SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947
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December 20, 2012

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RE: *Audrey E. Sweiger v. Delaware Park, L.L.C. & Delaware Racing Association d/b/a Delaware Park*,
C.A. No. S11C-10-020 RFS
Date submitted: October 8, 2013

Dear Counsel:

Before the Court is Plaintiff Audrey E. Sweiger's ("Plaintiff's") Motion *in Limine* to Preclude Defendants Delaware Park, L.L.C. and Delaware Racing Association d/b/a Delaware Park ("Defendants") from Denying or Otherwise Challenging Items which were the subject of Plaintiff's Request for Admissions. Plaintiff's Motion is **GRANTED**.

Facts

This Motion stems from an incident which occurred on the evening of January 13, 2010. On that date, Plaintiff, an eighty-one-year-old woman, visited Defendants'

establishment, and was present in Defendants' casino at about 6:20 p.m. Plaintiff claims that she left the casino area and entered an adjacent glass-enclosed alcove, which Plaintiff believed to be a smoking room. Plaintiff then attempted to re-enter the casino through a different entrance and in doing so, walked into an unmarked glass window and fell to the floor. She suffered bodily injuries as a result. Other glass windows within the wall contained decals, but the one causing Plaintiff's injury did not.

During discovery, Plaintiff served Defendants a Request for Admissions under this Court's Civil Rule 36 ("Rule 36"). Out of twenty-two admissions requested, nineteen related to Plaintiff's medical bills, each asking (1) whether the bill was a true and correct copy of the bill, (2) whether the amount charged was a customary charge for the services rendered, and (3) whether such care was necessary treatment for the injuries sustained. Defendants responded that they were without sufficient information to reply to the first question, and denied the second and third. The two remaining requested admissions asked about the absence and then subsequent presence of a decal on the glass window which caused Plaintiff's injury.

Analysis

Plaintiff contends that Defendants failed to provide Responses to her Request for Admissions, as ordered by this Court in a Pretrial Order dated April 22, 2013; and

therefore, Rule 36 deems the matters admitted and established. Defendants flatly contest this "failure" and assert that they indeed filed timely responses.[1] Plaintiff replies that Defendants never filed additional responses or moved for relief after this Court issued its Pretrial Order. Further, she asserts that Defendants responses asserting an inability to answer due to lack of information do not comply with Rule 36's dictate that such answers must be accompanied by an assurance that the responding parties have tried to, but cannot answer the matter.[2] Plaintiff also argues that a Request for Admissions attempts to establish that which no real dispute exists, such as in this case where the bulk of the requested admissions concern medical bills and no dispute exists as to the extent or treatment of her injuries.

The law on Rule 36 is clear. "The purpose of a request for admissions is not to deprive a party of a decision on the merits."[3] Rather, "the purpose of Rule 36 is to facilitate the proof at trial by eliminating facts and issues over which there is little dispute, but which are often difficult and expensive to prove. Requests for admission

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[1] Defendants claim that this Court took Plaintiff's word that Defendants failed to provide Responses to her Request, as shown in its Pretrial Order. Defendants also state that after they filed their timely Responses and after this Court issued its Pretrial Order, Plaintiff served Defendants another Request for Admissions identical to her first Request, to which Defendants filed identical responses to their first responses.

[2] Plaintiff further argues that Defendants attempt to couch two requested Admissions as seeking inadmissible information, when in actuality, the information sought was not inadmissible.

[3] *Bryant v. Bayhealth Med. Ctr., Inc.*, 937 A.2d 118, 126 (Del. 2007).

should not be used to establish the ultimate facts in issue."[4]

Preliminarily, the Court notes that any of Defendants' responses regarding the placement of decals on the glass window which caused Plaintiff's injury are irrelevant because, as the Court ruled in Defendants' Motion for Summary Judgment, Defendants had no duty to place decals on the window.[5]

Regarding the remaining admissions, the Court finds that Defendants' responses did not adequately comport to Rule 36. That Rule states that if a party denies an admission, it must do so "specifically" and "meet the substance of the requested admission."[6] The Rule also states that if a party claims to be unable to either admit or deny the admission, it must state that it "has made reasonable inquiry that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny."[7] Defendants responses clearly did not conform to these requirements. As the Court does not consider the issues relating to Plaintiff's medical bills to be significant to this litigation, Defendants' responses to those admissions are

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[4] *Thorton v. Meridian Consulting Eng'rs, Del., LLC*, 2006 WL 2126291, at *2 (Del. Super. Feb. 13, 2006) (citations omitted).

[5] *See Sweiger v. Delaware Park, L.L.C.*, C.A. No. S11C-10-020 RFS, at 9 (Del. Super. Dec. 3, 2013) (citing *Talmo v. Union Park Automotive*, 2012 WL 730332, at *3 (Del. Mar. 7, 2012)).

[6] Super. Ct. Civ. R. 36(a).

[7] *Id.*

admitted, and thus conclusively established.

Based on the above, Plaintiff's Motion is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Cc: Prothonotary
Judicial Case Manager