

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SECURITY TECHNOLOGIES, INC, et al,

Plaintiffs,

v

BRMC EQUITIES, LLC, et al,

Defendants.

Case No. 2013-135199-CK
Hon. Wendy Potts

Consolidated with
Case No. 2013-134695-CK

OPINION AND ORDER RE: BRMC EQUITIES LLC'S MOTION TO PERMIT LATE FILING
OF RESPONSES TO REQUESTS TO ADMIT PER MCR 2.312(B), RELIEF FROM ORDER
PER MCR 2.612, OR WITHDRAW ADMISSIONS PER MCR 2.312(D)(1)

At a session of Court
Held in Pontiac, Michigan

DEC ^{On} 04 2015

Defendant BRMC Equities moves the Court to allow it to file late responses to Plaintiff Security Technologies, Inc's requests to admit. Securatech served the requests to admit on BRMC on October 24, 2013. A request for admission is deemed admitted unless, within 28 days after service of the request, the party to whom the request is directed serves on the party requesting the admission a written answer or objection. MCR 2.312(B)(1). Thus, BRMC had until November 21, 2013 to serve its responses on Securatech. Because BRMC did not serve its responses on Securatech until December 9, 2013, the requests were deemed admitted.

The Court has discretion to allow BRMC to withdraw its admissions or file late answers if it shows good cause for doing so. MCR 2.312(D)(1); *Janczyk v Davis*, 125 Mich App 683, 691; 337 NW2d 272 (1983). When deciding whether to allow late answers to requests to admit, the Court considers three factors: (1) whether allowing the late answers will aid in the presentation of the action by allowing a resolution on the merits, (2) whether the other party

would be prejudiced by allowing the late answers, and (3) the reason for the delay and whether it was inadvertent. *Janczyk, supra* at 692-693.

None of these factors weigh in favor of allowing BRMC to withdraw its admissions. BRMC's late answers will not aid in deciding this case on the merits because the claims at issue have long been decided. The key admission that BRMC wants to set aside pertains to whether Securitech and Rudy Patros paid in full a loan from Metro Murad Properties, LLC. However, that admission was acknowledged and relied on by the Court in its May 2014 summary disposition opinion. A few months after the Court issued that opinion BRMC, for the first time, challenged its admissions. The Court again relied on the admissions in its bench opinion determining damages and rejected BRMC's attempt to withdraw the admissions. Allowing BRMC to withdraw the admissions and file late answers now would not aid in determining the case on the merits. To the contrary, it would disrupt claims, issues, and facts that have already been decided and finally determined.

Allowing BRMC to withdraw its admissions would also be extremely prejudicial to Securitech and Patros, who have relied on those admissions for more than a year. If the Court were to allow BRMC to deny these admitted facts, the Court would have to set aside nearly every substantive decision made in this case since the May 2014 summary disposition opinion. The Court would then have to reopen the case and the parties would have to relitigate whether the loan was repaid. Because the time for taking discovery has long passed, Securitech and Patros would be unable to conduct discovery to determine how much was paid towards that loan, which would prevent them from obtaining a fair trial. Thus, BRMC's delayed request to withdraw its admissions would be highly prejudicial.

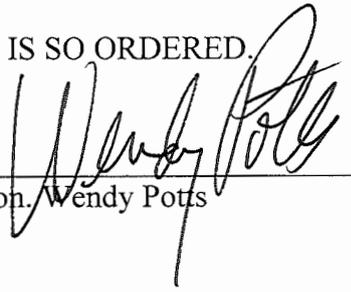
As for the delay, BRMC's initial failure to timely answer the requests may have been inadvertent, and the two-week delay between when the answers were due and when they were

actually served was not substantial. However, BRMC's lengthy delay in seeking to withdraw the admissions is considerable and largely unexplained. Had BRMC promptly sought an extension to file its answers or asked to withdraw the admissions, it would have likely been granted and would not have prejudiced Securatech. However, the first time that BRMC acknowledged its admissions and asked the Court to withdraw them was in its trial brief filed months after the Court deemed them admitted. Because BRMC gives the Court no reasonable explanation for why it waited so long to address the admissions, the Court cannot conclude that the delay was excusable.

For all of these reasons, BRMC fails to demonstrate good cause for withdrawing the admissions or filing late answers and the motion is denied.

Dated: DEC 04 2015

IT IS SO ORDERED.



Hon. Wendy Potts