which governs pretrial procedure. Rule 218(c) provides, in pertinent part:

"(c) Order. At the case management conference, the court shall make an order which recites any action taken by the court, the agreements made by the parties as to any of the matters considered, and which specifies as the issues for trial those not disposed of at the conference. The order controls the subsequent course of the action unless modified. All dates set for the disclosure of witnesses, including rebuttal witnesses, and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial

court reasonably anticipates that trial will commence, unless otherwise agreed by the parties. This rule is to be liberally construed to do substantial justice between and among the parties.”

Ill. S. Ct. R. 218(c) (eff. July 1, 2014).

According to defendant, his original counsel’s “ill-founded” belief that he did not have to respond to the amended request because it was propounded after the discovery deadline had passed is sufficient to show good cause and that he, therefore, should have been allowed to file a late response.

¶ 23 Initially, we note that defendant cites no authority, nor did our research reveal any, to support the proposition that his failure to timely respond to the amended motion to admit facts should be excused simply because the motion was proffered after the discovery deadline had passed. In fact, Rule 216 specifically requires that a party file a written objection within 28 days if he believes a request to admit facts is improper for whatever reason. See Ill. S. Ct. R. 216 (eff. July 1, 2014). Thus, while the record shows the amended request to admit facts was propounded after the date for discovery had passed, defendant still had a duty to respond or object to the request within the allotted time.

¶ 24 More importantly, however, defendant never actually requested an extension to file a response to the amended motion to admit facts as required by Rule 183. As such, defendant’s reliance on *Armagan v. Pesh*, 2014 IL App (1st) 121840, is misplaced. In that case, the defendant formally sought an extension of time to respond to the plaintiff’s request to admit facts in his motion to reconsider the court’s earlier ruling deeming the facts admitted. *Id.* ¶ 25. In contrast, defendant here merely filed an unverified response to plaintiff’s amended request to admit facts more than 100 days after the request was propounded. While he subsequently filed

motions to dismiss plaintiff’s motion for summary judgment and his motion to deem facts admitted, neither motion requested an extension of time to respond to plaintiff’s amended request. We recognize defendant’s substitute counsel, who also represents him in this appeal, argued in his motion to reconsider the trial court’s March 2016 judgment that defendant’s motion to dismiss plaintiff’s motion to deem facts as having been admitted included a prayer for relief that stated, “if the [c]ourt so desires and thinks appropriate, order new discover deadlines.” However, merely requesting new discovery deadlines is not the same as asking the court for permission to submit an untimely response to a previously propounded request to admit facts. Defendant’s failure to request an extension, on its own, is fatal to defendant’s contention on appeal. Nonetheless, we further note that defendant never responded to the original request to admit facts propounded in October 2014, which was, for all intents and purposes, the same as the amended request to admit facts.

¶ 25 Based on the above, we find that the trial court did not err in granting plaintiff’s motion to deem facts admitted.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Kankakee County.

Affirmed.