



Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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www.cco.state.oh.us

MATTHEW RIES, Admr., et al.

Plaintiffs

v.

THE OHIO STATE UNIVERSITY
MEDICAL CENTER

Defendant

Case No. 2010-10335

Judge Patrick M. McGrath

ENTRY

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COURT OF CLAIMS
OF OHIO

On January 13, 2015, plaintiff filed a motion to deem requests for admission admitted. On January 16, 2015, defendant filed a memorandum contra as well as a motion for leave to amend and serve late responses to plaintiff's requests for admission. Plaintiff filed a reply to defendant's memorandum contra and its own memorandum contra to defendant's motion for leave on January 23, 2015.

Plaintiff served defendant with the requests for admission on December 11, 2014 and a response was due from defendant by January 8, 2015. Defendant provided a response on January 14, 2015, six days after the required deadline, and states that because of his holiday schedule he "lost track of the due date" for the response. Plaintiff argues that this is not a compelling circumstance to justify the delay in providing a response.

If the court deems the admission admitted, defendant requests that it be allowed to withdraw or amend its responses pursuant to Civ. R. 36(B). Civ. R. 36(B) provides that " * * * the court *may* permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining his action or defense on the merits." [Emphasis added.] The language in the rule gives the court discretion in determining whether it will allow a withdrawal or amendment as defendant seeks in its motion, but does not mandate the court to do so. Furthermore, the

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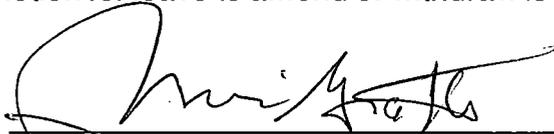
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Supreme Court of Ohio has stated that “[u]nder compelling circumstances, the court may allow untimely replies to avoid the admissions.” *Cleveland Trust Co. v. Willis*, 20 Ohio St.3d 66, 485 N.E.2d 1052 (1985).

Upon review, the court finds that defendant has not provided a compelling reason for failing to provide a timely response to plaintiff’s requests for admission. Accordingly, plaintiff’s motion is GRANTED, and its December 11, 2014 requests for admission are hereby deemed admitted. Defendant’s motion for leave to amend or withdraw is DENIED.



PATRICK M. MCGRATH
Judge

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