

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

BENINATI CONTRACTING, INC.,

Plaintiff/Counter-Defendant,

vs.

Case No. 2015-1400-CB

PAUL BENINATI,

Defendant/Counter-Plaintiff.

OPINION AND ORDER

Plaintiff has filed a motion to deem requests for admission admitted. Defendant has filed a response and requests that the motion be denied. In addition, Plaintiff has filed a reply brief in support of its motion.

I. Factual and Procedural History

Defendant is a 50% shareholder in Plaintiff. Defendant's brother, Mark Beninati ("M. Beninati") is Plaintiff's remaining 50% shareholder. Defendant and M. Beninati's working relationship has allegedly fallen apart, which ultimately has led to this litigation.

On September 28, 2015, Plaintiff filed its first amended verified complaint in this matter ("Complaint"). The Complaint includes the following claims: Count I- Trespass, Count II- Unjust Enrichment, Count III- Statutory Conversion, Count IV- Claim and Delivery, Count V- Breach of Fiduciary Duty, Count VI- Accounting, and Count VII- Dissolution. On June 28, 2015, Defendant filed its counter-complaint in this case ("Counter-Complaint"). The Counter-Complaint includes a single claim for slander of title.

On August 5, 2015, Plaintiff sent Defendant requests for admissions, interrogatories and production of documents (collectively, "Discovery Requests") together with a proof of service. (See Plaintiff's Exhibit 1.) On September 11, 2015, Defendant's counsel sent Plaintiff's counsel an email requesting that the discovery requests be sent in word format in order to facilitate the process of providing answers. (See Plaintiff's Exhibit 2.) Plaintiff's counsel complied with Defendant's counsel's request on the same date. (Id.)

Despite being provided a word version of the requests, Defendant has not provided answers to the requests to date. On November 14, 2016, Plaintiff filed its instant motion to deem the requests for admission deemed admitted. On December 7, 2016, Defendant filed his response. On December 9, 2016, Plaintiff filed a reply brief in support of its motion. The Court has since taken the matter under advisement.

II. Arguments and Analysis

In its motion, Plaintiff seeks to have the 24 requests for admission contained within the Discovery Requests deemed admitted. MCR 2.312 (B)(1) provides that "[e]ach matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter". MCR 2.312 (D)(1) provides that a matter admitted under this rule is conclusively established unless the court on motion for good cause permits withdrawal or amendment of an admission.

In this case, it is undisputed that Defendant did not answer the requests to admit in a timely manner, nor has Defendant filed answers to date. Accordingly, the Court is required to deem them as admitted under MCR 2.312(B)(1). While Defendant argues that the doctrine of laches should be applied to deny Plaintiff its requested relief, Defendant has not provided any authority to establish that laches may be applied in this situation and has failed to apply the elements of laches to the facts present in this case. As a result, Defendant's position is rejected on the basis that it is improperly supported.

III. Conclusion

Based upon the reasons set forth above, Plaintiff's motion to deem requests for admissions admitted is GRANTED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: FEB - 9 2017

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge