Trial Evidence Limitations Imposed on Request for Admission Denials

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In a matter of first impression in California, an appellate court has concluded that a party to litigation cannot use another party's denial of Request for Admissions as impeachment at trial. On January 13, 2015, in *Gonsalves v. Li*, 2015 WL164606, the First District Court of Appeal overturned a $1.2 million jury verdict after the plaintiff's attorney repeatedly examined the defendant over his denials of admission requests that had been propounded in the case.

In *Gonsalves*, plaintiff, Kenneth Gonsalves, worked as a sales consultant at a BMW dealership. He filed an action against Ran Li and Xiaoming Li after Ran Li lost control of a BMW that he was test-driving, with Gonsalves and Xiaoming Li as passengers. After Ran Li turned onto a freeway on-ramp, he lost control of the vehicle, causing it to spin into a guardrail. Gonsalves sued Ran Li for motor vehicle negligence, and sued Ran's father, Xiaoming Li, for negligent supervision. Xiaoming was later dismissed from the action.

Ran denied liability and claimed that he lost control of the vehicle when Gonsalves told him to hit the "M" button in the vehicle so that he could experience the vehicle's full potential. Gonsalves claimed significant injuries as a result of the accident.

During the litigation, Gonsalves propounded Requests for Admissions, including requests that Ran Li admit that he was driving too fast, and that his pressure on the accelerator was a substantial factor in causing the accident. Ran Li denied these requests on grounds that he lacked sufficient information to admit or deny these specific facts. At trial, on cross-examination, Gonsalves' counsel extensively questioned Li on his failure to admit the Requests for Admission. Objections by defense counsel that the questions were argumentative were overruled. During closing arguments, Gonsalves' counsel commented on Li's responses, and urged the jury to consider the fact that Li failed to admit these facts when considering liability. The jury awarded Gonsalves in excess of $1.2 million.

Requests for Admissions are an underutilized discovery tool that can assist a party in establishing admissible evidence that can be used both at trial and often in summary judgment motions. Requests for Admissions can be used to establish the truth of certain facts, the genuineness of documents, and a party's opinion on a particular matter. Under California *Code of Civil Procedure* Section 2033.410, a fact admitted in response to a Request for Admission "is conclusively established against the party making the admission." The primary purposes of Requests for Admissions are to expedite trial and eliminate the need to prove certain matters at trial. Thus the proverbial carrot and stick for parties to consider propounding carefully crafted admission requests, given risk of failing to admit that which inevitably must be conceded, especially given the attorney fees sanction available to the party forced to prove an unreasonably denied admission request. (See *Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 736-737 [the statute "authorizes only those expenses ... proving the matters denied by the opposing party"]).

Specifically, if a party unreasonably fails to admit the fact and the truth of that matter is later determined by the requesting party, the requesting party can seek an order requiring the non-admitting party to pay the reasonable expenses in proving that fact. (C.C.P. § 2033.420 [fee shifting not appropriate when "[t]he party failing to make the admission had reasonable ground to believe that that party would prevail on the matter"]; see *Brooks v. American Broadcasting Co.* (1986) 179 Cal.App.3d 500, 511; accord *Hillman v. Stults* (1968) 263 Cal.App.2d 848, 886; *Chodos v. Superior Court* (1963) 215 Cal.App.2d 318, 324,) .

The trial court can award costs incurred in proving non-admitted matters not only if it finds the responding party did not have substantial justification in denying the particular request, but also if the responding party failed to make a reasonable investigation into the matter at issue. (*Smith v. Circle P. Ranch Co., Inc.* (1978) 87 Cal.App.3d 267.) While this does not mean

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that the responding party is required to go through great efforts to establish the other side's case, the responding party is required to conduct a reasonable investigation into the facts so that an adequate response can be provided.

Moreover, parties responding to Requests for Admissions must ensure that the responses are complete and accurate, as there are additional consequences for a party's unreasonable denial of a Request for Admission. If the responding party fails to timely respond to Requests for Admissions, all objections are waived. Furthermore, the propounding party can move for an order having the requests "deemed admitted." Such an order is mandatory unless a response is provided before the hearing on the motion. (C.C.P. § 2033.280.)

On appeal in the *Gonsalves* case, Li argued that the trial court erred by allowing his denials of Requests for Admissions to be entered into evidence and by allowing Gonsalves to cross-examine Li on the denials. While the statute governing Requests for Admissions allows for the recovery of *monetary sanctions* (in the form of cost-shifting) for a party's failure to admit a matter, the Court of Appeal in *Gonsalves* found that the statute does not provide for a party's failure to respond to be utilized against that party *at trial*.

Given the lack of authority on the issue in California, the Court of Appeal looked to other jurisdictions in support of its holding that denials of Requests for Admission are inadmissible at trial.

The court noted that at least three other states hold that denials of Requests for Admissions are inadmissible at trial. The court considered a decision from Massachusetts's highest court, which interpreted a statutory scheme similar to California's. In Massachusetts, as in California, the purpose of Requests for Admission is to narrow the issues before trial. The *Gonsalves* Court agreed with the Massachusetts Supreme Court that denials are not statements of fact, but rather, an indication that a party is not willing to concede an issue that must be determined at trial.

The Court of Appeal also analogized *Gonsalves* to *Rifkind v. Superior Court* (1994) 22 Cal.App.4th 1255, wherein the Court of Appeal condemned the practice of questioning a party at deposition to state facts in support of causes of action or affirmative defenses; to identify of each witness having knowledge of such facts; and identify documents relating to such facts or witnesses. (See also *Peck v. Clesi* (N.D. Ohio 1963) 37 F.R.D. 11, 12 [disapproving requests that "appear[ ] to be nothing more than an attempt by one party, in anticipation of a favorable verdict at trial, to lay a foundation for transferring to the other party a large part of the costs of the lawsuit.... Such an attempt will not be permitted."].)

In *Gonsalves,* the appellate court found plaintiff's counsel's conduct at trial similarly "unfair," as Li was asked to explain his responses without the ability to consult with his lawyer regarding why certain positions were taken in responding to the requests for admissions. Even more harmful, Li was asked to explain his responses in front of the jury.

It is therefore important that parties in civil litigation carefully respond to Requests for Admissions given the potential for monetary sanctions if the facts at issue are later proven to be true, and the denial was unreasonable. However, for now, it is settled that denials of Requests for Admissions cannot be utilized at trial as a method of impeachment. *Gonsalves* provides a party with protection against the potential for abuse of this discovery procedure by an opposing party.

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