

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH JAMAR JACOBS : CIVIL ACTION
: :
: :
v. : :
: :
CITY OF WEST CHESTER, : :
et al. : NO. 97-CV-3409

MEMORANDUM ORDER

Presently before the court is the Motion of defendants Borough of West Chester, Borough of West Chester Police Department, Police Chief John Green, Officer Collins, Officer James Moorehead, Lt. Johnson and Officer Michael Euler's to Strike Plaintiff's Answers to First Set of Combined Requests for Admission, Interrogatories and Requests for Production of Documents.

Defendants served plaintiff with requests for admissions on July 31, 1997. The following statements were included in defendants' request for admissions:

1. Plaintiff was in possession of crack cocaine at the corner of Market and Matlock Streets in West Chester, Pa. On December 18, 1996;
2. Plaintiff sold crack cocaine on December 18, 1996;
- 3./4. Plaintiff attempted to, and did, in fact, swallow a package of crack cocaine when defendant police officers approached him on December 18, 1996.

Plaintiff did not respond to defendants' request during the 30 days allowed under Fed. R. Civ. P. 36. By letter of September 18, 1997 defense counsel inquired if plaintiff would voluntarily dismiss this action and also informed him that the

requests for admissions would be deemed admitted pursuant to Fed. R. Civ. P. 36(b).

On October 14, 1997 plaintiffs responded to defendants' request for admissions as follows:

I was not in possession of drugs. Hospital record from Chester County Hospital shows there was (sic) no foreign bodies in my stomach. Drug tests were negative. I did not swallow any drugs. I expect to call Henry Young who will testify that I was standing with him in front of the Elks Club just prior to my arrest and that I was not involved in any illegal activity.

This was 45 days after plaintiff's response was due. Plaintiff never sought an extension of time to respond the requests.

Plaintiff asserts and defendants do not deny that by letter of August 7, 1997 plaintiff's counsel informed defense counsel that in light of information provided in the statements of defense witnesses, plaintiff's counsel would review the issue of dismissing the case with plaintiff. This required, in part, an investigation of the information suggested by the requests for admissions. Plaintiff asserts that the non-cooperation of a Mr. Hollingsworth, presumably a potential defense witness, contributed to the delay in responding to the request for admissions.

Rule 36(b) emphasizes the "importance of having an action resolved on the merits, while at the same time assuring each party that justified reliance on an admission in preparation for trial will not prejudice him." Coca-Cola Bottling Co. v. The

Coca-Cola Co., 123 F.R.D. 97, 103 (D. Del. 1988)(quoting 1970 Amendment's Advisory Committee Notes for Rule 36). Defendants have not argued or shown that they have suffered any material prejudice as a result of the belated filing of plaintiff's response. Defendants did not file any dispositive motions or inalterably commit themselves to a trial strategy in reliance on the unanswered requests. See, e.g., BML Group, Inc. v. U.S. Pizza, Inc., 1992 WL 101636 at *1 (E.D. Pa. May 5, 1992)(plaintiff's responses to requests for admissions not stricken though served over two months late where defendants did not suffer significant prejudice).

ACCORDINGLY, this day of January, 1998, **IT IS HEREBY ORDERED** that said defendants' Motion to Strike (Doc. #10) is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.