

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

BRANDON M. COOK)	
)	
Plaintiff,)	
)	
v.)	Case No. 13-CV-107-GKF-FHM
)	
JOE PETERS, JR., in his)	
official and individual capacities;)	
STANLEY GLANZ, in his official)	
capacity as Sheriff of Tulsa)	
County; TULSA PROMENADE)	
LLC., a foreign limited liability)	
company; GLIMCHER REALTY)	
TRUST, a foreign real estate)	
trust,)	
Defendants.)	

OPINION AND ORDER

Defendant Joe Peters, Jr.'s *Motion to Withdraw Admissions Pursuant to Rule 36(b) of the Federal Rules of Civil Procedure*, [Dkt. 112], is before the court for decision. Plaintiff has filed a response. [Dkt. 128].

Through the oversight of counsel, Defendant Peters failed to respond to Plaintiff's requests for admissions. Pursuant to Fed. R. Civ. P. 36(a)(3), Defendant Peters' failure to respond resulted in the matters being admitted. Defendant seeks to withdraw the admissions pursuant to Fed. R. Civ. P. 36(b).

In relevant part, Rule 36(b) provides that the court may permit withdrawal of an admission if the withdrawal would promote the presentation of the merits of the action and is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits.

Plaintiff acknowledges that withdrawal of the admissions would promote the presentation of the merits of the action but argues Plaintiff will be prejudiced because Plaintiff was led to believe the admissions would stand. But,

“[t]he prejudice contemplated by the Rule is not that the party obtaining the admission must now convince the jury of the truth of the matter. *Bergemann v. United States*, 820 F.2d 1117, 1121 (10th Cir. 1987). Rather, ‘the prejudice contemplated by the rule “relates to the difficulty a party may face in proving its case” because of the sudden need to obtain evidence required to prove the matter that had been admitted.’” *Gutting v. Falstaff Brewing Corp.*, 710 F2d 1309, 1314 (8th Cir. 1983)(*citations omitted*).

Estell v. Williams Scotsman, Inc., 228 F.R.D. 669, 670 (N.D. Okla. 2005).

Plaintiff has not persuaded the court that Plaintiff will be prejudiced in maintaining or defending the action on the merits if the court allows Defendant Peters to withdraw the admissions.

Defendant Peters’ *Motion to Withdraw Admissions Pursuant to Rule 36(b) of the Federal Rules of Civil Procedure*, [Dkt. 112], is GRANTED. Defendant Peters shall promptly serve responses to the requests for admissions.

IT IS SO ORDERED this 14th day of April, 2015.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE