Rediscovering the Truth: Requests for Admissions Are Not Discovery

By Edward S. Margolis

The Illinois Supreme Court's recent decision in* PRS International v Shred Pax *clarifies the scope of Supreme Court Rule 216, which governs requests for admissions. This decision, along with the court's earlier decision in* Bright v Dicke, *gives practitioners a powerful tool for narrowing issues of fact and thereby paving the way for summary judgment or expedited trials.

I. The *PRS International* Case

Any thoughts a practitioner might have about clearing the shelf of those old legal encyclopedias has been scotched by the Illinois Supreme Court in its landmark decision in *PRS International, Inc. v Shred Pax Corporation*.[1] The court dusts off its 1983 edition of Am Jur 2d and in two remarkable sentences ends the debate over whether or not requests to admit are discovery:

> Although requests to admit are often classified as a discovery device and treated as such in practice [*Bright v Dicke*, 166 Ill 2d 204, 208], ``the purpose of admissions is not to discover facts but rather to establish some of the material facts in a case without the necessity of formal proof at trial." Requests to admit are ``a device by which to `separate the wheat from the chaff'" and are ``intended to circumscribe contested factual issues in the case so that issues which are disputed might be clearly and succinctly presented to the trier of facts." 23 Am Jur 2d § 314 (1983).[2]

What is astounding about this ruling is that it seems to depart from the supreme court's recent statement of the law in *Bright v Dicke*,[3] where the court states, ``[w]e note, moreover, that a request for admissions is essentially a discovery tool."[4] The confusion arises because the ``common practice" the court describes in *PRS International* of classifying requests to admit as a ``discovery device" was its own practice. On the other hand, the source of the statement that ``the purpose of admissions is not to discover facts but rather to establish some of the material facts in a case without the necessity of formal proof at trial" is the 1983 edition of Am Jur 2d.

The significance of the supreme court's rulings in *Bright v Dicke* and *PRS International v Shred Pax Corp.*, however, goes far beyond the making of arcane semantic distinctions. These two decisions, which define the scope and limitations of requests for admissions, are profoundly important to all litigating attorneys.

II. Requests to Admit — the Subject of Heated Debate

Every litigating attorney should become acquainted with the procedure for obtaining admissions of facts and genuineness of documents prior to trial. Obtaining admissions not only narrows the issues the court will have to address at trial but often provides the foundation for a winning motion for summary judgment. While admissions can be obtained through the pleadings (complaint, answer, reply) and in responses to written interrogatories, no written discovery procedure can rival the request for admissions in focusing on specific facts or documents.

The Illinois Supreme Court Rule 216 (formerly Rule 18) was adopted in 1956. Since then, questions have remained about the extent to which requests to admit facts and genuineness of documents can be used to achieve their intended purpose of narrowing issues and thus reducing needless waste of time by counsel and the courts.[5] Practitioners clashed with other practitioners and with trial courts about the implications of unanswered requests, which under the Rule constitute admissions when not denied under oath within 28 days. The appellate courts were divided.[6]

In the 1980s, the debate over whether requests to admit were discovery became heated as the upper monetary limits of the small claim procedure[7] began to rise. While virtually no practitioner back in 1964 when the small claim rules were promulgated could argue the appropriateness of depositions, discovery, and motions in cases under $200, attitudes began to change as the amount of the small claim increased exponentially: $500 in 1967, $1,000 in 1969, $2,500 in 1981 and $5,000 as of January 1, 1997.[8]

The language of Rule 287 was unequivocal in its prohibition against depositions and discovery. But it was not until 1992 that the rule specifically prohibited requests for admissions.[9] The ambiguity in the supreme court rules cited by many practitioners in arguing that requests for admissions were not discovery and thereby not barred in the small claims procedure was found in the rules themselves, which spoke of ``Discovery, Requests for Admission, and Pretrial Procedure."[10]

Practitioners argued that because requests for admissions were designated separately from discovery and separated by a comma they were indeed something different from discovery. Further, until 1995, requests for admissions were not mentioned in Rule 201(a) as a discovery method. As is described in the historical note to the rule, in 1995 requests to admit were included without fanfare in subparagraph (a) along with depositions upon oral examination or written questions, written interrogatories to parties, discovery of documents, objects or tangible things, inspection of real estate, and physical examination of persons.

The implications for practitioners of whether requests for admissions are discovery, however, goes far beyond the small claims arena. While the rules of discovery governing written interrogatories, depositions, and requests for production of documents involve elaborate procedures before an opposing counsel could be compelled to respond,[11] no such requirements were provided in requests for admissions of fact and genuineness of documents, which were ``self-executing" in that the failure to respond in itself constituted an admission.

III. *Bright v Dicke* and *PRS International v Shred Pax* Clarify the Power of Requests for Admissions

Recently, the Illinois Supreme Court, upholding the trial court's ruling denying leave to file a late response to requests for admissions in *Bright v Dicke*,[12] held that ``[t]he rules of court we have promulgated are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written."[13] Attorneys who had become lax about responding to written discovery (i.e., interrogatories and requests for production) received a rude awakening when the supreme court held that the failure to respond to a request to admit within 28 days indeed constitutes an admission that will not be altered unless good cause is shown.[14]

With the coming of *Bright v Dicke*, one might have thought that the Illinois Supreme Court had spoken its last word on requests to admit, but not so. In *PRS International, Inc. v Shred Pax Corporation*,[15] the Illinois Appellate Court reversed a trial court that had entered summary judgment on certain requests for admissions that were not denied within 28 days and that the trial court deemed admitted. The appellate court looked at the requests for admissions and concluded that they were improper because they related to ``ultimate facts" and ``legal conclusions."[16]

PRS International was a simple contract case where the defendant served the plaintiff with a request to admit that the plaintiff never obtained permits for delivery, installation, or operation of a pyrolysis system, never requested that the defendant deliver the system at a specified place and time, refused delivery when the system was proffered, and requested that the system be sold to someone else. Since these were elements of the contract cause of action, the court held that they were ``ultimate facts" and thereby improperly included in the requests for admissions. This was the controlling precedent in Illinois for the short interval between the appellate court's decision and the reversal by the supreme court (October 31, 1997 to October 22, 1998).

The Illinois Supreme Court granted leave to appeal the appellate court's decision and in a landmark decision overruled the appellate court and reinstated the summary judgment. The supreme court held that while the appellate court was correct in holding that ``conclusions of law" should not be contained in requests for admissions, the appellate court was incorrect in holding that such requests could not include ``ultimate facts."[17]

The implications of the supreme court's decision in *PRS International* combined with the earlier decision in *Bright v Dicke* breathes new life into the requests-for-admissions procedure. It is now clear that a plaintiff or defendant can request admissions regarding all of the elements of a contract case: order, acceptance, delivery, failure to pay, etc. While a litigant may not state in requests to admit that such conduct as listed above constitutes ``performance" or ``breach of contract," the ultimate facts, if established, may well lead the court to that conclusion and summary judgment is properly entered.

In PRS International, the supreme court holds as follows:

> PRS has constructively admitted, through its failure to respond to the requests for admissions, that it indicated to Shred Pax that it would refuse to accept delivery of the pyrolysis system. In addition, PRS officers stated to Shred Pax that PRS would prefer that Shred Pax attempt to find another buyer for the pyrolysis machine, and that PRS's owners were attempting to become ``completely disassociated with anything to do with the tire shredding and/or burning." Thus, PRS repudiated the contract with Shred Pax [under the Illinois Commercial Code, Section 2-703]. Shred Pax then had the right to withhold delivery of the goods for which PRS indicated that it would not accept delivery. Accordingly, PRS's claim that Shred Pax breached the contract by failing to deliver the pyrolysis machine must fail; the duty to deliver was excused by PRS's own repudiation of the contract and PRS has no claim for breach of that contract. For this reason, Shred Pax is entitled to summary judgment.[18]

IV. Conclusion

The supreme court in *Bright v Dicke* and *PRS International v Shred Pax* restores the vigor of the requests-to-admit procedure and reaffirms its role as a unique and valuable tool to promptly expedite the resolution of litigated cases. The final resolution of the question as to whether requests for admissions are discovery should come as no surprise to any practitioner who has followed the debate and who employs the procedure.

Requests for admissions are not now, nor have they ever been, a procedure for uncovering new information. Properly used, requests for admissions require the answering party to admit and to concede to the genuineness of facts and documents which the requesting party already knows to be true. In fact, they discover nothing.

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1. 184 Ill 2d 224, 703 NE2d 71 (1998).

2. Id, 703 NE2d at 77.

3. 166 Ill 2d 204, 652 NE2d 275 (1995).

4. Id, 166 Ill 2d at 208.

5. See Committee comments to S CT Rule 216.

6. See, generally, Gilbert C. Schumm, *Illinois Supreme Court Rule 216: How to use Requests to Admit*, 73 Ill B J 338 (Feb 1985).

7. Currently S Ct Rules 281 through 289.

8. See Committee comments to S Ct Rule 281.

9. See Committee comments to S Ct Rule 287.

10. Article II of the Rules of the Supreme Court. *Rules on Civil Proceeding in the Trial Court* are broken out alphabetically in parts A through J. Part E is entitled *Discovery, Requests for Admission, and Pretrial Procedure*.

11. See, generally, S Ct Rule 201(k).

12. 166 Ill 2d 204, 652 NE2d 275 (1995).

13. Id, 166 Ill 2d at 210.

14. Id, 166 Ill 2d at 209.

15. 292 Ill App 3d 956, 686 NE2d 1214 (3d D 1997).

16. Id.

17. 184 Ill 2d 224, 703 NE2d 71 (1998).

18. Id, 703 NE2d at 80.

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