

Dated: May 31, 2022
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
Western Division

In re:

HEATHER PATRICE
HOGROBROOKS HARRIS,
Debtor.

Case No. 17-20334
Chapter 7

HEATHER PATRICE
HOGROBROOKS HARRIS,
Plaintiff.

vs.

SHELBY COUNTY and
CITY OF MEMPHIS,
Defendants.

Adv. Proc. No. 21-00053

OPINION AND ORDER DENYING SHELBY COUNTY TRUSTEE'S
MOTION TO DEEM REQUESTS FOR ADMISSION ADMITTED

Heather Patrice Hogrobrooks-Harris ("Hogrobrooks-Harris"), proceeding *pro se*, commenced an adversary proceeding against Shelby County, Tennessee and the City of Memphis, Tennessee, seeking to be relieved of all taxes, penalties, and associated

attorney's fees. In preparation for trial, the Shelby County Trustee's Office (through counsel) served Hogrobrooks-Harris with discovery requests, and after delayed responses, Shelby County filed a *Motion for Order (1) Compelling Plaintiff to Respond to Discovery Requests, and (2) Deeming Matters Admitted* ("Motion to Compel").

BACKGROUND

On December 23, 2021, Shelby County Trustee¹ served Hogrobrooks-Harris with *Requests for Interrogatories, Requests for Production of Documents, and Requests for Admission*.² Shelby County Trustee served Hogrobrooks-Harris with Requests for Admission seeking to have her admit or deny various facts at issue in the adversary proceeding regarding unpaid ad valorem taxes. During January and February 2022, counsel for Shelby County Trustee and Hogrobrooks-Harris were in communication regarding the status of the responses to the County's discovery requests.³ On February 23, 2022, Shelby County Trustee filed its Motion to Compel contending that Hogrobrooks-Harris failed to respond to any of the discovery requests as of February 15, 2022.⁴ Shelby County Trustee is seeking the entry of an order (1) compelling Hogrobrooks-Harris's response to the interrogatories and production of documents, and (2) deeming each request admitted.⁵

¹ The Office of the Trustee is a County Charter Office. The County Trustee may serve up to two four-year terms performing duties identified by the Tennessee Constitution and laws of the state of Tennessee. The Trustee commonly works on accounting, billing, tax collections, operations of County's cash flow, and reporting for the County and City. See SHELBY COUNTY TRUSTEE, <https://www.shelbycountytrustee.com/206/Trustee-Duties> (last visited May 24, 2022).

² Def.'s Mot. Compel, ECF No. 34.

³ Def.'s Mot. Compel, ECF No. 34, Ex. 2.

⁴ Def.'s Mot. Compel, ECF No. 34.

⁵ Def.'s Mot. Compel, ECF No. 34. In the Motion to Compel, Shelby County Trustee also requested the awarding

On April 26, 2022, the Court conducted a hearing on the Motion to Compel.⁶ During the hearing, counsel for Shelby County Trustee clarified that Hogrobrooks-Harris responded to the discovery requests, although not timely. Shelby County Trustee withdrew the motion to compel discovery responses as to the interrogatories and production of documents. Shelby County Trustee, however, did not withdraw the Motion to Compel regarding the Requests for Admission. Shelby County Trustee contends that each request should be deemed admitted because the responses to the Requests for Admission were late. Hogrobrooks-Harris argued that she communicated with counsel for Shelby County Trustee about the late responses, submitted the responses as promised, and therefore, the Requests for Admission should not be deemed admitted. At the conclusion of the hearing, the Court took the matter under advisement. Both parties also made post-hearing submissions.⁷

ISSUE

The issue before the Court is whether Shelby County Trustee's Requests for Admission should be deemed admitted because Hogrobrooks-Harris's responses were submitted beyond the 30-day deadline.

DISCUSSION⁸

Requests for Admission may be sought to establish the truth relating to "(A) facts, the

of "reasonable expenses incurred in making the motion, including attorney's fees," pursuant to Rule 37(a)(5)(A) of the Federal Rule of Civil Procedure. For the reasons outlined in this Opinion and Order (including Shelby County Trustee's withdrawal of the Motion to Compel regarding the first set of interrogatories and requests for production), the Court will deny this relief requested.

⁶ ECF No. 39.

⁷ ECF Nos. 43 and 46.

⁸ This Court has jurisdiction over this proceeding under 28 U.S.C. §§ 157(a) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

application of law to fact, or opinions about either; and (B) the genuineness of any described documents.”⁹ Rule 36 of the Federal Rules of Civil Procedure (as incorporated under Bankruptcy Rule 7036)) governs Requests for Admission, and subparagraphs (a)(3) and (b) of Rule 36 states that:

(3) Time to Respond; Effect of Not Responding.

A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

. . .

(b) Effect of an Admission; Withdrawing or Amending it.

A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.¹⁰

It is undisputed that Hogrobrooks-Harris responded to the Requests for Admission after 30 days of service.¹¹ Shelby County Trustee argued that Rule 36(a)(3) is “self-executing” and matters in the Requests for Admission should be deemed admitted because of Hogrobrooks-Harris’s untimely responses.¹² Shelby County Trustee further contended that Hogrobrooks-Harris has not made any formal request with “the Court that could be treated or imputed as a

⁹ Fed. R. Civ. P. 36(a)(1).

¹⁰ Fed. R. Civ. P. 36(a)(3) and (b).

¹¹ ECF Nos. 43 and 46.

¹² ECF No. 43, at 1 (citing *In Re Meggitt*, No. 17-30029, 2018 WL 1121585, at *1 (Bankr. N.D. Ohio Feb. 27, 2018)).

withdrawal of, or request to withdraw, the admissions that have occurred[.]”¹³ Conversely, Hogrobrooks-Harris explained that she communicated with counsel for Shelby County Trustee regarding Hogrobrooks-Harris’s responses, submitted the responses as promised, and edited the responses after counsel for Shelby County Trustee expressed some dissatisfaction with the initial responses.¹⁴

The Sixth Circuit has made clear that “the failure to respond in a timely fashion does not require the court automatically to deem all matters admitted.”¹⁵ Further, no formal motion to withdraw or amend admissions is required under Rule 36(b).¹⁶ A withdrawal may be “imputed for a party’s actions,” which include a belated response or denial.¹⁷ There is a two-prong test to determine whether to grant a withdrawal or amendment of admissions under Rule 36(b): (1) whether upholding the admission would practically eliminate any presentation on the merits of the case; and (2) whether the party seeking to deem matters admitted will suffer prejudice from the denial.¹⁸

¹³ ECF No. 46. At the hearing, the County argued that a formal motion to withdraw Hogrobrooks-Harris’s admission should be required based on the language of Rule 36(b), while also acknowledging that Hogrobrooks-Harris is proceeding *pro se* and may not be familiar with procedural rules.

¹⁴ ECF No. 46.

¹⁵ See *U.S. v. Petroff-Kline*, 557 F.3d 285, 293 (6th Cir. 2009) (quoting *Gutting v. Falstaff Brewing Corp.*, 710 F.2d 1309, 1312 (8th Cir. 1983)) (affirming the lower court’s decision not to deem matters admitted due to late responses).

¹⁶ See *Kerry Steel Inc. v. Paragon Indus.*, 106 F.3d 147, 153–54 (6th Cir. 1997) (affirming that no formal motion is necessary to withdraw or admissions under Rule 36(b)).

¹⁷ *Chancellor v. City of Detroit*, 454 F. Supp. 2d 645, 666 (E.D. Mich. 2006) (finding “denials may be deemed the functional equivalent of a request to withdraw.”).

¹⁸ *Riley v. Kurtz*, No. 98-1077, 1999 WL 801560, at *3 (6th Cir. Sept. 28, 1999) (quoting *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995)) (holding that the district court abused its discretion in refusing to allow the withdrawal of two inadvertent admissions that went to the heart of the case).

Shelby County Trustee seeks to have matters admitted that go to the merits of the underlying adversary proceeding. Except for request No. 9,¹⁹ the requests seek for Hogrobrooks-Harris to admit that ad valorem taxes accrued, there are unpaid ad valorem taxes, the tax liens are attached to certain parcels of real property, and the ad valorem taxes are not discharged chapter 7 case. Requests for Admission assist with “. . . obviating the need to adduce testimony or documents as to matters that are really not in controversy.”²⁰ Deeming facts as admitted (as outlined in Shelby County Trustee’s Requests for Admission) may eliminate controversy altogether. Therefore, the first prong of the test weighs in favor of Hogrobrooks-Harris because upholding the requests would eliminate proceeding on the merits of the underlying complaint.

Under the second prong, courts evaluate whether the party seeking to deem matters admitted will suffer prejudice from the denial. Prejudice is a high bar to meet, and it is “‘not simply that the party who initially obtained the admission will now have to convince the factfinder of its truth.’ . . . Instead, prejudice under Rule 36(b) ‘relates to special difficulties a party may face caused by a sudden need to obtain evidence upon withdrawal or amendment of an admission.’”²¹ It is Shelby County Trustee’s burden to demonstrate it would be prejudiced if the Court allows the withdrawal and the requests are not deemed admitted.²²

Shelby County Trustee asserts Shelby County and the City of Memphis will be prejudiced if the requests are not deemed admitted because it will be burdensome for two taxing

¹⁹ Request No. 9 states: “Admit that you filed your petition for Chapter 7 relief on January 12, 2017.”

²⁰ *Petroff-Kline*, 557 F.3d at 293.

²¹ *Riley*, 1999 WL 801560, at *3 (quoting *Kerry Steel*, 106 F.3d at 154).

²² *Id.*

authorities to retrieve and present to the Court tax payment and non-payment information for four parcels of real property over a seven-year period. The Court finds this argument wholly unpersuasive.²³ Shelby County Trustee will have sufficient time to gather the information prior to trial. Therefore, the second prong of the test does not weigh in favor of Shelby County Trustee.

CONCLUSION

Consistent with Rule 36(b) and Sixth Circuit case law, the Court finds and concludes that Shelby County Trustee's Requests for Admission should not be deemed admitted.

Accordingly, it is **ORDERED** that:

1. Shelby County Trustee's Motion to Compel responses regarding the First Set of Interrogatories and Request for Production of Documents is withdrawn;
2. Shelby County Trustee's Motion to Deem Matters Admitted is denied;
3. To the extent that Hogrobrooks-Harris's late responses to Shelby County Trustee's Requests for Admission are considered deemed admitted, the admitted requests are withdrawn pursuant to Rule 36(b) and consistent with Sixth Circuit case law; and
4. Shelby County Trustee's requests for fees under Rule 37(a)(5) is denied.

cc:
Defendant
Attorney for Defendant
Plaintiff
Chapter 7 Trustee

²³ Furthermore, where a party is *pro se*, the Supreme Court has reasoned that the *pro se* litigant should be held to a "less stringent standard[.]" See *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).