THIRD DIVISION
October 31, 2018

No. 1-17-1531

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES REID, Plaintiff-Appellant, v. GOODING RUBBER, INC., a foreign corporation, Defendant, and TAC/SUMMIT LLC, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County 13 L 7755 Honorable Moira S. Johnson Judge Presiding

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Summary judgment on spoliation claim was properly granted, as no admissible evidence existed that plaintiff asked defendant to preserve evidence before its disposal.

¶ 2 While at work, plaintiff James Reid was injured when a hose he was using to clean a tank split, releasing caustic liquid, causing burns as well as a fall when he tried to escape. Reid filed product liability and negligence claims against the hose manufacturers. At issue in this appeal, he

also claimed that his employer was negligent because it failed to preserve the hose, resulting in spoliation of evidence.

¶ 3 The employer moved for summary judgment based on two of Reid's answers to requests to admit. The trial court granted the motion. We affirm.

¶ 4 BACKGROUND

¶ 5 In 2011, Reid worked as a tank washer for defendant TAC/Summit LLC (TAC). Early into his shift on July 8, he was using a hose to clean a tank trailer with water and caustic. The hose "ruptured by the ball valve," spraying the area with the caustic mixture. Reid and his co-worker ran for safety. While fleeing down a ladder, Reid fell and injured one of his wrists.

¶ 6 Almost immediately after the fall, a supervisor, James O'Keefe, drove Reid to the emergency room. The ride to the hospital took 15 to 20 minutes. As we will discuss in more detail later, Reid and O'Keefe have differing accounts of what happened during the trip to the hospital; Reid says he secured a promise from O'Keefe to preserve the hose as potential evidence, while O'Keefe denied that any conversation of the sort happened.

¶ 7 In any event, TAC threw away the hose. The evidence suggests that it was thrown out the day of the incident and then sat in TAC's dumpster for some time.

¶ 8 On September 15, 2011, about three months after the incident, Reid's counsel, the law firm of Cohn & Cohn, sent a "preservation letter" to TAC, asking them to preserve the hose. By then, the dumpster containing the hose had been emptied.

¶ 9 About two years after the incident, Reid filed suit against the hose manufacturers and TAC. Reid claimed product liability and negligence against the manufacturers. Against TAC, he alleged spoliation of evidence.

¶ 10 The complaint alleged that Reid fell from the tank trailer after the hose split. On or near the day of the accident, a TAC employee "isolated and/or segregated the subject industrial hose from the other industrial hoses and/or parts for the benefit of the Plaintiff." And TAC "knew or should have known" that the hose was "relevant to future litigation against the manufacture [*sic*] of the subject industrial hose." The hose was the "key" piece of evidence in proving his underlying product liability claims, and TAC breached its duty of care by disposing of it.

¶ 11 TAC's human resources and safety director testified at his deposition that TAC does not have a written policy regarding inspecting or replacing hoses. The employees are verbally told to check hoses at the start of their shifts. Hoses are replaced "when they are broken." There is also no written policy about how to investigate incidents. When there is an incident, it is reported to the facility manager, who then fills out an accident report. There is no written policy or "custom and practice" about retaining evidence that "may be material to potential litigation." When a hose breaks, it gets thrown away "as soon as we replace it, immediately."

¶ 12 During the litigation, before Reid's deposition, TAC issued requests to admit. Reid answered the requests to admit on December 9, 2014. We need to discuss two of them in detail.

¶ 13 First, Request to Admit No. 3 (Request No. 3):

> "3. Admit that on July 8, 2011, or any time thereafter, James Reid did not enter into a contract or *agreement* with [TAC] whereby [TAC] agreed to preserve the hose for plaintiff.
>
> ANSWER: Plaintiff admits that he did not enter into a contract or agreement with [TAC] on July 8, 2011, or anytime thereafter, whereby [TAC] agreed to preserve the hose for plaintiff." (Emphasis added.)

¶ 14 Second, Request to Admit No. 6 (Request No. 6) asked Reid to admit that no request was made to TAC to preserve the hose, other than the one made by plaintiff's lawyers, the law firm of Cohn & Cohn, three months after the accident (see *supra*, ¶ 8). The request and answer read:

> "6. Admit that the COHN & COHN letter sent to [TAC] was the only *request* made upon [TAC] to preserve the potential evidence for the benefit of James Reid.
>
> **ANSWER**: Plaintiff cannot truthfully admit or deny that the COHN & COHN letter sent to [TAC] was the only request made upon [TAC] to preserve potential evidence for the benefit of James Reid because Plaintiff lacks knowledge of the same. In particular, Plaintiff does not know if such a request or requests were made by other individuals and/or entities." (Emphasis added.)

¶ 15 At his deposition six months later, on June 4, 2015, Reid testified to a conversation he had with his supervisor, O'Keefe, on the way to the hospital after the accident:

> "And he asked me what happened and I told him. I say, 'That the hose busted. What are you guys going to do with it? I'm going to need it.'
>
> He said, 'we are going to put it away.'
>
> I said, 'I'm going to need it for the insurance company.'
>
> ***
>
> I asked Jimmy O'Keefe, 'What are they going to do with the hose?'
>
> He said, 'We are going to take it down and keep it.'

¶ 16 Throughout his deposition, Reid consistently asserted that he discussed his need for the hose's preservation with O'Keefe, who told him he would preserve it. Reid also said that he spoke with O'Keefe later that day when he was picked up from the hospital. Again, Reid "asked him if he took down the hose. He said, 'Yeah, the hose was tooken (sic) down.' "

¶ 17 TAC's counsel challenged Reid on this testimony, referencing the requests to admit we have laid out above. Counsel pressed Reid on whether this conversation with O'Keefe constituted an "agreement" to preserve the hose (channeling the third request to admit) and whether Reid's raising of this issue with O'Keefe constituted a "request" to preserve the hose (summoning the sixth request to admit).

¶ 18 Ultimately, Reid admitted (over his lawyer's objection that it called for a legal conclusion) that, when he asked O'Keefe to preserve the hose, and O'Keefe said he would, the two of them had "an agreement." He also testified that his answer to Request No. 3 was "not correct."

¶ 19 As to Request No. 6, where Reid was asked to admit that no other "request" was made of TAC to preserve the hose, other than his lawyers' request three months after the accident, the following exchange occurred between TAC's lawyer and Reid:

> "Q: And you tell us in No. 6—your answer is that you truthfully cannot admit or deny whether that was the only request made; isn't that what it says?
>
> A: Yes.
>
> Q: Okay. But, in fact, as you sit here right now, you, yourself, are testifying that you made a request?
>
> A: Yes.
>
> Q: You made a request upon a manager at [TAC] to preserve the hose, correct?
>
> A: Yes.
>
> Q: So No. 6 isn't accurate, either, is it?
>
> A: I can't recollect that."

¶ 20 A bit later, counsel for TAC followed up with Reid on this question:

Q: Now, did you actually ask Jimmy to keep the hose, or did you just ask Jimmy about the hose and what was going to happen with it?

A: I asked him could he keep the hose, preserve the hose.

¶ 21 TAC ultimately moved for summary judgment, arguing that Reid could not establish a spoliation claim because there was no evidence that TAC voluntarily undertook to preserve the hose, and that the "special-circumstances" doctrine did not apply, for the same reason—TAC was never asked, and never promised, to preserve the hose after the accident, at least not until the law firm made a formal request three months later, by which point the hose had already been discarded. TAC argued that Reid's deposition testimony about his conversations with Jimmy O'Keefe about preserving the hose was inadmissible, because he had made judicial admissions in his answers to the requests to admit that foreclosed that later testimony.

¶ 22 The trial court agreed and granted TAC summary judgment on the spoliation claim. With the remainder of the case (product-liability and negligence claims) still pending, the trial court later added language under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) allowing the immediate appeal of this ruling. The parties agree that this appeal is timely.

¶ 23 ANALYSIS

¶ 24 Summary judgment is appropriate where " 'there is no genuine issue as to any material fact and * * * the moving party is entitled to a judgment as a matter of law.' " *Dardeen v. Kuehling*, 213 Ill. 2d 329, 335 (2004) (quoting 735 ILCS 5/2-1005(c) (West 1998)). In determining whether summary judgment is appropriate, we must view the evidence in the light most favorable to the nonmoving party. *Father & Sons Home Improvement Il, Inc. v. Stuart*, 2016 IL App (1st) 143666, ¶ 24. Summary judgment is "a drastic measure and should be allowed only 'when the right of the moving party is clear and free from doubt.' " *Dardeen*, 213 Ill. 2d at

335 (quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)). An order granting a motion for summary judgment is reviewed *de novo*. *Martin v. Keeley & Sons, Inc.*, 2012 IL 113270, ¶ 25. A *de novo* review requires this court to perform the same analysis as a trial court would. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 25 Viability of Plaintiff's Theories

¶ 26 Illinois does not recognize an independent tort for spoliation of evidence. *Dardeen*, 213 Ill. 2d at 335. Instead, an action for negligent spoliation must be brought under the traditional elements of negligence—duty, breach, and damages proximately caused by the breach. *Boyd v. Travelers Ins. Co.*, 166 Ill. 2d 188, 194-95 (1995).

¶ 27 The only element at issue in this case is duty. "The general rule is that there is no duty to preserve evidence; however, a duty to preserve evidence may arise through an agreement, a contract, a statute [citation omitted] or another special circumstance. Moreover, a defendant may voluntarily assume a duty by affirmative conduct." *Boyd v. Travelers Insurance Co.*, 166 Ill. 2d 188, 195 (1995); *Dardeen*, 213 Ill. 2d at 336. Each of these bases is independent, and any of them is sufficient to impose a duty. *Jones v. O'Brien Tire and Battery Service Center, Inc.*, 374 Ill. App. 3d 918, 924 (2007).[1]

¶ 28 Here, Reid does not claim that TAC owed a common-law duty to preserve the hose, or that a contract or statute imposed that duty. Instead, he says, TAC owed a duty to preserve the hose based on (1) a voluntary undertaking theory, because TAC voluntarily assumed the duty

[1] If a duty is found as explained above, a plaintiff must then establish a second element—"whether a reasonable person should have foreseen that the evidence was material to a potential civil action." *Dardeen*, 213 Ill. 2d at 336. Our case never got that far, so we need not reach that issue.

when Reid requested that O'Keefe preserve the hose, and O'Keefe agreed; and (2) the "special circumstances" doctrine, for essentially the same reason.

¶ 29 If Reid's testimony is to be believed, he is correct, at the very least, that the voluntary-undertaking theory would be a colorable claim. If a defendant promises to undertake a duty but then does not do what he promised to do, resulting in injury to a plaintiff who relied on that promise, the defendant is liable to that plaintiff for its nonfeasance. See *Bell v. Hutsell*, 2011 IL 110724, ¶ 23 (under "nonfeasance" theory of voluntary-undertaking liability, promise to assume duty, followed by nonperformance of duty, is actionable if plaintiff relied on promise and suffered harm thereby); *Bourgonje v. Machev*, 362 Ill. App. 3d 984, 997 (2005) (same). If O'Keefe promised Reid that he would preserve that hose, and if Reid relied on that promise and thus took no further action to preserve it, TAC would be liable to Reid under a voluntary-undertaking theory for spoliation of evidence.

¶ 30 We might say the same thing of the "special circumstances" doctrine. As the name suggests, the doctrine is incapable of precise definition and is intensely fact-specific. See *Martin*, 2012 IL 113270, ¶ 39. Our supreme court has spent more time explaining what is *not* sufficiently "special" to invoke this doctrine than what is.

¶ 31 For example, it is not enough, alone, to allege that the defendant was the plaintiff's employee; one's status as employer does not automatically trigger a duty to preserve evidence related to an employee's injury. *Id*., ¶ 48. Nor is it enough, alone, that a defendant could have foreseen litigation arising from the accident. *Id*., ¶ 49. Likewise, the fact that a defendant had the opportunity to preserve the evidence via possession and control over it, by itself, is not "special" enough to invoke this exception. See *id*. at ¶ 45; *Dardeen*, 213 Ill. 2d at 336. "Something more than possession and control are required." *Martin*, 2012 IL 113270, ¶ 45.

¶ 32 Our supreme court has suggested that this "something more" could include "*a request by the plaintiff to preserve the evidence* and/or the defendant's segregation of the evidence for the plaintiff's benefit." (Emphasis added.) *Id*. An example would be *Miller v. Gupta*, 174 Ill. 2d 120, 123-24 (1996), where the plaintiff's counsel requested that the plaintiff's doctor preserve x-rays related to a potential medical malpractice action; the doctor obtained the x-rays pursuant to that request and set them aside on his desk; but the doctor placed them in a location on the desk that the office custodian understood to be a trash pile and, thus, she threw them out. See also *Martin*, 2012 IL 113270, ¶ 40 (discussing *Miller*). As in *Miller*, here, Reid testified that he requested that TAC preserve the hose.

¶ 33 Thus, it is quite possible that, if Reid asked O'Keefe to preserve the hose and O'Keefe promised that he would, Reid could find safe harbor under the "special circumstances" doctrine, in addition to the voluntary-undertaking theory.

¶ 34 Judicial Admissions and Requests to Admit

¶ 35 But the viability of plaintiff's theories depends on a predicate fact—whether Reid, in fact, made that request to O'Keefe to preserve the hose. As a purely evidentiary matter, a question of fact exists on this question, as Reid and O'Keefe sharply differ in their deposition testimony. O'Keefe denied that he made any promise to preserve it, or that the topic was even discussed.

¶ 36 But TAC argues that no question of fact exists because Reid is *barred* from testifying about his conversation with O'Keefe about the hose. TAC says that Reid's responses to Requests to Admit Nos. 3 and 6 were judicial admissions that he never had such a conversation with O'Keefe, that he never made such a request and never secured such a promise.

¶ 37 From what we can tell, that's where the rubber met the road for the trial court. Its order granting summary judgment did not say so, but in a later hearing on sanctions that is part of the

record, the trial court indicated that the grant of summary judgment was based on Reid's answers to the requests to admit. Our review is *de novo*, so it doesn't really matter why the trial court ruled as it did, but we would agree that this is the pivotal question. There is clearly a question of fact concerning what Reid and O'Keefe did or did not say to each other about preserving the hose; their deposition testimony is at odds. But if, as TAC claims and the trial court ruled, Reid is *barred* from testifying to his version of the facts, then there is no basis for finding TAC liable under either the voluntary-undertaking or "special circumstances" doctrine for spoliation.

¶ 38 So the question for us is whether Reid made judicial admissions in his answers to Requests to Admit Nos. 3 or 6, such that his later, contradictory deposition testimony is barred.

¶ 39 The purpose of requests to admit under Illinois Supreme Court Rule 216 (eff. July 1, 2014) is not to discover facts but to *establish* certain material facts without requiring formal proof at trial. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 346 (2007); *P.R.S. International, Inc. v. Shred Pax Corp.*, 184 Ill. 2d 224, 237 (1998). The point is to separate uncontested facts from contested ones to streamline the litigation. *Vision Point*, 226 Ill. 2d at 346; *P.R.S. International*, 184 Ill. 2d at 237. The focus must be on facts, not legal issues; Rule 216 cannot be used to admit legal conclusions. *P.R.S. International*, 184 Ill. 2d at 236.

¶ 40 An admission is substantive evidence, admissible as an exception to the hearsay rule. *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2016 Ill App (1st) 142754, ¶ 89. There are evidentiary admissions, and there are judicial admissions. A party may contradict or explain an evidentiary admission. *Id*.; *North Shore Community Bank and Trust Co. v. Sheffield Wellington LLC*, 2014 IL App (1st) 123784, ¶ 115. But a judicial admission is a formal admission in the pleadings that has " 'the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.' " *Pepper Construction Co.*, 2016 Ill App (1st)

142754, ¶ 89 (quoting *Serrano v. Rotman*, 406 Ill. App. 3d 900, 907 (2011)). Thus, a party is bound by a judicial admission and may not later contradict or modify it. *Pepper Construction Co.*, 2016 Ill App (1st) 142754, ¶ 89.

¶ 41 That's harsh medicine. It's a "gotcha" moment in the litigation. While requests to admit serve a vital function by narrowing issues, we should be careful in labeling something a judicial admission, because we are removing that fact from any further need for proof, and we prevent a party from later challenging that fact in any way. That is why we consistently say that a judicial admission must be "clear, unequivocal, and uniquely within the party's personal knowledge." *Pepper Construction Co.*, 2016 Ill App (1st) 142754, ¶ 90. We must tread carefully here, lest we decisively resolve a fact question due to an errant statement, a deceptively- or vaguely-phrased request, or any other possible ambiguity. See *North Shore Community Bank and Trust Co.*, 2014 IL App (1st) 123784, ¶ 115. Still, if a request to admit facts is made in proper form, "[a]n admission pursuant to a request to admit operates as a judicial admission that is considered incontrovertible and has the effect of withdrawing a fact from contention." *Tires 'N Tracks, Inc. v. Dominic Fiordirosa Construction Co., Inc.*, 331 Ill. App. 3d 87, 91 (2002).

¶ 42 Standard of Review

¶ 43 The courts are split on the standard of review for judicial admissions. See *id.*, ¶ 90 (collecting cases); *Crittenden v. Cook County Commission on Human Rights*, 2012 IL App (1st) 112437, ¶¶ 46-47. Some courts have employed *de novo* review, reasoning that a reviewing judge can decide the legal question of what is "clear and unequivocal" just as well as a trial judge. See *North Shore Community Bank and Trust Co.*, 2014 IL App (1st) 123784, ¶ 117. Others have used the abuse-of-discretion standard, on the theory that the context for the alleged judicial admission

is critical, and matters of context are usually left in the first instance to the trial court. See *Serrano*, 406 Ill. App. 3d at 907.

¶ 44 We have no hesitation, however, in employing *de novo* review here. This is summary judgment. We sit in the shoes of the trial judge. *Khan*, 408 Ill. App. 3d at 578. Relief at this stage must be " 'clear and free from doubt.' " *Dardeen*, 213 Ill. 2d at 335 (quoting *Purtill*, 111 Ill. 2d at 240). A discretionary standard of review has no place here.

¶ 45 Request to Admit No. 3

¶ 46 In response to Request No. 3, Reid admitted "that he did not enter into a contract or agreement with [TAC] on July 8, 2011, or anytime thereafter, whereby [TAC] agreed to preserve the hose for plaintiff." TAC argues that Reid's testimony contradicts that admission—that his testimony that he asked O'Keefe to preserve the hose, and that O'Keefe agreed to do so, was tantamount to "enter[ing] into [an] agreement" to preserve the hose.

¶ 47 We do not agree for two reasons. First, it is at least debatable that the request sought an admission to a legal conclusion, not a fact. A party cannot judicially admit a legal conclusion. *P.R.S. International*, 184 Ill. 2d at 236. Whether the result of two parties' interactions or discussions met the legal definition of a "contract" or "agreement" could reasonably be viewed as a request for a legal conclusion.

¶ 48 And even if Request No. 3 did not seek the admission of a legal conclusion, we still would not find the response to be unequivocal. It is true that the word "agreement" is broader than the word "contract." A contract is an agreement with consideration; so every contract is an agreement, but not every agreement is a contract. See *Agreement*, Black's Law Dictionary (10th Ed. 2014) (quoting 2 Stephen's Commentaries on the Laws of England 5 (L. Crispin Warmington ed., 21st ed. 1950)) (" 'The term 'agreement,' although frequently used as

synonymous with the word 'contract,' is really an expression of greater breadth and meaning and less technicality.' "). Still, when TAC requested that Reid admit he never "enter[ed] into [an] agreement" to preserve the hose, it certainly gives the impression of something more formal than a mere oral conversation.

¶ 49 Yes, we might say that Reid's deposition testimony described an "agreement" to preserve the hose, but would we say that Reid and O'Keefe "entered into an agreement" to do so? Maybe. But maybe not. If you asked your friend to open the door for you, because your hands were full, and the friend did so, would you say that you and your friend "entered into an agreement" that your friend would open the door? Probably not; you'd probably laugh and think that such a description was far too formal.

¶ 50 Our point is that it's at least a debatable proposition. Even more so, considering that the entire phrase referenced a "contract or agreement," the former term being unquestionably formal and legal, thus suggesting that the latter term should be considered likewise. We do not find the phrase "enter into an agreement" in this context to clearly and unequivocally describe the alleged conversation between Reid and O'Keefe. It's a close call; it's arguable. But "arguable" is not unequivocal. The answer to Request No. 3 was not a judicial admission.

¶ 51 <u>Request to Admit No. 6</u>

¶ 52 We reach a different conclusion as to Request No. 6, which asked Reid to admit that his law firm's letter seeking preservation of the hose was the "only request" made on TAC to preserve the hose. To begin, there is no question that Reid's deposition testimony indicated that he requested that O'Keefe preserve the hose. At times during the deposition, he recounted the exchange as if he simply brought up the issue, saying he was going to need the hose "for the insurance company," at which point O'Keefe voluntarily agreed to preserve it. Other times,

however, he testified that he specifically asked O'Keefe to preserve it. (See *supra* ¶¶ 15-17.) And TAC's lawyer, presumably recognizing as much, pinned down Reid later:

> Q: Now, did you actually ask Jimmy to keep the hose, or did you just ask Jimmy about the hose and what was going to happen with it?
>
> A: I asked him could he keep the hose, preserve the hose.

¶ 53 We can only interpret Reid's deposition testimony as describing a "request" to preserve the hose. That much, in our view, is clear and unequivocal. Nor is there anything vague about the word "request" in Request No. 6 or Reid's response to it. We have already commented that the word "agreement" is a fairly loaded word with both legal and colloquial meanings, but "request" does not carry the same baggage. There is nothing about the word "request" that suggests a formal gesture but not an informal one.

¶ 54 So that gets us to Reid's response to Request No. 6. It is worth printing again here in full:

> "Plaintiff cannot truthfully admit or deny that the COHN & COHN letter sent to [TAC] was the only request made upon [TAC] to preserve potential evidence for the benefit of James Reid because Plaintiff lacks knowledge of the same. In particular, Plaintiff does not know if such a request or requests were made by other individuals and/or entities."

¶ 55 Reid's answer, at first blush, appears noncommittal. He refused to admit or deny that no other preservation request was made to TAC. He did so, he explained, because he could not speak for a request anyone else may have made, beyond his personal knowledge. Insofar as the response is addressing what anyone else may have requested, the response is unobjectionable.

¶ 56 But in fact, the only possible way to interpret Reid's answer is that he was indicating that he, himself, did not personally know of any other request. He answered that he "lack[ed] knowledge" of any such request. That, itself, is a concrete admission. There is nothing unclear

about that admission. There is nothing equivocal about it. And that fact is uniquely within Reid's personal knowledge; quite obviously, Reid and only Reid could testify as to what he knows and does not know. In sum and substance, Reid admitted the requested fact as far as he knew. He answered, in essence, "I do not personally know of any other request, but I can't speak for what anyone else did." So while he may have left the door open to what other people may have requested, beyond his knowledge, he emphatically closed the door as to what he personally knew.

¶ 57 Reid's deposition testimony, six months later, that he made a request to O'Keefe to preserve the hose on the day of the accident, cannot be reconciled with his admission that he "lack[ed] knowledge" of any such request made to TAC. He cannot say, in December 2014, that he doesn't know of any request to TAC to preserve the hose, and then testify under oath in June 2015 that *he, himself,* made such a request to TAC, through O'Keefe.

¶ 58 We recognize that someone's knowledge and memory can be unreliable and fleeting at times. If, hypothetically, Reid were to make some argument that he answered the request to admit in good faith, but that something or someone jogged his memory at some point after he answered Request No. 6 and before his deposition (a six-month window), and he suddenly recalled making a request to O'Keefe to preserve the hose, we would at least hear him out on that point. But he has made no such argument. And he had more than one chance to do so. TAC's lawyer confronted him with his answer to Request No. 6 at his deposition, and either in response to those questions or in follow-up with his own lawyer, he could have explained any extenuating circumstances under oath. He also could have filed an affidavit in response to the motion for summary judgment, after TAC referenced Request No. 6 specifically as a reason why there was no basis for holding TAC liable on a spoliation claim.

¶ 59 He did neither of those things. His only argument to us is that the term "request," in the context of a request for preservation of evidence, could only be understood as referencing a *formal* request—a written letter, presumably—as opposed to an informal, oral one. We have already said that we find nothing about the word "request" to be limited to formal requests. In sum, we do not see how Reid or his counsel could have interpreted Request No. 6 as *not* including Reid's request to O'Keefe, on the day of the accident, to preserve the hose.

¶ 60 As loath as we would typically be to find a judicial admission and, in doing so, cutting off a fact from further evidence or proof, we cannot allow a party to subvert requests to admit under Illinois Supreme Court Rule 216 (eff. July 1, 2014) by claiming not to know of a fact peculiarly within his knowledge one day, but suddenly remembering it the next. Reid's answer to Request No. 6 was a judicial admission that Reid was unaware of any request made to TAC to preserve the hose, other than the one his lawyers made three months after the accident. He is bound by that answer and cannot later change it through deposition testimony.

¶ 61 Thus, absent any admissible evidence in the record that Reid requested that TAC preserve the hose before its disposal, there is no basis for liability against TAC for spoliation of evidence under either a voluntary-undertaking or "special circumstances" theory of liability. The grant of summary judgment is affirmed.

¶ 62 Affirmed.