IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

KYUNG HEE PARK,
Plaintiff-Appellee,

v.

KIM, DONG HYEN and KIM, JEONG TEAK,
Defendants-Appellants.

SUPREME COURT NO. CV-05-0004-GA
SUPERIOR COURT NO. 02-0652

Cite as: 2007 MP 13

Argued and Submitted August 14, 2006
Decided July 17, 2007

Reynaldo O. Yana, Saipan, Commonwealth of the Northern Mariana Islands, for Defendants-Appellants
Joseph A. Arriola, Saipan, Commonwealth of the Northern Mariana Islands, for Plaintiff-Appellee

BEFORE: ALEXANDRO C. CASTRO, Associate Justice; JUAN T. LIZAMA, Justice Pro Tem; EDWARD MANIBUSAN, Justice Pro Tem

CASTRO, Associate Justice:

¶ 1 We are presented with a summary judgment motion that was granted after a party failed to answer a request for admission on the grounds that the party believed the request called for a legal conclusion. For the reasons set forth below, we AFFIRM.

I

¶ 2 On June 3, 2002, appellant Kim, Jeong Teak ("Jeong Teak") purchased a vehicle from a local dealership for $28,062. Jeong Teak paid $18,264 as a down payment, but was unable to secure a loan for the balance since he was classified as a "tourist." Appellant Kim, Dong Hyen ("Dong Hyen") agreed to sign as a borrower on the note to aid in the transaction, and both signed the contract with the dealership as co-buyers.

¶ 3 Soon after, Jeong Teak became unable to make payments on the vehicle, and decided to sell it to appellee Kyung Hee Park ("Park"). Park alleges that Jeong Teak and Dong Hyen concurred in this decision. Park purchased the automobile for $10,000 and assumed the responsibility for the remaining payments on the note. Park took possession of the automobile, and Jeong Teak returned to Korea in October, 2002.

¶ 4 In November, 2002, Dong Hyen filed a police report claiming Park stole the automobile. Subsequently, the police took the automobile from Park and transferred possession to Dong Hyen. This action sparked Park to file the underlying lawsuit for breach of contract and conversion, which was filed December 3, 2002.

¶ 5 On December 10, 2003, Park served Dong Hyen with, among other discovery requests, a request for admissions. Park granted a three-week extension to Dong Hyen on the original deadline, but never received responses to the discovery requests or the request for admissions. As there were no responses to the discovery requests, requests for additional time, objections to the discovery requests, or protective orders filed, Park sought summary judgment.

¶ 6 On August 11, 2004, the trial court denied Park's motion as to the contractual claims, but granted it with regards to the conversion claim. The contractual claim was subsequently dismissed, and the instant appeal is from the grant of summary judgment for the vehicle's conversion.

II

¶ 7 The issue on appeal is whether the trial court erred in granting summary judgment when it found the following request for admission proper: "Do You admit or deny that You did in fact fraudulently and wrongfully converted [sic] the use and possession of the Subject Vehicle."

("Request No. 8"). An order granting summary judgment is reviewed de novo, *Dela Cruz v. Hotel Nikko Saipan, Inc.*, 5 N.M.I. 96, 97 (1997), although we review any legal determination underlying the trial court's decision under the standard applicable to that determination. *United States v. Alisal Water Corp.*, 431 F.3d 643, 654 (9th Cir. 2005).

¶ 8 Summary judgment motions are affirmed if we determine that: (1) there was no genuine issue of material fact; and (2) the trial court correctly applied the substantive law. *Dela Cruz*, 5 N.M.I. at 97. Additionally, summary judgment may be affirmed if we find the result is correct under a different theory. *Id.* We review determinations regarding timeliness and neglect for abuse of discretion, *Comm. for Idaho's High Desert, Inc. v. Yost*, 92 F.3d 814, 824 (9th Cir. 1996), as well as for evidentiary rulings. *See, e.g., Pellegrino v. Commonwealth*, 5 N.M.I. 242, 243 (1999). We may reverse only if the trial court's decision was based on a clearly erroneous finding of material fact or did not apply the correct law. *Pangelinan v. Itaman*, 4 N.M.I. 114, 117 (1994).[1]

III

¶ 9 Dong Hyen argues that the deemed admissions did not prove that Park was entitled to summary judgment. He focuses on Request No. 8, which he claims is an improper admission since it is a legal opinion or legal conclusion. Dong Hyen cites numerous cases for the proposition that non-lawyers are not competent to give legal testimony, and therefore, the trial court's acceptance of the admission was an error. Additionally, he asserts that since the answer to the complaint he filed denied the original accusation, the failure to answer the request for admissions does not warrant the granting of summary judgment against him.

¶ 10 Commonwealth Rule of Civil Procedure 36(a) provides that:

> A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statement or opinions of fact or the application of law to fact, including the genuineness of any documents described in the request.

Com. R. Civ. P. 36(a). On its face, the rule allows a party to request an admission of any discoverable matter that relates to the application of law to fact. *See, e.g., Rome v. United States*, 450 F. Supp. 378, 383 (D.D.C. 1978), *aff'd*, 446 U.S. 156 (1980) (noting that Rule 36(a) expressly states that a party may not refuse to respond to a request merely on the ground that the matter for which an admission has been requested presents a genuine issue for trial). Rule 36(a) does, however, preclude a request for the admission of a pure matter of law. *See, e.g., Williams v. Krieger*, 61 F.R.D. 142, 144 (S.D.N.Y. 1973). Despite this, many courts hold that even if a

[1] The appropriate test for abuse of discretion is not whether another court would rule differently, but whether the trial court based its decision on tenable grounds and reasons. *Coggle v. Snow*, 56 Wash. App. 499, 507 (1990).

request is objectionable, if a party fails to object or respond, the party should be held to have admitted the matter. *Rutherford v. Bass Air Conditioning Co.*, 38 N.C. App. 630, 635 (1987); 8 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2259 (2006). *But see Williams*, 61 F.R.D. at 144 (refusing to apply the rule since five of the six requests for admission went to pure matters of law). Here, the trial court held that, by failing to file an answer, Dong Hyen had admitted to each and every request,[2] the most important being Request No. 8, which asks Dong Hyen to admit a legal conclusion. The legal conclusion, however, relates to the vehicle's repossession, a fact issue in the case.

¶ 11 Federal courts interpreting Rule 36(a) unanimously hold that a party may request another party to admit *any* fact, regardless of whether or not that fact can be characterized as "ultimate." *See, e.g., Campbell v. Spectrum Automation Co.*, 601 F.2d 246, 253 (6th Cir. 1979); *Cereghino v. Boeing Co.*, 873 F. Supp. 398, 403 (D. Or. 1994); *Branch Banking & Trust Co. v. Deutz-Allis Corp.*, 120 F.R.D. 655, 658 (E.D.N.C. 1988); *Rome*, 450 F. Supp. at 383; *In re Niswonger*, 116 B.R. 562, 566 (Bankr. S.D. Ohio 1990); *In re Adelman*, 90 B.R. 1012, 1015 (Bankr. D.S.D. 1988); *In re Sweeten*, 56 B.R. 675, 678 (Bankr. E.D. Pa. 1986); 7 MOORE'S FEDERAL PRACTICE ¶ 36.10[7] (3d ed. 1998) [hereinafter MOORE'S]. Indeed, these courts have held that a request to admit, to which the served party did not respond, may provide the sole grounds for an award of summary judgment for the requesting party. *See Donovan v. Carls Drug Co.*, 703 F.2d 650, 651 (2d Cir. 1983); *Cereghino*, 873 F. Supp. at 403; 7 MOORE'S, *supra* ¶ 36.10[7].

¶ 12 On the other hand, Rule 36(a) requests may not include requests for opinions of law or for legal conclusions. 7 MOORE'S, *supra* ¶ 36.10[8]. *See also Golden Valley Microwave Foods, Inc. v. Weaver Popcorn Co.*, 130 F.R.D. 92, 96 (N.D. Ind. 1990) (finding that request to admit a patent was valid called for legal conclusion and was improper); *English v. Cowell*, 117 F.R.D. 132, 135 (C.D. Ill. 1986) (holding improper a request to admit party was subject to a statute); *Adelman*, 90 B.R. at 1015 (striking an admission requiring a creditor to admit or deny that he must file security documents if he wants to protect himself).

¶ 13 In *Jensen v. Pioneer Dodge Ctr., Inc.*, 702 P.2d 98, 101 (Utah 1985), a case similar to the one presented, the Utah Supreme Court dealt with a defendant that failed to respond in time to a request for admission that the defendant had "willfully and unlawfully converted plaintiff's property." The *Jensen* court reversed the trial court's decision not to treat the matters requested as admitted, further stating that: "matters admitted are conclusively established as true unless the

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[2] Pursuant to Commonwealth Rule of Civil Procedure 36(a), once a party is served with a written request for admissions, that party has thirty days to respond to each individually stated matter, failure to do so will deem each matter admitted and considered conclusively established for the purpose of the pending action only. *Young Jo Cho v. Min Wan Cho*, 6 N.M.I. 516, 518 (2002) (citing Com. R. Civ. P. 36(a)).

trial court, on motion by the defendant, permits withdrawal or amendment of the admissions." *Id.* at 100.

¶ 14 In the case at bar, Dong Hyen never moved to withdraw or amend his admissions. He argues that Park's attorney "already knew the answers" to the request for admission since Dong Hyen had denied the allegations in other documents filed with the court. This argument is unpersuasive. In *United States v. Kasuboski*, 834 F.2d 1345, 1347 (7th Cir. 1987), the court held a defendant's failure to respond to request for admissions was an admission of each matter for which admission was sought even though request for admissions raised the same questions asked and answered in depositions. Additionally, although the *Jensen* court did not discuss the issue of whether the admission regarding converted property involved the application of law to fact or a pure matter of law, it concluded that "if a party fails to object . . . that party should be held to have admitted the matter." 702 P.2d at 100-01.

¶ 15 Having failed to answer this request, the trial court granted summary judgment against appellant on the conversion claim based in part on its determination to assess Dong Hyen with the consequences of his delay, and to admit the default admission as evidence against him. We find no abuse of discretion in the trial court's reasoning, and acknowledge that the trial court correctly applied the substantive law. In doing so, there ceased to be any genuine issue of material fact, making a determination of summary judgment appropriate.

IV

¶ 16 Where, as here, a party fails to answer a request to admit and fails to move for withdrawal of matters deemed admitted, the trial judge has the discretion to award summary judgment to the requesting party. We, therefore, AFFIRM the grant of summary judgment.

Concurring:
Lizama, J.P.T., Manibusan, J.P.T.