

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

KRP MARCELLUS I, LLC,
RIVERCREST ROYALTIES II, LLC,
DIVERSIFIED ROX MINERALS, LLC,
BRD ROYALTY HOLDINGS, LLC and
AMON G. CARTER FOUNDATION,
collectively known as KIMBELL GROUP,

Plaintiffs,

vs.

CIVIL ACTION NO.: 18-C-215

Presiding: Judge Michael D. Lorensen

Resolution: Judge Christopher C. Wilkes

CHEVRON U.S.A. INC.,
a Pennsylvania corporation,
TH EXPLORATION, LLC,
a Texas limited liability company, and
DOE CORPORATION 1-20,

Defendants.

**ORDER DENYING PLAINTIFFS' MOTION TO DEEM
UNANSWERED REQUESTS FOR ADMISSIONS TO DEFENDANT
CHEVRON, U.S.A., INC.'S ADMITTED**

This matter came before the Court this 10th day of July 2019, pursuant to Plaintiffs' Motion to Deem Unanswered Requests for Admissions to Defendant Chevron, U.S.A., Inc.'s Admitted. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

Procedural Background and Findings of Fact

1. This matter surrounds the causes of action alleged in the Amended Complaint filed March 4, 2019, alleging causes of action for breach of contract, tort, and declaratory

- judgment related to certain oil and gas conveyances covering approximately 53,000 acres in Marshall County, West Virginia. *See* Am. Compl.
2. On September 17, 2018, Plaintiffs KRP Marcellus I, LLC, Rivercrest Royalties Holdings II, LLC, Diversified Rox Minerals, LLC, BRD Royalty Holdings, LLC, Amon G. Carter Foundation, and the Kimbell Art Foundation (hereinafter “Plaintiffs”) filed the original Complaint in this matter, and also on September 17, 2018, Plaintiffs served Discovery Requests to Defendant Chevron, U.S.A., Inc. (First Set) (hereinafter “Defendant” or “Chevron”). *See* Pl’s Mot., p. 1.
 3. On or about October 3, 2018, the parties communicated and agreed to a thirty day extension for which Chevron could file a response to the initial discovery requests. *See* Pl’s Mot., p. 2.
 4. On November 21, 2018, Chevron filed its Motion to Dismiss Plaintiffs’ Complaint, a Motion to Stay Discovery Pending Adjudication of Motions to Dismiss Complaint, and a Motion to Refer the case to the Business Court Division.
 5. Thereafter, the Motion to Refer was granted on January 22, 2019. Once the matter was transferred to the Business Court Division and assigned to the undersigned, the undersigned entered an Agreed Order allowing Plaintiffs to file an Amended Complaint. On March 4, 2019, Plaintiffs filed their Amended Complaint, and Chevron filed a timely Motion to Dismiss Amended Complaint on March 21, 2019.
 6. Once the matter was assigned to the undersigned, the Court issued briefing orders on pending motions. Importantly for the purposes of the instant motion, the Court elicited briefing on Chevron’s Motion to Dismiss Amended Complaint, as well as on Chevron’s Motion to Stay Discovery Pending Adjudication of Motions to Dismiss Complaint.

7. On May 16, 2019, the Court entered its Order Denying Chevron U.S.A. Inc.'s Motion to Dismiss Plaintiffs' Amended Complaint. Also on May 16, 2019, the Court entered its Order Denying Defendant's Motion to Stay Discovery, denying said motion as moot as Chevron's Motion to Dismiss was denied.
8. Defendants did not receive copies of the Orders entered on May 16, 2019 until June 6, 2019, due to a clerical error on the part of the Marshall County Circuit Clerk's Office.
9. On June 18, 2019, Plaintiffs filed the instant Motion to Deem Unanswered Requests for Admissions to Defendant Chevron, U.S.A., Inc.'s Admitted, arguing the Court should deem specified discovery requests (requests for admissions) as admitted pursuant to West Virginia Rule of Civil Procedure 36(a) because Defendant Chevron has not answered its discovery requests, the parties have not agreed to any extension of time, and the Court has not issued an order enlarging the time for response. *See* Pl's Mot., p. 2-4.
10. On June 21, 2019, Defendant Chevron U.S.A. Inc. filed its Response in Opposition to Plaintiffs' Motion to Deem Unanswered Requests for Admissions to Defendant Chevron, U.S.A., Inc.'s Admitted, arguing the motion should be denied, because on June 21, 2019, fifteen (15) days after receiving notice of the Court's order denying its Motion to Stay, it timely served responses to Plaintiffs' discovery requests, including the requests for admissions. *See* Def's Resp., p. 3.
11. On June 24, 2019, Defendant TH Exploration, LLC filed its Response in Opposition to Plaintiffs' Motion to Deem Unanswered Requests for Admissions to Defendant Chevron, U.S.A., Inc.'s Admitted, urging the Court "to the extent that the Court would rule in favor of [Plaintiffs] on any part of the Motion...[that the Court] include in any such order to

that effect that any such admissions cannot be used against TH Exploration”. *See* Def’s Resp., p. 1.

12. On June 28, 2019, Plaintiffs filed their Reply to Defendant Chevron U.S.A.’s Response to Plaintiffs’ Motion to Deem Unanswered Requests for Admissions Admitted, arguing that Chevron did not adhere to its discovery obligations, because taking in consideration the parties’ initial thirty-day agreed-upon extension, the instant discovery responses were due at the very latest by November 21, 2018. *See* Pl’s Reply, p. 2. Further, Plaintiffs argued Chevron’s filing of a Motion to Stay Discovery did not relieve it of its obligation to respond to discovery, and it did not file a motion for protective order. *Id.*
13. On July 3, 2019, Chevron filed a Motion for Leave to File Sur-Reply to Plaintiffs’ Reply to Defendant Chevron U.S.A.’s Response to Motion to Deem Unanswered Requests for Admissions Admitted, seeking to respond to the arguments set forth in Plaintiffs’ Reply Brief. *See* Def’s Mot. to File Sur-Reply, p. 2.
14. The Court finds the issue is now ripe for adjudication.

Conclusions of Law

This matter is before the Court on Plaintiffs’ Motion to Deem Unanswered Requests for Admissions to Defendant Chevron, U.S.A., Inc.’s Admitted. Requests for admission are governed by Rule 36 of the West Virginia Rules of Civil Procedure. Rule 36(a) provides, in pertinent part:

A party may serve upon any other party a written request for the admission, for the purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or the application of law to fact...

W. Va. R. Civ. P. 36(a).

Rule 36(a) also gives a deadline for answering such discovery requests. Rule 36(a) provides that “[t]he 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 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...”. *Id.*

Further, the West Virginia Supreme Court of Appeals has explained that the purpose of Rule 36(a) is to expedite trial by establishing certain material facts as true and thus narrowing the range of issues at trial. *Checker Leasing, Inc. v. Sorbello*, 181 W. Va. 199, 382 S.E.2d 36 (1989). Additionally, the West Virginia Supreme Court of Appeals has held that “[f]ailure to respond to a request for admissions is deemed to be an admission of the matters set forth in the request”. *Dingess-Rum Coal Co. v. Lewis*, 170 W. Va. 534, 295 S.E.2d 25 (1982).

Additionally, Rule 26 of the West Virginia Rules of Civil Procedure sets forth general provisions governing discovery. Rule 26(c)(2) provides, in pertinent part: “[u]pon motion by a party or by the person from whom discovery is sought...the court...may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including...: (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place.” *See* W. Va. R. Civ. P. 26(c)(2).

Further, the West Virginia Supreme Court of Appeals has stated that “[c]ertainly, Rule 26(c)(2) may be used to stay discovery pending the outcome of a dispositive motion...”. *GMS Mine Repair & Maint., Inc. v. Miklos*, 798 S.E.2d 833, 838 (2017).

In the present case, the Court considers the procedural timeline of the instant civil action. First, it is undisputed that on September 17, 2018, Plaintiffs filed their Complaint, and they served their first set of discovery requests upon Chevron on this date as well. *See* Pl's Mot., p. 1; *see also* Def's Resp., p. 2. Plaintiff has proffered that Chevron contacted it for, and received, an initial thirty-day extension to file discovery responses on or about October 3, 2018. *Id.* at 2. On November 21, 2018, Chevron filed a Motion to Dismiss in this matter, and Chevron also filed a Motion to Stay Discovery and a Motion to Refer the case to the Business Court Division¹. *See* Def's Resp., p. 2. After the matter was transferred to the Business Court Division, the undersigned entered an Agreed Order allowing Plaintiffs to file an Amended Complaint. On March 4, 2019, Plaintiffs filed their Amended Complaint, and Chevron filed a timely Motion to Dismiss Amended Complaint. On May 16, 2019, the Court entered Orders denying Chevron's Motion to Dismiss and Motion to Stay. Due to a clerical error within the Marshall County Circuit Clerk's Office, Chevron did not receive notice or a copy of those Orders until June 6, 2019. *Id.* at 3. Thereafter, on June 21, 2019, fifteen days after receiving notice of the order denying its Motion to Stay, Chevron timely served responses to Plaintiffs' discovery requests, including the requests for admissions. *Id.*

The Court finds that because Chevron filed a timely motion to dismiss (both the original Complaint and the Amended Complaint), along with a timely Motion to Stay, and because it provided responses to the sought-after discovery responses in a timely manner after receiving notice of this Court's order denying its motion to stay (well within thirty days), Plaintiffs' motion must be denied. The Court considers the fact that although Chevron did not provide discovery

¹ On January 22, 2019, the Motion to Refer the instant civil action to the Business Court Division was granted.

responses while its Motion to Stay was pending, it acted swiftly once it received notice that its Motion to Stay was denied by this Court.

The Court considers that in *Dingess-Run Coal Co.*, the trial court did provide a party additional time to respond to requests for admissions; however, the party requested additional time prior to the running of the deadline provided in Rule 36. Further, the litigant provided an affidavit saying that he was hospitalized and unable to file a timely response. When the litigant failed to respond after his hospitalization, the trial court deemed the requests admitted and granted summary judgment based upon the admissions the litigant failed to answer. 170 W.Va. 534, 295 S.E.2d 25.

Here, the Court considers the fact that Chevron did not respond to the requests for admission while its Motion to Stay was pending. Once the motion was ruled upon by the undersigned, Chevron quickly provided the discovery responses to Plaintiffs. If Chevron had then failed to respond after the ruling on the Motion to Stay, similar to how the litigant in *Dingess-Run Coal Co.* failed to respond even after his hospitalization had ended, this Court may have come to a different conclusion.

Further, the Court agrees with Chevron's assertion that granting Plaintiffs' motion would "hinder the presentation of the merits of the case". *Id.* at 4. The Court has been proffered with no evidence of, and finds no indication of, any prejudice to Plaintiffs that would result by Chevron's submission of its initial discovery responses at this relatively early juncture in this litigation. Indeed, Defendants' Answers and Affirmative Defenses to the Amended Complaint in this matter were just filed on June 13, 2019, and June 14, 2019, respectively. This is a mere three days before the filing of the first discovery responses by Chevron. The Court also notes that it granted Plaintiffs' request to extend the expert disclosure deadline after Plaintiffs

requested an extension in order to properly review Defendants' discovery responses prior to filing its disclosure, which is further evidence of a lack of prejudice to Plaintiffs.

For all of these reasons, the Court finds Plaintiffs' Motion to Deem Unanswered Requests for Admissions to Defendant Chevron, U.S.A., Inc.'s Admitted shall be denied.

The Court finds Chevron's motion for a sur-reply moot.

Accordingly, it is hereby ADJUDGED and ORDERED that the Court DENIES Plaintiffs' Motion to Deem Unanswered Requests for Admissions to Defendant Chevron, U.S.A., Inc.'s Admitted. The Court notes the objections and exceptions of the parties to any adverse ruling herein.

The Clerk is directed to enter this Order as of the date first hereinabove appearing, and send attested copies to all counsel of record, as well as to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 10th day of July 2019.



Michael D. Lorensen
Business Court Division

A Copy Teste:

Joseph M. Rucki, Clerk

By Danica Crowe Deputy