

REBECCA BRASELL

NO. 19-C-355

VERSUS

FIFTH CIRCUIT

STATE FARM MUTUAL INSURANCE

COURT OF APPEAL

COMPANY

STATE OF LOUISIANA

December 06, 2019

Susan Buchholz
First Deputy Clerk

IN RE REBECCA BRASELL

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE DONALD A.
ROWAN, JR., DIVISION "L", NUMBER 790-937

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and John J. Molaison, Jr.

WRIT GRANTED; REMANDED.

In this writ application, plaintiff challenges the trial court's grant of defendant's motions: specifically, a *Motion to Deem the Requests for Admissions Admitted* and a *Motion for Partial Summary Judgment*. For the following reasons, this writ application is granted.

Regarding requests for admissions, pursuant to the Louisiana Code of Civil Procedure, a party may serve upon any other party a written request for the admission of the truth of any relevant matters of fact. *See* La. C.C.P. art. 1466. Generally, the matter is deemed admitted if the party to whom the request is directed does not respond within thirty days *after service of the request*. La. C.C.P. art. 1467. (Emphasis added).

Generally, the courts have given full effect to Articles 1467 and 1468 when there has been a total lack of response to requests for admissions. *Prestage v. Clark*, 97–0524 (La. App. 1 Cir. 12/28/98), 723 So.2d 1086, 1090, *writ denied*, 99–0234 (La. 3/26/99), 739 So.2d 800; *Vardaman v. Baker Center, Inc.*, 96–2611 (La. App. 1 Cir. 3/13/98), 711 So.2d 727, 732. The language of Article 1467 is very clear; the matter is admitted unless a written answer or objection is served on the party making the request within the specified time after service of the request. *Prestage*, 97–0524 at p. 7, 723 So.2d at 1090; *Vardaman*, 96–2611 at p. 9, 711 So.2d at 732–33.

However, Article 1467 is not a trap set for the litigant; it provides many options for the party on whom the request is served. For example, if the party cannot answer within the specified time, the court may allow additional time. *See* La. C.C.P. art. 1467; *Prestage*, 97–0524 at pp. 7–8, 723 So.2d at 1090. Additionally, a party against whom a fact has been deemed admitted has the opportunity to seek to have the fact withdrawn or amended. *See* La. C.C.P. art. 1468; *Vardaman*, 96–2611 at p. 9, 711 So.2d at 733. However, if a party fails to take any steps available to it, the fact is admitted and, according to Article 1468, is conclusively established. *Vardaman*, 96–2611 at p. 9, 711 So.2d at 733.

In this matter, the defendant did not prove service of the requests for admission on the plaintiff and, thus, there is no proof of failure to answer within a specified time *after* service of the request. Further, not only did plaintiff request an extension of time to answer the requests but also the plaintiff answered the requests within the extension granted. Thus, the trial court erred in deeming the requests admitted. Accordingly, this writ is granted, the *Motion to Deem Requests Admitted* is hereby vacated, and that motion is denied.

Further, in light of the fact that the defendant’s motion for partial summary judgment was based on entirely on the plaintiff’s requests being deemed admitted, we find that, without those admissions, defendant’s motion for partial summary judgment was improperly granted. Accordingly, this writ is granted, the *Motion for Partial Summary Judgment* is vacated, and the matter is remanded to the district court for further proceedings.

Gretna, Louisiana, this 6th day of December, 2019.

FHW
MEJ
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **12/06/2019** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

19-C-355

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