IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

REGINALD SPENCE,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No. N10C-11-074 MJB**
	)	
	)	
LAYAOU LANDSCAPING, INC.	)	
a Delaware Corporation, MID-DEL	)	
HYDROSEEDING LLC, a Delaware	)	
Limited Liability Company	)	
	)	
Defendants.	)	

Submitted: April 25, 2013
Decided: July 30, 2013
Correction to Cover Page Only (Defendant's Caption): September 12, 2013

Upon Defendant Mid-Del's Motion to Compel.
DENIED.

OPINION AND ORDER

Pilar G. Kraman, Young Conaway Stargatt & Taylor, LLP, Attorney for Plaintiff Reginald Spence, Wilmington, Delaware, 1000 North King Street, Wilmington, DE 19801.

Richard D.. Abrams, Mintzer, Sarowitz, Zeris, Ledva & Meyers, LLP, Attorney for Defendant Mid-Del Hydroseeding LLC, 1220 North Market Street, Suite 3000, Wilmington, Delaware 19801.

David L. Baumberger, Chrissinger & Baumberger , Attorney for Defendant Layaou Landscaping Inc., Three Mill Road, Suite 301, Wilmington, DE 19806.

BRADY, J.

I. Background

This case involves a personal injury action brought by Plaintiff Reginald Spence ("Spence") to recover damages against Defendant Layaou Landscaping Inc. ("Layaou") after his slip and fall while walking in the parking lot of Delaware Transit Corporation's Operation Complex in Georgetown, Delaware on December 21, 2009.[1] Layaou contracted to provide snow and ice removal for the site.[2] Subsequently, Spence amended his complaint to add Defendant Mid-Del Hydroseeding LLC ("Mid-Del"), the subcontractor who provided snow and ice removal for Layaou.[3] Spence was deposed on September 24, 2012.[4] In Spence's deposition, he answered the following:

> **Q**: What was the condition of the employee lot when you pulled in that morning?
> **A**: If I had to give it a grade, I'd say fair.[5]
> **Q**: In what way?
> **A**: You were – it wasn't clean-clean. There were spots of – where you could partially see blacktop and parts where you couldn't see.[6]
> **Q**: From snow, you mean?
> **A**: Snow, ice, whichever you wish to say.[7]
> ***
> **Q**: So when you got to the lot, you remember there [were] spots that were snow covered and spots that were bare?
> **A**: Yes.[8]
> ***
> **Q:** Okay. Let's stick to the employee lot for the moment. Did you see anything on the ground that indicated to you that somebody had treated it at all, anything the employee lot?
> **A**: I don't remember seeing it.[9]
> ***
> **Q**: When you got up, did you look back down to see what it was that you stepped on?
> **A**: No, I did not.[10]

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[1] Def. Mid-Del's Motion to Compel, ¶ 1.
[2] *Id*.
[3] *Id*.
[4] Mid-Del's Mot. to Compel Directed to Pl., ¶ 2.
[5] Pl.'s Supplement in Opp'n to Mot. to Compel, Ex. A, pg. 60, lines 23-24.
[6] Pl.'s Supplement in Opp'n to Mot. to Compel, Ex. A, pg. 61, lines 3-4.
[7] Pl.'s Supplement in Opp'n to Mot. to Compel, Ex. A, pg. 61, line 6.
[8] Def Mid-Del's Supplement to their Mot. to Compel, Ex. A, pg. 61, line 18.
[9] Def Mid-Del's Supplement to their Mot. to Compel, Ex. A, pg. 62, line 20.
[10] Def Mid-Del's Supplement to their Mot. to Compel, Ex. A, pg. 65, line 1.

Q: Do you know what you stepped on?
A: I am assuming I knew what I stepped on. That's the best I can say.[11]
Q: Well, what are you assuming it was?
A: Ice.[12]
***
Q: But to your knowledge, you don't know what you slipped on; correct?
A: I'm going – again, I say it was ice, you know, because you only slip on ice – its possible it could have been packed snow that had frozen over. I-.[13]
Q: That's fine. When you got out of the car, and your feet hit the ground, were you standing on blacktop or were you standing on snow or ice?
A: I don't remember.[14]
***
Q: Did you see any snow or ice in front of your car where you slipped and fell?
A: In the correct – the answer is within the parking lot there were, like I said, places you could see clearly that there was black and there was places – that's the only way I can answer the question. I am not certain.[15]
Q: Is it fair to say you didn't look where you were putting your feet when you were walking since you have no recollection of what you were walking on?
A: I really wasn't focused down.[16]
Q: Okay. What were you focused on?
A: Not that I was focused on it. Just getting out – how many times do we look down? You get comfortable doing things.[17]

On October 5, 2012, Mid-Del served upon Spence ten requests for admissions.[18] Spence admitted question one, and objected to the remainder, the following questions, two through ten:

(2) [Spence] testified on page 121 of his deposition that: "It's really not anybody's fault. It's just something that just happened and some things you just can't control."
(3) [Spence] does not blame anyone for his alleged injuries.
(4) [Spence] was aware that there were patches of snow and ice on the ground prior to falling.
(5) [Spence] was aware that there were patches of snow and ice on the ground in the location he parked his car.
(6) [Spence] did not look at the ground anywhere in his intended path of travel from his car to his place of employment.
(7) [Spence] assumes that he slipped on ice/snow.
(8) [Spence] has no idea what he actually slipped on.

[11] Def Mid-Del's Supplement to their Mot. to Compel, Ex. A, pg. 65, lines 3-4.
[12] Def Mid-Del's Supplement to their Mot. to Compel, Ex. A, pg. 65, line 6.
[13] Pl.'s Supplement in Opp'n to Mot. to Compel, Ex. A, pg. 117, lines 4-6.
[14] Pl.'s Supplement in Opp'n to Mot. to Compel, Ex. A, pg. 117, line 11.
[15] Pl.'s Supplement in Opp'n to Mot. to Compel, Ex. A, pg. 117-18, lines 21-24, 1.
[16] Pl.'s Supplement in Opp'n to Mot. to Compel, Ex. A, pg. 118, line 6.
[17] Pl.'s Supplement in Opp'n to Mot. to Compel, Ex. A, pg. 118, lines .
[18] Mid-Del's Mot. to Compel Directed to Pl., ¶ 2.

(9) [Spence] was not looking where he was placing his feet after he exited his car.
(10) [Spence] does not believe in his heart of hearts that anyone is to blame for his slip and fall.[19]

Spence alleged that the requests were improper under Superior Court Rules 26 and 36, requested information in Mid-Del's possession, were overly broad and burdensome, and were vague and/or ambiguous.[20] Mid-Del and Spence corresponded via e-mail on December 11 and 12, 2012, about questions two through ten because Mid-Del did not find the requests objectionable.[21] Spence provided no further responses.

II. Procedural History

On March 19, 2013, Mid-Del filed the instant Motion to Compel responses to questions two through ten, and requested attorney's fees and costs to prepare the motion.[22] On April 4, 2013, Spence filed a motion in opposition to Mid-Del's Motion to Compel. A hearing was held on April 11, 2013. The Court sustained Plaintiff's objections to requests 2, 3 & 10, and asked for supplemental submissions from the parties for questions four through nine. On April 18, 2013, Mid-Del filed their supplemental submission for questions four through nine. On April 25, 2013, Spence submitted his supplemental submission opposing Mid-Del's Motion to Compel. This is the Court's decision on the matter.

III. Parties Contentions

Spence contends that Mid-Del's questions four through nine are misleading and mischaracterize Spence's testimony.[23] Spence argues that he cannot admit or deny questions four through nine because they are vague and ambiguous when read in the context of the deposition testimony the parties cite to.[24] Further, Spence contends that the questions require

[19] Mid-Del's Mot. to Compel, Ex. A.
[20] Pl.'s Opp'n to Mid-Del's Mot. to Compel, ¶ 2.
[21] Def Mid-Del's Mot. to Compel, Ex. B.
[22] Mid-Del's Mot. to Compel, ¶ 8.
[23] Pl's Supplement in Opp'n to Def Mid-Del's Mot. to Compel Directed to Pl, pg. 1.
[24] Pl.'s Supplement in Opp'n to Def Mid-Del Hydroseeding LLC's Motion to Compel Directed to Plaintiff, ¶ 2.

him to admit contributory negligence and ultimate issues of fact that are currently being disputed in the case.[25]

Mid-Del contends that Superior Court Rules 36 Requests for Admission permits the questions as they are within the "any matter" scope of Rule 26(b).[26] Mid-Del asserts their questions are appropriate under Rule 36 as they are "narrowly tailored to address the truth of matters critical to the analysis of liability in this case and to confirm Plaintiff's statements made during his deposition."[27] Mid-Del argues that the "objections are improper, baseless, and deny Mid-Del the finality afforded by Rule 36."[28] Mid-Del requests that this Court deem questions four through nine admitted based on Spence's deposition testimony or Spence's failure to adequately respond, and award Mid-Del their attorney's fees and costs to prepare this Motion.[29]

IV. Discussion

Delaware Superior Court Civil Rule 36 governs requests for admission. Rule 36(a) provides that "[a] party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact . . ." Rule 36(b) provides that "[t]he matter is admitted unless, within 30 days after service of the request . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter [and t]he answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter."

[25] Pl.'s Opp'n to Def. Mid-Del's Mot. to Compel, ¶ 5.
[26] Superior Court Rule 26(b) provides:

> (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 . . ."

[27] Def. Mid-Del's Mot. to Compel, ¶ 7.
[28] *Id*.
[29] Def Mid-Del's Mot. to Compel, ¶ 7-8; Def Mid-Del's Supplement to their Mot. to Compel.

A request for admission is not intended to "deprive a party of a decision on the merits."[30] The purpose of a request for admission is to "simplify trials by eliminating facts about which there is no real controversy, but which are often difficult and expensive to prove."[31] However, a request for admission "should not be used to establish the ultimate facts in issue or demand the other party admit the truth of a legal conclusion."[32]

At Spence's deposition, he discussed the conditions of the parking lot, that he was "not focused down" when he stepped out of his car, and so was uncertain whether he was standing on ice. Spence testified that he assumed he slipped on ice. Mid-Del's questions five, six, and nine ask Spence to admit that he "was aware there were patches of snow and ice on the ground in the location he parked his car," that he "did not look at the ground anywhere in his intended path of travel from his car to his place of employment," and that he "was not looking where he [placed] his feet after he exited his car." Mid-Del argues that because Spence was generally aware that there was snow on the ground and did not see anyone attending to the snow in the employee parking lot, his testimony should extend to his admission that he was aware there were patches of snow and ice where he parked his car. Mid-Del also argues that because Spence stated he "really wasn't focused down," the Court should deem that Spence was not looking at the ground

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[30] *Bryant ex rel. Perry v. Bayhealth Medical Center, Inc.*, 937 A.2d 118, 126 (Del. 2007).
[31] *Id*.
[32] *Id*.

> The Fifth Circuit held that requests for admissions may not be used for matters that go beyond the general scope of discovery and ruled that "it is beyond the intent of [Fed. R. Civ. P. 36(a), identical to Super. Ct. Civ. R. 36(a)] to countenance a request for admission . . . which can be paraphrased: 'Admit that we win the case.'" *Carney v. Internal Revenue Serv.*, 258 F.3d 415, 422 (5th Cir. 2001).
> Federal courts allow litigants to request admissions as to a broad range of matters, including ultimate facts, but "[r]equests for admission cannot be used to compel an admission of a conclusion of law." *See Playboy Enter., Inc. v. Welles*, 60 F.Supp.2d 1050, 1057 (S.D.Cal. 1999); *Stubbs v. Comm'r Internal Rev.*, 797 F.2d 936, 938 (11th Cir. 1986); *Campbell v. Spectrum Automation Co.*, 601 F.2d 246, 253 (6th Cir. 1979); *Disability Rights Council v. Wash. Metro. Area*, 234 F.R.D. 1, 3 (D.D.C. 2006). Fed. R. Civ. P. 36(a) is identical to Super. Ct. Civ. R. 36(a).

Id. n. 29, 33.

anywhere in his path from his car to work, nor was looking where he placed his feet after he exited the car. The Court does not find the deposition testimony extends to the points reached by Mid-Del. Further, the questions ask Spence to admit his liability or contributory negligence in the accident. A request to admit is not a device one party can use to force an opposing party to admit ultimate facts in dispute, which are left for the fact-finder to resolve.[33]

Mid-Del's eighth question requests Spence admit that he "has no idea what he actually slipped on." Mid-Del argues that because Spence testified that he assumed he fell on ice or snow, this should extend to Spence having no idea what he actually slipped on. Spence's deposition testimony does not support that finding. The remaining questions, four and seven, have been addressed by Spence in his deposition, so Mid-Del does not need a court order as this information is on the record.

Much of what Mid-Del requests Spence to admit is proper inference or argument that can be made from the facts and Mid-Del may, of course, seek to so use the information at trial. However, the Court will not grant an order requiring Spence to admit factual questions that are reserved for the fact-finder. The Court will not, at this time, grant the relief Mid-Del requests.

V. Conclusion

For the reasons stated above, Mid-Del's Motion to Compel and request for attorney's fees and costs to prepare the Motion are therefore **DENIED.**

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge

[33] *Bryant*, 937 A.2d at 126.