

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KENNISON BATTLE, <u>et al.</u>,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 99-1788 (RCL)
)	
DISTRICT OF COLUMBIA, <u>et al.</u>,)	
)	
Defendants.)	
)	

PRETRIAL ORDER

Upon consideration of the joint pretrial statement by the parties, plaintiffs’ motion [143] for clarification of partial summary judgment order, defendants’ motion [147] for reconsideration of Court’s Order [142] granting partial summary judgment, defendants’ motion [148] for leave to withdraw admissions by default, defendants’ motion [153] for *writ of habeas corpus ad testificandum*, plaintiffs’ motion [159] to quash the *writs of habeas corpus ad testificandum*, and plaintiffs’ motion [160] *in limine*, the Court hereby enters the following Pretrial Order:

1. Plaintiffs’ Motion [143] for clarification of partial summary judgment order is GRANTED and Defendants’ Motion [147] for reconsideration of Court’s Order granting partial summary judgment is DENIED.

Whether grant of an unopposed summary judgment motion is proper under Rule 56(e), Fed. R. Civ. P., is a discretionary determination. *Fed. Deposit Ins. Corp. v. Bender*, 127 F.3d 58 (D.C. Cir. 1997). The Court’s grant of partial summary judgment was proper under Rule 56(e) because of the sufficiency of plaintiffs’ motion and the circumstances in which defendant declined response.

Plaintiffs filed their partial summary motion several months before close of discovery. The motion was supported not only by plaintiffs' sworn interrogatory answers and the factual findings of an investigation, but also by defendant's admissions. (*See* Pls.' Statement of Material Facts.) Defendants sought two extensions of time to respond to plaintiffs' motion. Plaintiffs opposed the second request on the ground that the extension would be futile due to defendants' admissions.

Thereafter, the parties requested and the Court granted a short stay of proceedings to pursue settlement discussions guided by assessment of plaintiffs' damages by Magistrate Judge Kay. After the stay expired, discovery closed and the second time extension sought by defendants expired. Subsequently, plaintiffs filed a status report on September 28, 2005 stating that no settlement had occurred and that plaintiffs' unopposed motion for partial summary judgment was ripe for adjudication. During this time, defendants made no filings. On November 8, 2005, this Court granted plaintiffs' motion for partial summary judgment.

These circumstances show that defendant's failure to oppose plaintiffs' partial summary judgment motion was a knowing and intentional waiver of the right to respond. Plaintiffs' partial summary judgment motion satisfied all procedural requirements for presentation of facts and law and was otherwise sufficient to make grant of the motion proper. Furthermore, the Court adopts the Notice [163] submitted by plaintiffs establishing the facts relevant to damages that should be read to the jury.

Defendants' motion [147] for reconsideration of Court's Order granting partial summary judgment is DENIED.

2. Defendants' Motion [148] for leave to withdraw admissions by default is DENIED.

Under Federal Rules of Civil Procedure 36(b), the “presentation of the merits of the action” would not “be subverted” by withdrawal of the admissions, because, withdrawal would not change the facts that must be “deemed established.” (Fed. R. Civ. P 56(d).) Furthermore, withdrawal of default would have to be denied because it would “prejudice [plaintiffs] in maintaining the action . . . on the merits,” because discovery is closed.

3. Defendants’ Motion [153] for *writ of habeas corpus ad testificandum* for plaintiffs, Shannon Battle and Eugene Scott is GRANTED.

Although the court granted summary judgment as to liability, the extent of the plaintiffs’ injuries remains an issue to be determined by the jury and as a result defendants are entitled to call the plaintiffs as witnesses, even though their interests are adverse.

4. Plaintiffs’ Motion [159] to quash the *writs of habeas corpus ad testificandum* is DENIED.
5. Plaintiffs’ Motion [160] *in limine* is GRANTED.

Defendant is precluded at trial from asking a witness any question that: (a) treats an established fact or a plaintiff’s entitlement to compensatory damages as if the fact or the entitlement were not true or not established; (b) seeks testimony duplicative of or contrary to an established fact; (c) seeks testimony not relevant to the amount of compensatory damages a plaintiff should be awarded; or (d) seeks a detail that, although relevant to the amount of compensatory damages a plaintiff should be awarded, has probative value that is substantially outweighed by a danger or consideration stated in Rule 403, Fed. R. Evid.; (2) offering evidence that a plaintiff who has not testified has been convicted of a crime; (3) offering or seeking to elicit evidence that a plaintiff who has testified has been convicted of a crime unless (a) the crime

is described in Rule 609(a)(2); (b) the conviction is not more than 10 years old, under Rule 609(b); (c) the evidence is not otherwise inadmissible; (d) defendant presents its evidence of the conviction to the Court and plaintiffs prior to trial, the Court determines that the evidence is admissible, and the plaintiff concerned is thereafter afforded adequate opportunity to stipulate to its truth; and (e) if the plaintiff concerned stipulates to its truth, the evidence is limited to the Court's reading of the stipulation to the jury; (4) making any argument or statement to the jury, or in the jury's presence, that asserts or implies that: (a) an established fact is not or might not be true; or (b) a plaintiff is not or might not be entitled compensatory damages.

6. Plaintiffs' Consent Motion [150] for Reconsideration of requirement for or extension of time to file plaintiffs' assets declarations are DENIED as moot in light of this Pretrial Order.

SO ORDERED.

Signed by Royce C. Lamberth, U.S. District Judge, January 26, 2006.