

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

ROBERT C. SEARLE, ET UX. : DOCKET NO. 04-0948

VS. : JUDGE TRIMBLE

S & P CAPITAL INVESTMENTS, : MAGISTRATE JUDGE WILSON
INC., ET AL.

MEMORANDUM RULING

Before the court is plaintiffs' "Motion to Deem Request for Admissions Admitted and Ruling on Sufficiency of Answers and Objections to Request for Admissions." [doc. # 31].

In May 2004, plaintiffs, Robert and Maria Searle, propounded requests for admissions to defendants, S&P Capital Investments, Inc. and Citifinancial, Inc. ("Citi"). On May 20, 2004, S&P initially responded to the requests. Citi did not respond to the requests until September 10, 2004, after the requests had been re-submitted following the Rule 26(f) conference in accordance with Fed.R.Civ.P. 26(d).¹

On October 12, 2004, plaintiffs filed the instant motion to test the sufficiency of defendants' responses to the requests for admissions. After delay for briefing, the matter is now before the court.

Rule 36 provides in pertinent part that

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in

¹ Plaintiffs granted Citi an extension of time until September 10, 2004, to respond to the requests.

writing, subject to Rule 29, 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. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. **A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an 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 party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party 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; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.**

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. 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. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

Fed.R.Civ.P. 36. (emphasis added).

Rule 36 permits litigants to request admissions as to a broad range of matters, including ultimate facts and applications of law to fact. *In re Carney*, 258 F.3d 415, 419 (5th Cir. 2001)(citations omitted). This discovery device permits the parties to reduce the issues for trial, and to focus their attention on disputed matters. *Id.*

We emphasize that lack of information or knowledge is an insufficient reason for a party to fail to admit or deny a request for admission unless the party also states that it has made a “reasonable inquiry and that the information known or readily obtainable by the party is

insufficient to enable the party to admit or deny.” Fed.R.Civ.P. 36(a). A reasonable inquiry includes an investigation and inquiry of employees, agents, and others who conceivably and realistically may have information which would enable the respondent to fashion the appropriate response. *Concerned Citizens of Belle Haven v. Belle Haven Club*, 223 F.R.D. 39, 44 (D. Conn. 2004)(citing, *Henry v. Champlain Enters.*, 212 F.R.D. 73, 78 (N.D.N.Y.2003)). The inquiry, under limited circumstances, may extend to non-parties, but not to strangers. *Id.*, see also, *Hanley v. Como Inn, Inc.* 2003 WL 1989607 (N.D. Ill.2003)(reasonable inquiry as to third parties is required, if necessary). Nevertheless, reasonable inquiry does not require a party to subpoena documents in another city. *T. Rowe Price Small-Cap Fund, Inc. v. Oppenheimer & Co., Inc.*, 174 F.R.D. 38, 43 -44 (S.D. N.Y. 1997). Because Rule 36 admissions advance the desired goal of reducing the need for proof of issues at trial, there is a strong disincentive to finding an undue burden upon the responding party when the necessary inquiries can be made without extraordinary expense or effort. *Id.* (citation omitted).

With these guideposts firmly planted, we turn to the case at hand. Except as otherwise stated below, plaintiffs’ objections to defendants’ responses are overruled.

a) **Exhibit A1: Statement of First Family Financial Services**

This exhibit purports to show that as of November 8, 1999, a balance of \$ 631.82 was owed to First Family Financial Service (“FFFS”). Defendants were asked to admit that the exhibit was genuine. S & P stated that it could not admit or deny the request because it had no corporate connection with FFFS, and because the exhibit did not contain a true copy of the records from FFFS. Yet, S & P did not state that it made reasonable inquiry. Fed.R.Civ.P. 36. Moreover, if, as alleged by Plaintiffs, the account was turned over to S & P for collection, it is

reasonably plausible that S & P has relevant documents related to the loan, including periodic statements. Accordingly, S & P will be required to supplement its response.

Citi stated that it made reasonable efforts to determine whether the statement was genuine. Citi contacted its Louisiana office, and searched all computer records, to no avail. Rule 36 does not require more. Of course, if it is later (*e.g.*, at trial) determined that a party wrongfully failed to admit the genuineness of a document, or the truth of a matter under Rule 36, that party is subject to paying reasonable expenses and fees. Fed.R.Civ.P. 37(c)(2).²

Plaintiffs' objection to defendants' responses is sustained as to S & P.

b) Exhibit A2: Copy of check # 3805 paid by Sabine State Bank in the amount of \$340.71.

Defendants stated that they were unable to verify that this exhibit was genuine. Citi indicated that it made reasonable inquiry; S & P did not so state. Accordingly, S & P will be required to make reasonable inquiry (if it has not already done so), and to amend its response appropriately. We reiterate that defendants' responses are subject to Fed.R.Civ.P. 37(c)(2).³

Plaintiffs' objection to defendants' responses is sustained as to S & P.

c) Exhibit A3: Copy of check # 3850 paid by Sabine State Bank in the amount of \$314.24.

For the reasons expressed in section b) above, plaintiffs' objection to defendants'

² Plaintiffs contend that FFFS was acquired by the Associates, which in turn, was acquired by Citi. (Amended Petition, ¶ 3). Conversely, Citi refers to FFFS as a third-party, and appears to contest that it is a successor to FFFS. Yet, there clearly is a relationship of some sort between Citi and FFFS. In later admissions, Citi conceded that it was a "servicer of First Family account number 1787875." (Ans. to Req. for Admission 2(c)). Moreover, Citi reported credit information regarding account number 1509099717878750 to credit reporting agencies. (Ans. to Req. for Admission 2(j)).

³ This caution will apply unsaid to any subsequent un-admitted or denied request.

responses is sustained as to S & P.

d) Exhibit A4: Worksheet indicating proper amounts from Exhibits A1-A3.

Plaintiffs do not object to withdrawing this exhibit, and thus it is deemed

WITHDRAWN. (*See*, Pl. Reply Memo. in Resp. to Citi Obj.).

e) Exhibit B1: Corporate history of “The Associates” from Citifinancial web site, four pages.

Citi does not contest the genuineness of this exhibit. However, Citi objects insofar as plaintiffs attempted (in their memorandum) to characterize the exhibit as a “history of First Family Financial Services becoming Citifinancial.” This reservation is consistent with Citi’s position that it is not a successor to FFFS, and is permissible.

S & P stated that it was unable to admit or deny the corporate history of the Associates. Yet, upon reasonable inquiry, *e.g.* viewing the referenced website, S & P should be able to admit or deny the genuineness of the exhibit as a representation of the webpage.

Plaintiffs’ objection to defendants’ responses is sustained as to S & P.

f) Exhibit B2: Extract of Experian updated Credit report indicating S&P Capital Investments, Inc. and Allied Finance Co. having been updated as of 04 February, 2004 two pages.

Citi denied this request for admission. To verify the genuineness of the credit report, Citi would have had to subpoena the report from the credit reporting agency. Such extraordinary efforts are not required to comply with Rule 36. *See, T. Rowe Price Small-Cap Fund, Inc. v. Oppenheimer & Co., Inc., supra.*

Again, S & P was unable to admit or deny the request, and thus was required to state that it made reasonable inquiry. S & P did not so state, and will be permitted to supplement its

response.

Plaintiffs' objection to defendants' responses is sustained as to S & P.

- g) Exhibit B3: Extract of Trans Union credit report indicating S & P Capital and Citifinancial as creditors dated 17 December 2003 two pages.**

For the reasons expressed in section f) above, plaintiffs' objection to defendants' responses is sustained as to S & P.

- h) Exhibit B4: Extract of Equifax credit report indicating S & P Capital as a creditor updated February 2004.**

For the reasons expressed in section f) above, plaintiffs' objection to defendants' responses is sustained as to S & P.

- i) Exhibit C1: Affidavit of Michael B. Rodriguez dated 20 April 2004.**

Citi denied this requested admission on the basis that it had no information to dispute or verify the authenticity of the document. Citi further argued that plaintiffs sought an admission as to every fact set forth in the affidavit.⁴ Plaintiffs disagree, and contend that they are merely asking defendants to state whether the document is genuine. Yet, if plaintiffs do not seek to verify the content of the affidavit, then discovery to determine whether the affidavit is genuine or not is irrelevant. *See*, Fed.R.Civ.P. 26(b)(1). Moreover, it is not apparent that the affidavit would even be admissible at trial. *See*, F.R.E. 801, *et seq.*

- j) Exhibit D1: Fax from Plaintiffs to S & P Capital Investments, Inc. 7 January 2004, showing then available copies of Exhibits A2 and A3 on the second and third page, three pages.**

Plaintiffs conceded that this exhibit was not an issue as to Citi. S & P was unable to

⁴ S & P stated that it was unable to admit or deny the affidavit because it represented a genuine issue for trial.

admit or deny authenticity without dully authenticated copies of the attached checks. However, S & P did not state that it made reasonable inquiry. Moreover, it is likely that plaintiffs merely sought confirmation that the exhibit was a genuine copy of the fax that was sent to S & P. At a minimum, S & P could respond to whether the exhibit was a genuine copy of a fax that was purportedly sent to S & P by plaintiffs. *See*, Fed.R.Civ.P. 36.

Plaintiffs' objection is sustained as to S & P.

k) Exhibit D3: Web page indicating S & P Capital Investments Inc.'s (800) 289-2322 number Internet Call Manager (ICM), dated 19 Jan 2004. Indicating Plaintiff's ICM account.

Plaintiffs conceded that this exhibit was not an issue as to Citi. S & P was unable to admit or deny authenticity without dully authenticated copies of the attached checks. However, S & P did not state that it made reasonable inquiry.⁵

Plaintiffs' objection is sustained as to S & P.

l) Exhibit D4: Letter from S & P Capital Investments, Inc. dated 21 January 2004, and postmarked 22 January 2004.

Plaintiffs conceded that this exhibit was not an issue as to Citi. S & P admitted the contents of the letter. However, it questioned the postmark date without proper proof. Yet, the copy of the exhibit in the court record does not contain a postmark date. Accordingly, S & P cannot be compelled to respond to its authenticity.

⁵ The court notes that many of S & P's objections to the requests for admission stem from a lack of authentication by the organization that produced the documents. If after reasonable inquiry, S & P is still unable to verify the genuineness of an exhibit, it will be incumbent upon plaintiffs to secure the necessary authentication. S & P's counsel has offered to meet with Mr. Searle to discuss discovery matters. (*See*, S & P's Opposition). Such coordination of effort would likely go a long way in facilitating the discovery process, and in obviating the need for further court oversight.

m) **Exhibit E1: Letter to Citifinancial Inc. received on 15 January 2003.**

This exhibit was admitted by Citi. It was denied by S & P. However, both the sender and recipient of the letter agree that it is genuine.

n) **Exhibit E2: Letter to S & P Capital Invesments, Inc.**

Plaintiffs conceded that this exhibit was not an issue as to Citi. S & P stated that it was unable to admit or deny the letter because it involved matters in dispute and represented a genuine issue for trial. Yet, we emphasize that plaintiffs are not asking defendants to admit the substance of the exhibit, only its genuineness. Moreover, S & P did not represent that it made reasonable inquiry. After reviewing its records, S & P should be able to determine if the exhibit is a genuine representation of the original.

Plaintiffs' objection is sustained as to S & P.

o) **Exhibit E3: Tel3.com telephone call log listing calls to 410 area code (Baltimore, MD).**

This exhibit was not addressed by either defendant, initially or after objection, and thus, is deemed admitted as a genuine copy of a telephone call log evidencing calls to the 410 area code.

Requests for Admissions No. 2.⁶

- a) Plaintiffs do not object to withdrawing this request, and it is deemed WITHDRAWN.
- b) Plaintiffs do not object to withdrawing this request, and it is deemed WITHDRAWN.
- c) Plaintiffs concede that this request was admitted.
- d) Plaintiffs concede that this request was admitted.
- e) Citi objected to the request as vague, ambiguous, and calling for a legal conclusion. Nevertheless, Citi denied the request. S & P stated that it was unable to admit or deny the

⁶ Due to the number of statement requests, we will refer to them by letter only.

request for admission because it presented a genuine issue at trial. Yet, Rule 36 permits litigants to request admissions as to ultimate facts and applications of law to fact. *In re Carney, supra*. It is manifest that plaintiffs' intent in propounding the request was to determine whether defendants agreed (or not) that the loan account at issue has been repaid in full. Certainly, defendants can frame their response as such, and avoid a never-ending succession of finely tuned requests for admission.

Plaintiffs' objection is sustained.

- f) Defendants denied this request. Moreover, the meaning of "good faith" in this context is not self-evident.
- g) Plaintiffs do not object to withdrawing this request, and it is deemed WITHDRAWN.
- h) Citi denied this request.⁷ It is consistent with Citi's earlier contention that it is not a successor to FFFS. *See*, discussion, *supra*. Of course, Citi assumed some role as to the account, because it admitted that it reported credit information to credit reporting agencies. *See*, Citi Response 2(j).⁸
- i) S & P stated that it was unable to admit or deny the request.⁹ S & P further stated that all of its records indicated that the account was still delinquent. If after reasonable inquiry, S & P is still unable to admit or deny the request, then it should so represent.¹⁰

Plaintiffs' objection is sustained as to S & P.

- j) Plaintiffs concede that this request was admitted by Citi. S & P denied the requested admission.
- k) Plaintiffs concede that this request was admitted by Citi.¹¹
- l) Plaintiffs concede that this request was admitted by Citi. S & P denied the requested admission.

⁷ This request was directed only to Citi.

⁸ Assuming account number 1509099717878750 is the account at issue. *Id.*

⁹ This request was directed only to S & P.

¹⁰ S & P may be able to admit part of the request. *See*, Fed.R.Civ.P. 36.

¹¹ This request was directed only to Citi.

- m) Citi objected to this request on the basis that it was vague, ambiguous, and indefinite as to time period.¹² We agree that plaintiffs' request could be more precise.
- n) Plaintiffs do not object to withdrawing this request, and it is deemed WITHDRAWN.
- o) Plaintiffs agreed to resubmit this requested admission.
- p-s) S & P stated that it was unable to admit or deny these requests because the information presented an issue for trial, or due to the lack of a specific date.¹³ Rule 36 permits litigants to request admissions as to ultimate facts and applications of law to fact. *In re Carney, supra*. Moreover, plaintiffs' limited their requests to definite time periods. S & P should respond to these requests following reasonable inquiry.

Plaintiffs' objection is sustained as to S & P.

- t) S & P denied this requested admission.
- u-v) S & P admitted these requested admissions.
- w-y) S & P denied these requested admissions.
- z) Plaintiffs concede that the referenced documents were admitted by defendants, and that the request is now redundant.
- aa) This request was admitted by S & P.¹⁴
- bb) Citi denied this request.¹⁵
- cc-ii) These requests for admission, (save request ee) were denied by Citi. Citi objected to request ee) on the basis that it was vague, ambiguous, called for a legal conclusion and was not reasonably calculated to lead to the discovery of admissible evidence. The court agrees that request ee) is vague and ambiguous.

Defendants shall have 30 calendar days from today to supplement their responses, as set

¹² This request was directed solely to Citi.

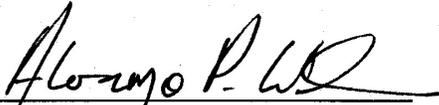
¹³ Requests p, q, r, s, t, u, v, w, x, and y are directed solely to S & P.

¹⁴ This request was directed only to S & P.

¹⁵ Requests for admission bb)-ii) are directed only to Citi.

forth above.¹⁶ The parties are advised to confer, and to cooperate in identifying issues that are genuinely disputed. Otherwise, plaintiffs' motion [doc. # 31] is DENIED.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 21st day of December, 2004.


ALONZO P. WILSON
UNITED STATES MAGISTRATE JUDGE

¹⁶ The court notes that any admission by one defendant does not bind the other. *Riberglass, Inc. v. Techni-Glass Industries, Inc.*, 811 F.2d 565, 566 (11th Cir. 1987).