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CIVIL PROCEDURE—SCOPE OF REQUESTS FOR ADMISSIONS

Linde v. Kilbourne [1]

A law partnership brought suit against two defendants to recover unpaid legal fees; the defendants defaulted and judgment was rendered for the partnership. This judgment later was set aside at the request of the defendants. Plaintiffs then submitted requests for admissions, requesting the defendants to admit the existence of the employment relationship, the duration of that relationship, the receipt of advices and statements for legal services rendered without protest as to the charges shown, and the reasonableness of those charges.[2] The defendants failed to answer either by objection or denial within the prescribed time period,[3] and the requests, by operation of rule 59.01, were deemed admitted.[4]

Based upon the matters deemed admitted, the plaintiffs moved for summary judgment. The defendants asked for leave to answer the petition and to object to the requests for admissions. The court denied leave in both cases and granted the plaintiffs' motion for summary judgment[5] because the admissions left no issues to be tried.[6]

On appeal, one defendant contended that the particular requests for admissions were improper because they exceeded the scope of the Missouri rule,[7] and that therefore the trial court erred in deeming the re-

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1. 543 S.W.2d 543 (Mo. App., D.K.C. 1976).

2. *Id.* at 544.

3. Mo. R. Civ. P. 59.01(a). The former rule, effective in 1969, prescribed a 10 day period in which to answer. The present rule, effective in 1975, prescribes a 20 day period in which to answer. Both allow the court to prescribe a longer or shorter period.

4. The rule applied in *Linde* was that prior to the one effective in 1975. Both the former and present rule provide that unless requests for admissions are answered, the matter requested is deemed admitted. When an admission is deemed admitted the moving party is relieved from adducing evidence to prove the fact, and the defendant is barred from disputing it. Young v. Frozen Foods Express, Inc., 444 S.W.2d 35, 39 (St. L. Mo. App. 1969).

5. Such admissions may be considered in a motion for summary judgment, even when the party with the burden of proof requested the admissions. Manpower, Inc. v. Area Dev. Corp., 440 S.W.2d 515, 519 (St. L. Mo. App. 1969); Kraehe v. Dorsey, 432 S.W.2d 367, 370 (St. L. Mo. App. 1968). *See* Metropolitan St. Louis Sewer Dist. v. Zykan, 495 S.W.2d 643 (Mo. 1973); Hudson v. General Mut. Ins. Co., 430 S.W.2d 755 (St. L. Mo. App. 1968).

6. When requests for admissions are considered in a motion for summary judgment, the court views the record most favorably to the party against whom such motion has been made. *See* Estate of Sample v. Travelers Indem. Co., 492 S.W.2d 829, 834 (Mo. 1973); Anderson v. Steurer, 391 S.W.2d 839 (Mo. 1965).

7. Mo. R. Civ. P. 59.01(a). The Missouri rule mentions only relevant and material matters of fact.

quests admitted and in granting summary judgment for the plaintiff. Despite her failure to make timely objection to the requests at the trial level, the defendant argued that requests for admissions are limited by rule 59.01 to matters of fact, and that the requests in question exceeded the scope of the rule because they sought admission of the ultimate issues, *i.e.,* concession of the cause of action.

The Kansas City District of the Missouri Court of Appeals affirmed the summary judgment in favor of the plaintiffs and held that the requests in question were properly deemed admitted. The court further declared that requests for admissions calling for the application of facts to law, for admission of the ultimate issues, or for the admission of an opinion or conclusion (if not based on abstract propositions of law) are all within the scope of Missouri rule 59.01.[8] The *Linde* court relied on an analogy to the corresponding federal rule which has been amended to include the application of law to facts.[9] Even though the language of Missouri rule 59.01 includes only "relevant and material matters of fact," the *Linde* court concluded that Missouri rulemakers tacitly adopted the federal approach.[10]

The court's decision has several shortcomings. The court failed to consider the notes of the Reporter of the Missouri Supreme Court Rules Committee. These notes reveal that the authors of the Missouri rule intended to limit the scope of the rule to issues of fact. The court also did not discuss the effect of a failure to answer or make timely objection to requests for admissions at the trial level, *i.e.,* whether requests for admissions can be deemed admitted without regard to their scope if there is a failure to answer or make timely objection.[11] Finally, the cases cited by the *Linde* court as authority for its conclusion that requests for admissions under rule 59.01 can be extended beyond matters of fact are distinguishable.

Most Missouri lawyers are unaware of the notes of the Reporter of the Missouri Supreme Court Rules Committee, which may be the best source of what the Missouri rules were intended to mean; the *Linde* court did not refer to the Reporter's notes. These notes directly con-

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8. 543 S.W.2d at 547.

9. FED. R. CIV. P. 36(a). Before the rule was amended in 1970, the federal courts were divided on whether requests for admissions were limited to factual issues. *See* FED. R. CIV. P. 36, Federal Rules Advisory Committee Notes (pertaining to 1970 amendments).

10. In effect, the court chose to follow the approach of federal decisions that allowed requests for admissions to include both law and fact before the 1970 amendment. *See* FED. R. CIV. P. 36, Federal Rules Advisory Committee Notes (pertaining to 1970 amendments).

11. The court may allow a late answer. Absent a showing of bad faith or prejudice, the discretion to allow a late answer is reposed solely in the trial court. Coates v. United States Fidelity & Guar. Co., 525 S.W.2d 654, 655 (Mo. App., D. St. L. 1975).

tradict the court's conclusion that the Missouri rulemakers intended to extend rule 59.01 to the application of facts to law:

> The Committee has retained the limitation in present rule 59.01 that requests for admissions are limited to "relevant and material matters of fact." The present rule has worked reasonably well without an excessive amount of litigation as to the meaning of "fact" and it was thought that the introduction of the more nebulous phrase in the federal rule would be an invitation to attempts to use this device for discovery purposes and thus increase objections and the resulting court rulings. Requests for admissions are not really a discovery device but are valuable only when used to establish narrow matters of fact concerning which there is not any dispute but which would require time and trouble for one of the parties to prove. Requests which are not narrowly limited will almost always draw a denial regardless of the language of the rule.[12]

Thus, the Reporter's notes make it clear that the rule was not designed to encompass the application of facts to law. The reason for the limitation is not so clear. The Rules Committee apparently assumed that disputes over what is fact and what is law are preferable to any broadening of the rule to include both. A request for the admission of disputed or uncertain facts will always be denied. Attorneys similarly will deny requests for admissions which have the effect of precluding any issue at trial. The attorney often is hesitant to admit a request before trial even if he knows that the answer is probably in the affirmative. Broadening the scope of the rule to both fact and law increases the likelihood of denial because the party to whom a request is submitted will be even more hesitant to answer. The Committee further must have intended to limit the Missouri rule so that it would not be used as a method of discovering the opponent's contentions before trial, a time when the opponent is uncertain of his legal theories or lacks a complete knowledge of the facts of the case. Perhaps the pretrial conference is a more appropriate time to state the basis of legal contentions. Furthermore, a lawyer might use interrogatories to elicit the basis of legal claims.[13]

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12. Missouri Supreme Court Rules Committee, Reporter's Notes on Rule 59.01 (1975) (these notes are not available in published form). "When our rules committee submits a proposed change in our permanent rules, it accompanies the proposed rule with an explanatory report. Our consideration of the suggested rule takes that report into consideration. When questions of interpretation of rules arise, we, on occasion, refer to these reports in our opinions." Casserly v. Bench, 521 S.W.2d 395, 397 (Mo. En Banc 1975) (Finch, J., concurring). *See also* Farmer's Ins. Co. v. Murphy, 518 S.W.2d 655, 657 (Mo. En Banc 1975).

13. On the other hand, it seems somewhat inconsistent to allow the use of interrogatories but not requests for admissions to discover contentions of law and fact. *See* Mo. R. Civ. P. 57.01. One commentator has stated: "In refusing to so extend the scope of admissions, [to application of law to fact] the Supreme Court has made a curious retrenchment from its approach to interrogatories, which are not objectionable because they involve '. . . an opinion or contention that relates

The only Missouri case that directly raises the question of the scope of requests for admissions is *J.R. Meade v. Foward Construction Co.*[14] Although the particular requests are not mentioned in the opinion, it is clear that some of the requests actually were admitted and others were deemed admitted by reason of failure to answer. In dictum, the St. Louis District of the Missouri Court of Appeals concluded that the trial court was not bound by the admissions because the requests involved "a question of law or at the least a conclusion, neither of which is the proper subject for a request for admissions."[15] Thus, if the application of law to facts may be equated with "questions of law," *J.R. Meade* is contrary to the *Linde* holding.

The *Linde* court cited several cases, including *Meade,* for the proposition that the Missouri rulemakers intended to extend the scope of rule 59.01 to the application of facts to law. A careful reading of these cases suggests that the issue actually determined was that when there is a failure to answer or object, requests for admissions may be deemed admitted *regardless of their scope.* If this is the correct holding of the cases cited in *Linde* as authority for the extension of rule 59.01, the *Linde* language is actually unnecessary dictum; the requests for admissions in *Linde* were properly deemed admitted *regardless of their scope.* Determination of the proper scope of requests for admissions was not essential to that holding.

In *Hudson v. General Mutual Insurance Co.*[16] the plaintiff requested that the insurer admit that a policy was in effect on a certain date, that a collision occurred and notice was given to the insurer, and that the policy provided that the insurer should pay on behalf of the insured when the insured became legally obligated to pay. The defendant failed to answer the requests, described by the court as "statements of fact." The court therefore determined that the requests were deemed admitted.[17]

Similarly, in *Kraehe v. Dorsey*[18] the defendant was requested to admit the agency of an undisclosed principal. Without discussing the proper scope of requests for admissions, the court stated that where no objection is made, nor any reason given why a request cannot be answered, the request is deemed admitted.[19]

In *Manpower, Inc. v. Area Development Corp.*[20] the plaintiff requested the defendant to admit that the plaintiff and the defendant were corpo-

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to fact or the application of law to fact . . .' Rule 57.01(b)." Simeone & Walsh, *The New Missouri Rules on Civil Discovery,* 30 J. Mo. B. 463, 471 (1974).

14. 526 S.W.2d 21 (Mo. App., D. St. L. 1975).

15. *Id.* at 30.

16. 430 S.W.2d 755 (St. L. Mo. App. 1968).

17. *Id.* at 756. Because the *Linde* court cited *Hudson,* it must have construed the requests therein as involving issues of law, despite the *Hudson* court labeling them as factual.

18. 432 S.W.2d 367 (St. L. Mo. App. 1968).

19. *Id.* at 370.

20. 440 S.W.2d 515 (St. L. Mo. App. 1969).

rations organized and existing by law, that the defendant was indebted to the plaintiff for services rendered on certain dates and in a specified sum, and that demand was made upon the defendant for payment for said sum but that defendant refused to pay. This case is similar to *Linde* in that the effect of the admissions was virtual concession of the cause of action. The court did not address the propriety of the scope of the requests, but determined that by defendant's failure to answer within the allowable time period the requests were deemed admitted. The court concluded that there was no genuine issue of fact to be tried and that therefore the plaintiff was entitled to summary judgment.[21]

In *Metropolitan St. Louis Sewer District v. Zykan*[22] the plaintiff requested that the defendants admit that a corporation was under the domination of one defendant as his "alter ego." The defendants failed to answer the request, and the trial court deemed the matter admitted. On transfer to the Missouri Supreme Court, the defendants argued that the admission was a conclusion and therefore not properly within the scope of a request for admissions. The supreme court determined that when defendants neither denied nor objected to the requests as required by rule 59.01, all the matters in the requests were deemed admitted.[23]

It is clear that the Missouri Supreme Court in *Zykan,* and the courts in *Manpower, Kraehe,* and *Hudson* did not directly address the question of the proper scope of requests for admissions. The courts in those cases did not hold that matters of law or of application of fact to law were the proper subjects of requests for admissions under rule 59.01. The cases merely suggest that requests for admissions containing such matters properly are deemed admitted if not the subject of objection or denial *regardless of their scope.*

The compelling conclusion is that requests for admissions in Missouri under rule 59.01 remain limited to requests for the admission of matters of fact. However, should a party fail to answer or make timely objection, the requests may be deemed admitted regardless of the possibility that they are beyond the scope of the rule and therefore objectionable. This suggests that the *Linde* court made the correct disposition of the case. Summary judgment was proper, because the requests were deemed admitted, not because rule 59.01 allows requests for the application of facts to law. The unnecessary dictum in *Linde* is in conflict with the dictum in *J.R. Meade* which asserted that a request for admissions on a question of law is objectionable.

The effect of a party's failure to answer or deny requests for admissions is unanswered by the Reporter's notes. However, most of the cases where requests were deemed admitted were decided before the rule

21. *Id.* at 519.
22. 495 S.W.2d 643 (Mo. 1973).
23. *Id.* at 656.