

AFFIRM; Opinion Filed April 12, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00084-CV

**PARDEEP GARCHA, CHAMBAL TRUCK AND SERVICE CENTER, LLC AND
GARCHA TRUCK AND TRAILER SERVICE CENTER, INC., Appellants**

V.

HARDIAL CHATHA, Appellee

**On Appeal from the County Court at Law No. 2
Dallas County, Texas
Trial Court Cause No. CC-16-01182-B**

MEMORANDUM OPINION

Before Justices Bridges, Myers, and Schenck
Opinion by Justice Schenck

Pardeep Garcha, Chambal Truck and Service Center, LLC (Chambal), and Garcha Truck and Trailer Service Center, Inc. (Garcha Truck) (collectively, Garcha Group) appeal the trial court's summary judgment in favor of Hardial Chatha. In their first issue, the Garcha Group argues the trial court erred in denying their motion to withdraw and set aside deemed admissions. In their second issue, the Garcha Group urges the trial court erred in granting the summary judgment because it was based almost solely on deemed admissions, many of which were impermissibly designed to secure the Garcha Group's admission of multiple legal conclusions central to the case. We affirm the trial court's judgment.

BACKGROUND

Mr. Chatha retained the Garcha Group to perform certain repairs, including rebuilding the engine of a commercial truck he owned. Initially, Mr. Chatha agreed to advance \$10,000 to cover the labor charge and as an advance on the cost of the parts. After ten days, Mr. Garcha demanded an additional \$3,300 to purchase an additional part, and Mr. Chatha in turn requested to see the truck, the parts purchased to that point, and the invoice for those parts. Mr. Garcha failed to produce the requested invoice or the parts or a work order for the labor. Mr. Chatha demanded the return of the commercial truck and the \$10,000 he advanced, but later accepted Mr. Garcha's offer to return the \$10,000 paid towards repairs and to provide an additional \$5,000 for the truck itself. The Garcha Group issued Mr. Chatha three checks for \$5,000 dated February 5, March 5, and April 5. The first check was returned for insufficient funds.

On March 9, 2016, Mr. Chatha filed suit against the Garcha Group asserting claims for breach of contract, fraud, conversion, and theft by check. The Garcha Group filed its original answer pro se. Mr. Chatha served discovery requests, including requests for admission, on the Garcha Group and later on their retained counsel, via two emails, but did not receive any reply to the initial request or to the two subsequent emails sent to counsel on June 27 and July 12.

Mr. Chatha moved for summary judgment on his claim for breach of contract based on unanswered requests for admission, which he urged should be deemed admitted. The Garcha Group filed a motion to withdraw and set aside the deemed admissions, which the trial court denied. The Garcha Group also filed their response to the motion for summary judgment and attached supporting documents. Mr. Chatha objected to the response and to portions of the accompanying affidavit of Mr. Garcha. The trial court signed an order in which it sustained Mr. Chatha's objections to the Garcha Group's summary judgment evidence, struck the objected-to

portion of Mr. Garcha's affidavit, and awarded summary judgment against the Garcha Group.¹ The Garcha Group filed a motion for new trial supported by affidavits in which two affiants stated that the failure to respond to the requests for admission was due an administrative error, rather than an intentional omission. The motion for new trial was overruled by operation of law, and this appeal follows.

DISCUSSION

I. Should the trial court have set aside deemed admissions?

In their first issue, the Garcha Group contends the trial court erred in denying their motion to withdraw and set aside the deemed admissions.

A trial court may permit a party to withdraw an admission (a) if the party shows good cause of the withdrawal, and (b) the court finds that the parties relying upon the deemed admissions will not be unduly prejudiced and that the presentation of the merits of the action will be subserved by permitting the party to withdraw the admission. *See* TEX. R. CIV. P. 198.3. Good cause is established by showing the failure involved was an accident or mistake, not intentional or the result of conscious indifference. *Marino v. King*, 355 S.W.3d 629, 633 (Tex. 2011) (per curiam). Undue prejudice depends on whether withdrawing an admission or filing a late response will delay trial or significantly hamper the opposing party's ability to prepare for it. *Id.*

We review a trial court's decision to permit or deny the withdrawal of deemed admissions for abuse of discretion. *Tommy Gio, Inc. v. Dunlop*, 348 S.W.3d 503, 508 (Tex. App.—Dallas 2011, pet. denied). We set aside the trial court's ruling only if, after reviewing the entire record,

¹ Although Mr. Chatha's motion only sought summary judgment on its claim for breach of contract and not on all his claims, the trial court's judgment states that "all relief not expressly granted herein is denied." We questioned whether we had jurisdiction over this appeal and provided the parties an opportunity to submit jurisdictional letter briefs. *See Farm Bureau Cnty. Mut. Ins. Co. v. Rogers*, 455 S.W.3d 161 (Tex. 2015). On request of Mr. Chatha, we abated the case to allow him to nonsuit any remaining claims not part of the summary judgment order. We reinstated the case after we received a supplemental clerk's record containing Mr. Chatha's motion for nonsuit and the trial court's order of nonsuit as to Mr. Chatha's claims for fraud, conversion, and theft by check. Accordingly, we conclude the trial court's order dated October 10, 2016, is a final judgment.

it is clear that the trial court abused its discretion. *Id.* at 509. A trial court abuses its discretion if it acts without reference to guiding rules or principles, or acts arbitrarily or unreasonably. *Id.*

Requests for admission are intended to simplify trials. *Marino*, 355 S.W.3d at 632. They are useful when addressing uncontroverted matters or evidentiary ones like the authenticity or admissibility of documents. *Id.* Further, they should be used as a tool, not a trapdoor. *Id.* And when admissions are deemed as a discovery sanction to preclude a presentation of the merits, they implicate the same due process concerns as other case-ending discovery sanctions. *Id.* Thus, we require a showing of flagrant bad faith or callous disregard for the rules to substantiate a summary judgment based solely on deemed admissions. *Id.* at 633.

The record establishes the following timeline:

- On April 19, 2016, Mr. Chatha served requests for admissions on the Garcha Group, which were initially due on May 19, 2016.
- On April 26, 2016, the trial court ordered Chambal Truck and Service Center, LLC and Garcha Truck and Trailer Service Center, Inc. to retain licensed counsel.
- On May 17, 2016, Mr. Chatha's counsel emailed the requests for admissions and other discovery to Mr. Garcha.
- The Garcha Group retained the Khaleeq Law Firm and filed an answer on May 27, 2016.
- On June 27, 2016, Mr. Chatha's counsel emailed Bilal Khaleeq at the Khaleeq Law Firm, advising him that the Garcha Group had been served with discovery requests and proposing to extend the date to respond for two weeks.
- On July 12, 2016, Mr. Chatha's counsel again emailed Bilal Khaleeq at the Khaleeq Law Firm, attaching a draft agreement to extend the date to respond to discovery for two weeks and advising Mr. Khaleeq that should he fail to sign and return the agreement on or before July 15, 2016, he would assume Mr. Khaleeq agreed the time period for all responses had expired.
- On August 5, 2016, the parties agreed to continue the non-jury trial scheduled for August 24, 2016, and the mediation deadline by at least sixty days.
- On August 23, 2016, Mr. Chatha filed his motion for summary judgment based upon deemed admissions.

In the motion to withdraw and set aside deemed admissions, the Garcha Group asserted that they had retained the Khaleeq Law Firm on May 27, 2016; that Mr. Chatha had sent his June 27, 2016 letter to attorney Jeff Shelton who had resigned from the firm on May 20, 2016; and that “[d]ue to the timing of Mr. Shelton’s resignation and several incidences of staff turnover within the Khaleeq Law Firm in the months of May, June, and July 2017, [c]ounsel for Defendants did not receive or respond to Plaintiff’s June 27 letter or subsequent Rule 11 letters.”

Mr. Chatha responded to the motion to withdraw and attached the emails and letters his counsel sent to Mr. Garcha and later to Mr. Khaleeq’s email address in June and July of 2017. After the trial court denied the Garcha Group’s motion to withdraw, the trial court conducted a hearing on Mr. Chatha’s motion for summary judgment. At that time, Mr. Khaleeq reiterated his argument that any failure to respond to the requests for admission was because Mr. Shelton’s email account was inaccessible after he left the firm. Mr. Chatha’s attorney continued to argue the emails were sent concerning discovery to Mr. Khaleeq’s email address—the same one used to communicate regarding the continuance—and not to Mr. Shelton’s. Mr. Khaleeq argued again the emails Mr. Chatha sent were not accessible from the time Mr. Shelton left the firm until Mr. Khaleeq was eventually able to access it.

After the trial court denied the Garcha Group’s motion to withdraw and granted Mr. Chatha summary judgment on his breach of contract claim, the Garcha Group moved for a new trial and attached affidavits to their motion. One of the affidavits is that of an employee of the Khaleeq Law Firm who contends he received the June 27, 2016 email forwarded from Mr. Khaleeq’s account and informed Mr. Khaleeq he would prepare a response. The employee states that he “later completed a similar task and mistakenly and accidentally attributed that action as a completion of the matter in the case at hand.” It is unclear from this statement if the employee indicated to Mr. Khaleeq that he had prepared and sent the response, nor is it stated whether Mr.

Khaleeq did anything to confirm that the employee had prepared and sent the response. Another affiant is Mr. Khaleeq who states that to “facilitate proper handling of each case, my email system is set up to automatically forward certain emails regarding individual cases or containing specific key words to different members of my staff.” In his affidavit, Mr. Khaleeq goes on to state that in early August 2016, he realized that Mr. Chatha’s communications were “being accidentally overlooked,” so he reassigned the case to active staff.

The record establishes that despite the fact that Mr. Chatha attempted to serve discovery using the email address Mr. Khaleeq provided, Mr. Khaleeq first attempted to deflect the blame onto an associate no longer with his firm, and then later admitted that he had programmed his email system to forward certain emails to different members of his staff. On this record, we cannot conclude the trial court abused its discretion by determining the Garcha Group’s failure to answer was, at the least, the result of conscious indifference rather than an accident or the result of mistake. In light of our conclusion regarding good cause, we need not address the Garcha Group’s arguments regarding undue prejudice. *See, e.g., Pitre v. Sharp*, 05-15-00173-CV, 2016 WL 2967826, at *4 (Tex. App.—Dallas May 13, 2016, no pet.) (mem. op.).

We overrule the Garcha Group’s first issue.

II. Did the trial court err in granting summary judgment?

In their second issue, the Garcha Group contends that some of the deemed admissions on which the trial court granted summary judgment were improper legal conclusions and that, absent those deemed admissions, there is insufficient evidence to support the summary judgment.

Rule 198 permits a party to serve on another party written requests that the other party admit the truth of any matter within the scope of discovery, including statements of the application of law to facts. *See* TEX. R. CIV. P. 198.1. Admissions of fact on file at the time of a summary judgment hearing are proper summary judgment proof and will support a motion for summary

judgment. *See Dallas Drain Co. v. Welsh*, No. 05-14-00831-CV, 2015 WL 4114976, at *5 (Tex. App.—Dallas July 8, 2015, no pet.) (mem. op.). However, a request for admission asking a party to admit or deny a purely legal issue is improper, and a deemed admission involving a purely legal issue is of no substantive, evidentiary effect. *See id.*

A claim for breach of contract requires proof that (1) a valid contract existed between the parties; (2) the plaintiff performed or tendered performance; (3) the defendant breached the contract; and (4) the plaintiff sustained damages as a result of that breach. *Killingsworth v. Hous. Auth. of City of Dallas*, 447 S.W.3d 480, 487 (Tex. App.—Dallas 2014, pet. denied).

Mr. Chatha's motion for summary judgment relied on the deemed admissions of the Garcha Group and attached as evidence copies of the requests for admission, which included as exhibits a copy of a check from Mr. Chatha to appellee Chambal in the amount of \$5,000, a copy of a check from Mr. Chatha to appellee Garcha Truck in the amount of \$5,000, a copy of a check from Chambal to Mr. Chatha in the amount of \$5,000 and marked as returned for insufficient funds, and a copy of the title to the commercial truck at issue. The Garcha Group responded to the motion for summary judgment with evidence, including a check-in sheet, invoices for parts and labor, an affidavit from Mr. Garcha regarding the underlying transactions,² and an affidavit from Mr. Khaleeq regarding the failure to respond to the requests for admission.

The Garcha Group complains that more than a dozen of the deemed admissions are impermissible legal conclusions. We need not address each conclusion, and instead review whether there is sufficient, proper summary judgment evidence to support the trial court's judgment. *See TEX. R. APP. P. 44.1 (a), 47.1.*

² The trial court sustained Mr. Chatha's objections to portions of Mr. Garcha's affidavit, and Mr. Garcha does not appeal that decision, so we only address the unobjected-to portions of Mr. Garcha's affidavit.

The following establishes the existence of a valid contract between the parties. The Garcha Group offered as evidence a check-in sheet that shows Mr. Chatha's truck driver signing the commercial truck into the Garcha Service Center. The second deemed admission states, "That the Commercial Truck suffered engine failure in Dallas, Texas and Plaintiff retained Defendants' to rebuild the engine and perform additional repairs." Thus, there appears to be evidence that the parties reached an agreement. Although the Garcha Group argues the second deemed admission constitutes an improper legal conclusion that a contract existed between the parties, we conclude the statement is one of fact from which a legal conclusion could be drawn that a valid contract existed between the parties.

Mr. Chatha established the elements of performance and breach as follows. The copies of checks attached to the deemed admissions that show Mr. Chatha paid Chambal and Garcha Truck each \$5,000, from which a legal conclusion could be drawn that Mr. Chatha performed or tendered performance. The third and fourth deemed admissions set forth the terms of the agreement between the parties, that the Garcha Group would rebuild the engine for \$4,000.00 in labor, plus the cost of parts, and that Mr. Garcha would purchase the parts. The fifteenth admission stated that the Garcha Group failed to repair the commercial truck. One of the invoices attached to the Garcha Group's response to Mr. Chatha's summary judgment motion reflects Garcha Truck invoiced Mr. Chatha for parts and labor but does not indicate such work was complete until over one month after the date of Mr. Chatha's original petition. The eighteenth deemed admission stated Mr. Garcha offered to purchase the commercial truck for \$5,000.00 and to repay Mr. Chatha for the \$10,000.00 advanced for parts. The nineteenth admission stated that the Garcha Group issued three checks payable to Mr. Chatha, each for the amount of \$5,000.00. One of the exhibits to the deemed admissions is a copy of a check from Chambal to Mr. Chatha in the amount of \$5,000 and marked as returned for insufficient fund. From this evidence, a legal conclusion could

be drawn that as of the date of the original petition, the Garcha Group had breached the agreement to repair Mr. Chatha's commercial truck.

With respect to damages, the twenty-seventh deemed admission states, "That Defendants have failed and refused to either deliver the Commercial Truck or refund Plaintiff's \$10,000.00 advance for parts." Additionally, one of the exhibits to the deemed admissions was a title in Mr. Chatha's name to the commercial truck. The foregoing evidence supports the legal conclusion that Mr. Chatha was damaged by the transaction with the Garcha Group. Further, from the evidence that the parties agreed that the Garcha Group would repay the \$15,000.00 advanced costs and for the value of the truck, the record supports the conclusion that Mr. Chatha's damages were \$15,000.00.

We overrule the Garcha Group's second issue.

CONCLUSION

We affirm the trial court's judgment.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas
JUDGMENT NUNC PRO TUNC**

PARDEEP GARCHA, CHAMBAL
TRUCK AND SERVICE CENTER, LLC
AND GARCHA TRUCK AND TRAILER
SERVICE CENTER, INC., Appellants

On Appeal from the County Court at Law
No. 2, Dallas County, Texas
Trial Court Cause No. CC-16-01182-B.
Opinion delivered by Justice Schenck,
Justices Bridges and Myers participating.

No. 05-17-00084-CV V.

HARDIAL CHATHA, Appellee

In accordance with this Court's opinion of April 12, 2018, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee HARDIAL CHATHA recover his costs of this appeal from appellant PARDEEP GARCHA, CHAMBAL TRUCK AND SERVICE CENTER, LLC AND GARCHA TRUCK AND TRAILER SERVICE CENTER, INC.

Judgment entered this 16th day of April, 2018.