IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

INTERNATIONAL DEVELOPMENT CORPORATION,	:	
Plaintiff	:	
	:	
vs.	:	**NO. 18-1550**
	:	
THE FRONTIER GROUP, LLC, GERARD J. BARRIOS, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATES OF CLARENCE W. MOORE AND ELVIRA MOORE,	:	
Defendants	:	**CIVIL ACTION - LAW**

OPINION

I. Factual and Procedural History

This civil action was initiated by Writ of Summons on October 23, 2018 and a Complaint was subsequently filed on January 17, 2019 seeking to quiet title oil and gas interests in several townships in Lycoming County and requesting declaratory relief and disparagement of title. In its Complaint, Plaintiff claims that Defendant, Gerard J. Barrios (hereinafter referred to as "Dr. Barrios"), as Administrator of the Estate of Clarence W. Moore, deeded thousands of acres of oil and gas interests to Plaintiff in 2000. Plaintiff then leased the property or portions of the property to Virginia Energy Consultants, LLC. The lease was assigned multiple times between 2006 and 2009. SWN Production Company, LLC (hereinafter referred to as "SWN") is the current leaseholder under the original 2006 lease and Plaintiff receives royalties pursuant to that lease.

Plaintiff further alleges that, in 2018, Dr. Barrios improperly leased the property to Defendant, The Frontier Group, LLC (hereinafter referred to as "Frontier"). This lease identifies property that is "nearly identical" to the property

that is the subject of the 2006 lease. *See Plaintiff's Complaint at ¶ 18*. Defendant Frontier now claims an interest in the property purportedly owned by Plaintiff.

Defendants filed an Answer and Counterclaims on February 22, 2019, seeking reformation of a deed for the oil, gas, and mineral rights acquired by Mr. Moore and alleging that the deed "was executed collateral to an agreement to settle a business controversy between Moore's widow Elvira and his estate and Charles David Rainey, Plaintiff, and C. W. Moore Corporation." *See Defendants' Counterclaim at ¶ 53*. They also stated that "any lease by [Plaintiff] to SWN or others of the properties of the Estate of Clarence Moore is a nullity and a cloud of title on this nullity would be impossible." *See Defendants' Counterclaims at ¶ 59*.

On March 20, 2019, SWN filed an Uncontested Petition to Intervene stating that, pursuant to the Memorandum of Lease recorded in 2010, SWN possesses an interest in the property identified in the 2000 Deed. The Petition was granted on March 28, 2019.

On August 27, 2019, Plaintiff served Requests for Admissions on Dr. Barrios to which he responded with objections and little to no substantive responses. Counsel for the parties conferred on the matter, resulting in Dr. Barrios filing his first supplemental responses. According to Plaintiff, Dr. Barrios simply re-stated his objections and again provided little to no substantive responses. The Court, however, was not provided with a copy of Defendant's first supplemental responses. Plaintiff filed the instant motion on October 25, 2019 asking the Court to strike Dr. Barrios' responses to Request for Admissions 1-5 and 7-14 and deem them admitted due to his failure to engage in good faith

discovery. Dr. Barrios filed a reply along with a second set of supplemental responses on February 5, 2020.

II. Discussion

Pennsylvania Rule of Civil Procedure 4014 governs requests for admission and states, in pertinent part:

> (a) A party may serve upon any other party a written request for the admission . . . of the truth of any matters . . . that relate to statements or opinions of fact or of the application of law to fact, including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or available for inspection and copying in the county.

Pa.R.C.P. No. 4014(a).

> (b) If objection is made, the reasons therefor shall be stated. The answer shall admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request.

Pa.R.C.P. No. 4014(b).

> (c) The party who has requested the admission may move to determine the sufficiency of the answer or objection. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial.

Pa.R.C.P. No. 4014(c).

"The purpose of [requests for admissions] is to clarify and simplify the issues raised in prior pleadings in order to expedite the litigation process" by eliminating matters to which there is no genuine dispute. *Estate of Borst v. Edward Stover Sr. Testamentary Tr.*, 30 A.3d 1207, 1210 (Pa. Super. 2011); *Sun Pipe Line Co. v. Tri-State Telecommunications, Inc.*, 655 A.2d 112, 121 (Pa. Super. 1995). Requests for admissions are properly used when a party seeks to discover the position its opponent will take at the trial with respect to documents or the facts surrounding the documents. *Hill v. Mayusky*, 21 Pa. D. & C.2d 519, 521 (C.P. Northumberland January 1, 1960), *citing* Goodrich-Amram §4014(*a*)-1. Pennsylvania's discovery rules require parties to disclose information which they may not otherwise wish to disclose. *Eigen v. Textron Lycoming Reciprocating Engine Div.*, 874 A.2d 1179, 1189 (Pa. Super. 2005). It is well established that discovery tools are meant to narrow the issues that might be raised during litigation and, to allow parties to provide incomplete, insufficient, or untruthful responses would promote gamesmanship and second-guessing in the discovery process. *Id.* at 1189-90.

Plaintiff argues that Dr. Barrios 1) failed to verify his responses; 2) failed to "credibly address, admit or deny any of the propounded Requests"; and 3) supplied deficient and/or insufficient responses that do not evidence good faith to engage in discovery. *See Plaintiff's Motion to Strike at ¶¶ 8 and 14*. Dr. Barrios argues that Plaintiff's requests are improper and generally sets forth four primary arguments defending his objections and responses to Plaintiff's requests for admissions.

First, Dr. Barrios argues that he cannot sufficiently respond to any of Plaintiff's requests concerning a 2000 Settlement Agreement because Plaintiff failed to attach the document to its requests and otherwise failed to properly define it. This argument stems from his assertion that there are multiple different versions of the Settlement Agreement, some of which were purportedly altered or changed without Dr. Barrios' knowledge or consent. Dr. Barrios states that he cannot respond to the requests because they call for speculation and guess work. However, and despite his objections, Plaintiff is not required to attach the "Settlement Agreement" to the requests.

"Copies of documents shall be served with the request **unless they have been or are otherwise furnished or available for inspection** and copying in the county." Pa.R.C.P. 4014(a) (emphasis added). In the "Instructions and Definitions" section of Plaintiff's requests, it defines "Settlement Agreement" as "the Settlement Agreement and Mutual Release dated August 2, 2000, with the body of the Settlement Agreement being attached to the Counterclaim as 'Exhibit J.'" It is clear that the document to which Plaintiff is referring is the document that *Dr. Barrios himself attached to his own counterclaim as Exhibit J*. Since Dr. Barrios produced this document, it was obviously available to him for inspection and therefore, this argument fails.

Next, Dr. Barrios states in almost all of his objections that the requests call for conclusions of law. He is correct that "requests for admissions must call for matters of fact rather than legal opinions and conclusions." *Dwight v. Girard Medical Center*, 623 A.2d 913, 916 (Pa.Cmwlth.Ct. 1993). Some examples of requests that call for legal conclusions include requests asking the Plaintiff to

admit that "adequate and proper medical treatment was made available to [Plaintiff]; that he received adequate and proper medical care when he permitted it to be provided; that the care given was appropriate and proper under the circumstances; and that the [Defendant] was not negligent or careless in any respect." *Id.* Here, as discussed in more detail below, Plaintiff does not use any legal terms or phrases in its requests that would require Dr. Barrios to provide a legal opinion or conclusion. Plaintiff's requests are based on fact and opinion of fact and thus, this argument likewise fails.

Third, Dr. Barrios argues that Plaintiff's requests are inappropriate because they address crucial issues in dispute between the parties. "A jury trial cannot be avoided by the promulgation of a set of requests for admissions where a defendant has to agree that plaintiff does not have to meet its burden of proof at the upcoming trial." *Sun Pipe Line Co.*, 655 A.2d at 121. Dr. Barrios states in his Response to Plaintiff's Motion to Strike that the "crux of this case is the **validity** and **enforceability** of a settlement agreement entered into between the principal of the Plaintiff, IDC and certain Defendants in 2000." *Defendant's Brief in Response at page 2 (emphasis added)*. Plaintiff's requests do not ask Dr. Barrios to admit that the 2000 Settlement Agreement is legally enforceable or legally valid. To the contrary, the requests are focused on facts surrounding the document, such as Dr. Barrios' understanding of its content and whether he signed it. This argument fails for these reasons.

Finally, Dr. Barrios argues that Plaintiff is attempting to circumvent the entire discovery process by inappropriately utilizing requests for admissions and states that the deposition of Dr. Barrios would be a more appropriate forum of

discovery as opposed to the requests. While Dr. Barrios might prefer a deposition over being pinned down by written requests for admissions, the law does not require a party conduct a deposition in lieu of or prior to a request for admissions. Additionally, Plaintiff has been attempting to depose Dr. Barrios since March of 2019 but the deposition has been unilaterally rescheduled by Dr. Barrios on multiple occasions.

Having addressed Dr. Barrios' primary objections, the Court will now address each request at issue as well as Defendant's second supplemental response to each request filed on February 5, 2020. Pursuant to subsection (c) of Rule 4014, the Court has five options when ruling on responses to requests for admissions:

1. If objected to, find that the objection is justified;
2. If objected to, find that the objection is not justified and Order an answer be served;
3. Find that the answering party's response is insufficient and Order the matter be deemed admitted;
4. Find that the answering party's response is insufficient and Order an amended response be filed; or
5. Find that the answering party's response is sufficient.

A. Request for Admission No. 1

Request number one states: "Please admit that you were appointed the Personal Representative of the Estate of Clarence W. Moore in the estate administration proceeding filed at Administration Number 41 98-0474 in the

Office of the Register of Wills of Lycoming County, Pennsylvania." Dr. Barrios generally admits that the Letters of Administration were granted relating to the Estate but denied that he was appointed as domiciliary personal representative of the Estate at that time. He argues that he cannot possibly respond to this request because it does not specify whether it means domiciliary or ancillary personal representative and, because of this, it calls for a conclusion of law.

The Court disagrees with Dr. Barrios' objections. Whether or not Dr. Barrios was appointed the Personal Representative is a simple fact, not a legal conclusion. In his own counterclaim, Dr. Barrios identifies that one of the signatories to the Settlement Agreement is "Gerard Barrios, 'Personal Representative' of the Estate of Clarence Moore." *See, e.g., Defendants' Counterclaim at ¶ 75*. Further, a review of the Estate file shows that Dr. Gerard J. Barrios filed a Petition for Grant of Letters, which were granted on October 30, 1998. Finally, despite this request not specifying whether it relates to the domiciliary or ancillary representation, Dr. Barrios is required in good faith to qualify his denial. He is required to make a reasonable inquiry into the facts which, in this case, are public record, and exercise good faith in responding to the request. Therefore, Dr. Barrios' objections are overruled and the Court finds his denial in bad faith. It shall be deemed admitted that Dr. Barrios was appointed as ancillary Personal Representative of the Estate of Clarence Moore.

B. Request for Admission No. 2

Request number two states: "Please admit that no other individual was appointed as a Personal Representative of the Estate of Clarence W. Moore in the estate administration proceeding filed at Administration Number 41-98-0474

in the Office of the Register and Wills of Lycoming County, Pennsylvania." Dr. Barrios, after objecting, states that "after reasonable inquiry and based on Dr. Barrios' present knowledge, he lacks sufficient information to admit or deny."

"An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny." Pa.R.C.P. 40149(b). Defendant need not specify what measures he took in his reasonable inquiry but must simply state that he did make a reasonable inquiry and that the information was insufficient to allow him to admit or deny. *Adley Exp. Co. v. Highway Truck Drivers & Helpers, Local No. 107*, 349 F. Supp. 436, 452 (E.D. Pa. 1972), *supplemented sub nom. Adley Exp. Co. v. Highway Truck Drivers & Helpers Local 107*, 365 F. Supp. 769 (E.D. Pa. 1973); Civil Procedural Rules Committee Explanatory Comment to Pa.R.C.P. 4014 (1978) ("[p]rior Rule 4014 has been completely revised to conform to Fed.R.Civ.P. 36 as amended in 1970"). Therefore, Dr. Barrios' response to request number two is sufficient.

C. Request for Admission No. 3

Request number three states: "Please admit that you signed the Settlement Agreement." Dr. Barrios admits that he signed a document that "may or may not be the Settlement Agreement referred to in this Request, however the document signed was incomplete at the time and was subsequently modified unbeknownst to Dr. Barrios." His argument, essentially, is that there exist multiple different versions of the Settlement Agreement. However, as we have held

above, the Plaintiff properly identified the Settlement Agreement and, if there is a corrected version that Dr. Barrios did in fact sign, he was required in good faith to provide further explanation to Plaintiff. Additionally, 4014 clearly states that a proper area of inquiry is the signing of any document described in the request. Pa.R.C.P. No. 4014(a). Therefore, Dr. Barrios' objections to request number three is overruled and the matter shall be deemed admitted.

D. Request for Admission No. 4

Request number four states: "Please admit that you signed the Settlement Agreement as the Personal Representative of the Estate of Clarence W. Moore." Dr. Barrios again responds with objections and argues that the request "improperly defines the Settlement Agreement to include the whole document, a part of the whole document, and a version of the document with and without uninitiated handwritten modifications." This statement is followed by a blanket denial.

Upon inspection of the Settlement Agreement, it appears that the signature space where Gerard Barrios would have singed states that the title is "Personal Representative." Since we've already deemed admitted that Dr. Barrios signed the Settlement Agreement and was appointed Personal Representative of the Estate, Dr. Barrios' objections are overruled and the matter set forth in request number four shall be deemed admitted.

E. Request for Admission No. 5

Request number five states: "Please admit that in conjunction with the negotiation and execution of the Settlement Agreement that you, as Personal

Representative of the Estate of Clarence W. Moore, were represented by legal counsel." In response, Dr. Barrios states that he believes Attorney Kenneth Yates represented the Estate of Clarence W. Moore at the relevant time. The Court believes that this information was provided in good faith and to the best of Dr. Barrios' memory. Therefore, while Dr. Barrios' objections are overruled, he has sufficiently provided a response to request number five.

F. Request for Admission No. 7

Request number seven states: "Please admit that you read the Settlement Agreement prior to signing it." Dr. Barrios objects due to the vagueness and ambiguity of the request. He goes on to state that, "Dr. Barrios read and signed a document that may or may not be the Settlement Agreement referred to in this Request, however the document he signed was incomplete at the time it was signed, and it was subsequently modified unbeknownst to Dr. Barrios." Courts have held that the answering party is required to, if reasonable, rely on their memory when answering requests for admissions. *Discover Bank v. Repine*, 157 A.3d 978, 982 (Pa. Super. 2017). Here, since no one but Dr. Barrios knows whether or not he read the Settlement Agreement, and since the word "read" is a common word in the English language with no dispute as to its meaning, Dr. Barrios was required to use his memory to determine the response to this request. Dr. Barrios has not claimed that he does not recall one way or another and thus, Dr. Barrios' objections are overruled and this matter shall be deemed admitted.

G. Request for Admission No. 8

Request number eight states: **"**Please admit that you understood the Settlement Agreement prior to signing it." Defendant again objects and states that he "read and signed a document that may or may not be the Settlement Agreement referred to in this Request, however the document he signed was incomplete at the time it was signed, and it was subsequently modified unbeknownst to Dr. Barrios." This response does not fairly meet the substance of the request as required by Pa.R.C.P. 4014. The requests asks Dr. Barrios whether he *understood* the Settlement Agreement, not whether he *read* it, as in request number seven.

Similarly, though, no one but Dr. Barrios knows whether or not he understood the Settlement Agreement prior to signing it. Dr. Barrios is therefore required to use his memory to determine the response to this request. If Dr. Barrios now realizes that he did not understand the document prior to signing it, he is required in good faith to state so. Thus, Dr. Barrios' objections are overruled and this matter shall be deemed admitted.

H. Request for Admission No. 9

Request number nine states: "Please admit that you understood the Settlement Agreement to be a negotiated resolution of the controversies identified therein." Dr. Barrios objects and states that he "believed that the parties had an agreement to resolve their dispute and that such agreement would be accurately memorialized. The document he signed was incomplete at the time it was signed, and it was subsequently modified unbeknownst to him." Proper inquiries for requests for admissions include opinions of fact. Pa.R.C.P. 4014(a).

This request asks for Dr. Barrios' opinion regarding his understanding of what the Settlement Agreement negotiated. If Dr. Barrios believes that the Settlement Agreement does not in fact memorialize what Dr. Barrios understood to be the resolution, then he is required in good faith to further explain his opinion. Dr. Barrios' objections are overruled and this matter shall be deemed admitted.

I. Request for Admission No. 10

Request number ten states: "Please admit that you understood that the parties to the Settlement Agreement would rely on that document." Dr. Barrios again asserts his repetitive objections of vagueness and ambiguity. This request is contemplating Dr. Barrios' own, personal opinion and understanding of the circumstances surrounding the Settlement Agreement. As stated above, Rule 4014 allows a party to inquire about opinions of fact held by the adverse party. Again, if Dr. Barrios' understanding of the parties' reliance is something that needed further explanation, then he was required to provide that explanation in good faith. Dr. Barrios' objections, therefore, are overruled and this matter shall be deemed admitted.

J. Request for Admission No. 11

Request number eleven states: "Please admit that, in conjunction with the preparation and execution of the Settlement Agreement, that you, as Personal Representative of the Estate of Clarence W. Moore, made all necessary investigations into the factual premises of that contract." Dr. Barrios objects, stating the request "is generally vague and assumes unknown facts and

circumstances and cannot reasonably be admitted or denied." The Court agrees that the phrase "necessary investigation" may be ambiguous in that two different people could define both "necessary" and "investigation" in two different ways. However, as Plaintiff points out, the basis for this request comes directly from the Settlement Agreement which, as we have already deemed admitted, Dr. Barrios signed. Specifically, the document states that the parties "made all necessary investigations into the factual premises hereof and into all matters being released hereby . . . ." *Settlement Agreement [identified as Exhibit J to Defendant's Counterclaim], at page 3, part N*. Again, if Dr. Barrios disagrees with this assertion, he is required to provide an explanation. However, since he did not, Dr. Barrios' objections are overruled and this matter shall be deemed admitted.

K. Requests for Admissions Nos. 12-13

Request number twelve states: "Please admit that the Settlement Agreement, at Paragraphs 3 & 4 on Page 4, contemplates the Estate of Clarence W. Moore transferring interests associated with oil and gas" and Request number thirteen states: "Please admit that the Settlement Agreement does not contain any representation by the Estate of Clarence W. Moore that it did not own the oil and gas interests that were identified in Exhibits "A" through "E" of the Settlement Agreement." Dr. Barrios objects stating the requests are vague and call for legal interpretations and therefore cannot reasonably be admitted or denied. Asking Dr. Barrios to admit to his interpretation of the Settlement Agreement is, again, an opinion of fact regarding the substance of the document, which is proper pursuant to Rule 4014. There is nothing in these two requests that can be

deemed conclusions of law. Dr. Barrios' objections are overruled and this matter shall be deemed admitted.

L. Request for Admission No. 14

Request number fourteen states: "Please admit that you did not inform any parties to the Settlement Agreement that the Estate of Clarence W. Moore did not own any of the oil and gas identified in Exhibits "A" though "E" of the Settlement Agreement." Dr. Barrios objects and states he cannot reasonably admit or deny. This request is similar in nature to requests 7 and 8 in that Dr. Barrios must rely on his memory in good faith when admitting or denying such a request. Dr. Barrios' objections are therefore overruled and this matter shall be deemed admitted.

Finally, Rule 4014 clearly requires that the answering party verify any substantive responses and the parties' attorney verify any objections. Pa.R.C.P. No. 4014(b) and *Note* ("[t]he matter is admitted unless . . . the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by the party's attorney . . . only the party may verify the answer"). Since Dr. Barrios' responses as set forth above contain more than objections, Dr. Barrios himself is required to verify them. It does not appear that Dr. Barrios verified his Second Supplemental Responses to Plaintiff's Request for Admission and thus is directed to do so within ten (10) days of the date of the below Order.

ORDER

AND NOW, this **25th** day of **March, 2020**, upon consideration of Plaintiff's Motion to Strike Defendant, Gerard J. Barrios' Responses to Request for Admissions and Defendant's response thereto, it is hereby Ordered that Plaintiff's motion is GRANTED as it relates to Requests 1, 3, 4, and 7-14 and said Requests are deemed admitted and DENIED as it relates to Requests 2 and 5. Defendant Barrios is directed to submit a signed Verification to his Second Supplemental Responses.

BY THE COURT,

_____
Hon. Ryan M. Tira, Judge

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