IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

IN RE:	**CLEO CLARK SECREASE and PAMELA A. SECREASE**	**3:04-bk-11726 E CHAPTER 7**
AMERICAN MARSH/J-LINE PUMPS COMPANY		**PLAINTIFF**
v.	**AP NO. 3:04-ap-1285**	
CLEO CLARK SECREASE		**DEFENDANT**

ORDER DENYING MOTION TO DEEM REQUESTS FOR ADMISSION TO BE ADMITTED AND MOTION FOR SUMMARY JUDGMENT

Now before the Court are Plaintiff's Motion to Deem Requests for Admission to be Admitted and Motion for Summary Judgment ("**the Admission and Summary Judgment Motion**"), the Response to Motion to Deem Requests for Admission to be Admitted and Motion for Summary Judgment, filed by Separate Debtor Cleo Clark Secrease ("**Defendant**") through his new Counsel, Ms. Katharine Wilson.

The procedural history of these matters is as follows. On March 25, 2005, the Admission and Summary Judgment Motion and Brief in support thereof, were filed by Plaintiff. In the Admission and Summary Judgment Motion, Plaintiff requested that its Request for Admissions be deemed admitted due to Defendant's failure to respond to that Request for Admissions. On April 1, 2005, Clarence P. Shoffner, Debtors' prior Counsel,

filed a Motion to Withdraw as Counsel ("**Motion to Withdraw**") and an initial Response to the Admission and Summary Judgment Motion. In Defendant's Response, Mr. Shoffner stated that Defendant needed additional time to file an appropriate response to Plaintiff's Motion and requested that the Court withhold a ruling on that Motion. In an Order entered April 7, 2005, the Court granted Mr. Shoffner's request to withdraw as counsel and withheld a ruling on the Admission and Summary Judgment Motion until Defendant had an opportunity to obtain additional counsel and file an appropriate response. On May 6, 2005, Defendant filed, through his new Counsel, Ms. Wilson, a Response to the Admission and Summary Judgment Motion and a Brief.

In Defendant's Response and Brief in support thereof, Defendant admits that the Response to the Requests for Admissions was untimely. However, Defendant points out that a response to the Request for Admissions was emailed to Plaintiff's attorney on March 22, 2005, by Defendant's former attorney. Defendant argues that Plaintiff will not be prejudiced by allowing the acceptance of Defendant's Response to the Request for Admissions. Defendant also requests that he be permitted to amend his Response to the Request for Admission and allowed a reasonable time to submit such amendments.

Rule 36(a) of the Federal Rules of Civil Procedure, made applicable to these proceedings by Bankruptcy Rule 7036, provides, in part, that matters set forth in requests for admissions are 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, signed by the party or by the party's attorney."

However, Federal Rule of Civil Procedure 36(b) provides the authority for a court to "permit a party to file an answer to a request for admissions *after* the expiration of the time afforded by Rule 36 in cases in which the presentation of the merits of the action would be otherwise subserved, and the opposing party is not prejudiced by allowing untimely responses." *Sadowsky v. Larson (In re Larson*), 169 B.R. 945, 955 (Bankr. D. N.D. 1994) (citing Fed. R. Civ. P. 36(b); *Beatty v. United States*, 983 F.2d 908, 909 (8th Cir. 1993) (further citations omitted)); *see also F.D.I.C. v. Prusia*, 18 F.3d 637, 640 (8th Cir. 1994). The type of prejudice contemplated by Federal Rule of Civil Procedure 36(b) "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." *Prusia*, 18 F.3d at 640 (citations and internal quotes omitted). Such prejudice does not include the fact that, if the admission were withdrawn, the party who obtained that admission would then have to convince the fact finder of its truth. *Id*. (citations omitted); *Larson*, 169 B.R. at 955 (citations omitted). In general, "deemed admissions are to give way to the quest for the truth only in extreme circumstances." *Beatty*, 983 F.2d at 909; *Flohr v. Pennsylvania Power & Light Co.*, 821 F. Supp. 301, 306 (E.D. Pa. 1993) (citations omitted) ("The Court should normally permit untimely answers [to requests for admissions] when doing so would aid in the presentation of the merits of the action and would not prejudice the party who made the requests.").

In this case, it is clear that the presentation of the merits of the action would be promoted by accepting Defendant's late submitted Response to the Request for Admissions. If Defendant's untimely Response is not accepted, then the merits of this matter will not be

heard, and such an outcome should only be countenanced in extreme circumstances, which are not present here. There has been no showing that Defendant or his former counsel acted in bad faith in submitting a late Response to the Request for Admissions. Moreover, under these facts, acceptance of Defendant's late Response to the Request for Admissions as timely does not induce the type of prejudice to Plaintiff contemplated under Federal Rule of Civil Procedure 36(b). *See Prusia*, 18 F.3d at 640 (citations omitted) (noting that "preparing a summary judgment motion in reliance upon an erroneous admission does not constitute prejudice.").

Accordingly, for the reasons stated herein

ORDERED that Defendant's late Response to the Request for Admissions is **ACCEPTED AS TIMELY**. It is also

ORDERED that the Motion designated in this Order as Plaintiff's Admission and Summary Judgment Motion is **DENIED.** It is also

ORDERED that Defendant's request for permission to amend his Response to the Request for Admission and for a reasonable time to submit such amendments is **GRANTED**. Any further amendments to Defendant's Response to the Request for Admissions must be filed within **ten (10)** days of the entry of this Order, and any such amendments filed outside this deadline will not be accepted.

ORDERED that trial in the above-captioned adversary proceeding will be set by subsequent notice.

IT IS SO ORDERED.

E.O.D. 5/18/05 by TLW

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: May 17, 2005

cc: Raymond A. Harrill, attorney for Plaintiff
Katharine Wilson, attorney for Defendant
Cleo Clark Secrease and Pamela A. Secrease, Debtors
Chapter 7 Trustee
U.S. Trustee