

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHARLES L. HONEYCUTT,)
)
 Plaintiff,)
)
 vs.) No. 02-2710 M1/V
)
 FIRST FEDERAL BANK, a FSB,)
 d/b/a First Federal Mortgage,)
)
 Defendant.)

ORDER ON PLAINTIFF'S MOTION TO COMPEL

This diversity tort action arises out of a failed real estate transaction. The plaintiff, Charles Honeycutt, alleges in his complaint that the defendant, First Federal Bank ("First Federal"), issued a loan "pre-approval" letter to Honeycutt's potential home buyer, Barbara Grantham; that he relied on the letter when entering into a purchase agreement with Grantham; and that First Federal failed to disclose a material condition precedent to Grantham's borrowing eligibility, specifically that First Federal would require Grantham to pay off an existing loan from Bank One in order to receive the mortgage loan from First Federal. Honeycutt asserts claims for negligent, intentional, and reckless misrepresentation, simple negligence, and violations of the Tennessee Consumer Protection Act by First Federal.

Now before the court is the motion of Honeycutt, filed

February 10, 2003, to overrule First Federal's objections to certain of the plaintiff's requests for admissions and production of documents and to compel responses. The motion was referred to the United States Magistrate Judge for a determination. For the reasons that follow, Honeycutt's motion is denied.

ANALYSIS

Honeycutt seeks responses to his Requests for Admissions Nos. 7, 22, 24, 26, 28, 46, 54, and 57, and to his Request for Production No. 7. In the absence of any stated procedural basis in Honeycutt's motion, the court construes the part of his motion that deals with requests for admissions as a motion to determine the sufficiency of the defendant's responses pursuant to Federal Rule of Civil Procedure 36, and the part of the motion dealing with the production of documents as falling under Rules 26 and 37.

A. The Requests for Admissions

Admissions sought under Rule 36 are time-saving devices, designed to narrow the particular issues for trial. FED. R. CIV. P. 36 Adv. Comm. Notes; *United Coal Cos. v. Powell Constr. Co.*, 839 F.2d 958, 967 (3d Cir. 1988) (internal citations omitted). A request for admissions "should be confined to facts that are not in material dispute." *United States v. Watchmakers of Switzerland Info. Cent., Inc.*, 25 F.R.D. 197, 201 (S.D.N.Y. 1959).

Generally, the statements posed by the party seeking their

admission should be "capable of an answer by a yes or no." *Johnstone v. Cronlund*, 25 F.R.D. 42, 45 (D. Pa. 1960); *United Coal*, 839 F.2d at 968 (citing *Johnstone v. Cronlund*, 25 F.R.D. 42, 45 (D. Pa. 1960)). Statements that are vague, or statements susceptible of more than one interpretation, defeat the goals of Rule 36 and are properly objectionable. *Johnstone*, 25 F.R.D. at 45. Similarly, statements "in which one part of the question could be readily answered yes or no, whereas the remainder of the question require[s] explanation," are properly objectionable. *Id.* at 46. Statements that combine fact, conclusion, and argument are properly objectionable. *Securities and Exchange Comm'n v. Micro-Moisture Controls*, 21 F.R.D. 164, 166 (S.D.N.Y. 1957). Statements are also properly objectionable if they use pejorative language or innuendo; if they contemplate a legal standard; if they require lengthy explanations before they can fairly be answered; or if they require inferences. See *id.* (striking the use of phrases such as "active and substantial personal securities account" and "direct business relationship"); *Watchmakers*, 25 F.R.D. at 201 (finding that phrases such as "price cutting activities" and "excessive quantities" were "clearly objectionable"); *Johnstone*, 25 F.R.D. at 45-46 (rejecting, for lack of propriety, clarity, and relevance, a request to admit that a party "knew the seriousness" of a child handling a gun).

When the answering party has objected to a request for

admission, the court determines whether the objection is justified. FED. R. CIV. P. 36. If the answering party's objection is unjustified, the court shall order the party to serve a response. FED. R. CIV. P. 36.

1. Requests Nos. 7 and 46

____ First Federal objects to the phrasing of these two requests.

Request No. 7 reads as follows:

Request No. 7 Defendant's employee communicated to Ms. Grantham the stipulation regarding payment of the Bank One loan.

Response First Federal objects to this request on the grounds that it improperly assumes facts not in evidence.

Request No. 46 and its response read as follows:

Request No. 46 Defendant knew that Mrs. Grantham did not qualify for a \$210,000 mortgage.

Response First Federal objects to this Request on the grounds that it assumes facts not in evidence. First Federal also objects on the grounds that the request is improperly phrased so as to infer [sic] unfairly a particular conclusion from Defendant's response.

As to Request No. 7, First Federal argues that Grantham's payment of the Bank One loan was not a "stipulation," and accordingly that it cannot admit or deny the request. (Def.'s Resp. in Opp. to Pl.'s Mot. to Compel at 3). First Federal insists that it did not determine that Grantham had to pay off the Bank One loan but that instead Grantham represented on her loan application that the Bank One loan would be paid off prior to closing. Because a key issue in this case is whether payment of the Bank One loan

was a condition precedent to approval for a First Federal loan, First Federal's objection is justified.

First Federal argues that the request No. 46 is similarly ambiguous and is also unclear as to time. First Federal explains that the knowledge that Grantham would not qualify for a loan was acquired only after Grantham failed to pay off the Bank One loan. On the basis that the request is not specific as to time, First Federal's objection is justified.

2. Requests Nos. 22, 24, 26, 28, 54, and 57

First Federal objects to these requests on grounds that they do not seek admission of verifiable facts, but instead improperly seek legal opinions or conclusions, and/or improperly call for speculation about the acts of third parties. The requests read as follows:

Request No. 22 Defendant should have known based on past experience in the mortgage business that Ms. Grantham intended to submit the letter identified as Exhibit A to the Complaint to a potential home seller.

Request No. 24 Defendant should have known based on past experience in the mortgage business that a home seller might rely on the letter identified as Exhibit A to the Complaint as a statement of Ms. Grantham's ability to perform her obligations under a contract for sale of real estate.

Request No. 26 Defendant should have known based on past experience in the mortgage business that Ms. Grantham intended to submit the letter identified as Exhibit B to the Complaint to a potential home seller.

Request No. 28 Defendant should have known based on past experience in the mortgage business that a home seller

might rely on the letter identified as Exhibit B to the Complaint as a statement of Ms. Grantham's ability to perform her obligations under a contract for sale of real estate.

Request No. 54 Based on its experience in the mortgage business, Defendant should have known that Ms. Grantham intended to supply the information in Exhibits A and B to a home seller.

Request No. 57 Based on its experience in the mortgage business, Defendant should have know [sic] that Ms. Grantham intended to influence a transaction between herself and a home seller with Exhibits A and B.¹

Requests that inquire into what a party "should have known" call for a legal conclusion, and in this case that legal conclusion is materially disputed. Therefore, these requests are improper. Requests that require predictions about what a third party might do are also improper because they are speculative and do not call for admission or denial of a fact. For these reasons, First Federal's objections are justified.

B. The Request for Production of Documents

Request for Production of Documents No. 7 and its response state as follows:

Request No. 7 All documents related to, evidencing or concerning Defendant's policies and procedures with respect to the preparation, issuance or use of pre-approval letters to applicants for home mortgage loans.

Response First Federal objects to this Request on the grounds that it is vague, ambiguous, and incomprehensible. Without waiving the foregoing

¹ There are no exhibits to the complaint in the clerk's file.

objections, First Federal states that its entire file related to Ms. Grantham's loan application has been previously produced.

First Federal, after double-checking its files via counsel, iterates that no policies or procedures exist at First Federal to govern pre-approval letters. (Def.'s Resp. in Opp. to Pl.'s Mot. to Compel at 7). First Federal has indicated that it is filing an amended Response to reflect this position. (*Id.*) The court cannot compel production of that which does not exist, and accordingly Honeycutt's motion to compel a response to Request for Production of Documents No. 7 is denied. First Federal is directed to serve an amended response on counsel for the plaintiff within eleven days of service of this order.

CONCLUSION

All First Federal's objections to Honeycutt's Requests for Admissions are justified. Accordingly, Honeycutt's Motion to Compel is denied as to Requests for Admissions Nos. 7, 22, 24, 26, 28, 46, 54, and 57. Honeycutt's motion to compel a response to Request for Production of Documents No. 7 is denied.

IT IS SO ORDERED this 5th day of March, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE