IT IS SO ORDERED.

Dated: March 8, 2013
11:07:57 AM

Kay Woods
Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
MELISSA A. GRUSZKA,	*	
	*	**CASE NUMBER 11-43575**
Debtor.	*	
* * * * * * * * * * * * * * * *	*	
WELLS FARGO FINANCIAL LEASING MANUFACTURER SERVICE GROUP, A DIVISION OF WELLS FARGO BANK, N.A., d/b/a WELLS FARGO BANK CAPITAL FINANCE,	*	**ADVERSARY NUMBER 12-4040**
Plaintiff,	*	
v.	*	
MELISSA A. GRUSZKA,	*	**HONORABLE KAY WOODS**
Defendant.	*	

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MEMORANDUM OPINION REGARDING (i) MOTION TO DEEM REQUESTS ADMITTED AND TO PROHIBIT INTRODUCTION OF UNPRODUCED DOCUMENTS INTO EVIDENCE; AND (ii) MOTION FOR LEAVE TO RESPOND TO REQUESTS FOR ADMISSION AND PRODUCTION OF DOCUMENTS, *INSTANTER*

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Before the Court are (i) Motion of Wells Fargo Financial Leasing Manufacturer Service Group, a Division of Wells Fargo Bank, N.A. d/b/a Wells Fargo Financial Capital Finance to Deem Requests to Admit Admitted and to Prohibit Introduction of Unproduced Documents into Evidence ("Motion to Compel") (Doc. # 29) filed by Plaintiff Wells Fargo Financial Leasing Manufacturer Service Group, a Division of Wells Fargo Bank, N.A., d/b/a Wells Fargo Financial Capital Finance ("Wells Fargo") on December 21, 2012; and (ii) Motion for Leave to File Answers to Requests for Admission and Responses to Request for Production of Documents, Instanter ("Motion for Leave") (Doc. # 32) filed by Defendant Melissa A. Gruszka on January 3, 2013. For the reasons set forth herein, the Court will (i) grant, in part, and deny, in part, the Motion to Compel; and (ii) grant the Motion for Leave.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general orders of reference (General Order Nos. 84 and 2012-7) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

I. FACTUAL AND PROCEDURAL BACKGROUND

By way of background, Debtor/Defendant Gruszka filed a voluntary petition pursuant to chapter 7 of Title 11, United States Code, on December 16, 2011.

On March 26, 2012, Wells Fargo filed Complaint Objecting to Discharge of Debt ("Complaint") (Doc. # 1) against Gruszka, which commenced the instant adversary proceeding. According to the Complaint, Gruszka personally guaranteed a debt owed to Wells Fargo by AFM Machine & Design, Inc. ("AFM") pursuant to a Single Sided Lease Agreement. (Compl. ¶ 7.) The Complaint seeks to hold the debt non-dischargeable under §§ 523 and 727[1] of the Bankruptcy Code.

On April 25, 2012, Wells Fargo and Gruszka jointly filed Proposed Discovery Plan ("Discovery Plan") (Doc. # 7), which established July 30, 2012, as the deadline by which to complete all fact discovery. (Disc. Plan ¶ 3(b).) Consistent with the Discovery Plan, on June 29, 2012, Wells Fargo served upon Gruszka (i) Plaintiff Wells Fargo Financial Leasing Manufacturer Service Group, a division of Wells Fargo Bank, N.A. d/b/a Wells Fargo Financial Capital Finance First Requests for Production of Documents to Defendant ("Requests for Production"); and (ii)

[1] Although Wells Fargo references 11 U.S.C. § 727 and bases its Second, Third and Fourth Claims for Relief on various sections of § 727 (*i.e.*, § 727(a)(2); § 727(a)(3); and § 727(a)(5)), Wells Fargo does not seek the denial of a discharge to the Debtor, but only that the debt that Gruszka owes to Wells Fargo be deemed non-dischargeable. *See generally* Compl. at 9.

Plaintiff Wells Fargo Financial Leasing Manufacturer Service Group, a division of Wells Fargo Bank, N.A. d/b/a Wells Fargo Financial Capital Finance First Set of Requests for Admission to Defendant ("Requests for Admissions") (collectively, "Discovery Requests").[2]

On December 21, 2012, Wells Fargo filed the Motion to Compel, in which it asserts that Gruszka failed to respond to Wells Fargo's Discovery Requests by the discovery deadline. (Mot. to Compel ¶ 3.) The Motion to Compel restates the twenty-two admissions requested by Wells Fargo and unanswered by Gruszka. It also sets forth the seventeen production requests to which Gruszka failed to reply. Wells Fargo requests the Court (i) to deem admitted the allegations contained in the Requests for Admissions pursuant to FED. R. CIV. P. 36(a)(3); and (ii) to prohibit Gruszka from introducing unproduced documents into evidence pursuant to FED. R. CIV. P. 34(b)(2)(A).

[2] To evidence service of the Discovery Requests, on June 29, 2012, Wells Fargo filed (i) Certificate of Service of Plaintiff Wells Fargo Financial Leasing Manufacturer Service Group, a Division of Wells Fargo Bank, N.A. d/b/a Wells Fargo Financial Capital Finance First Requests for Production of Documents to Defendant (Doc. # 18); and (ii) Certificate of Service of Plaintiff Wells Fargo Financial Leasing Manufacturer Service Group, a Division of Wells Fargo Bank, N.A. d/b/a Wells Fargo Financial Capital Finance First Set of Requests for Admission to Defendant (Doc. # 19). Contemporaneously with these filings, Wells Fargo also served upon Gruszka Plaintiff Wells Fargo Financial Leasing Manufacturer Service Group, a division of Wells Fargo Bank, N.A. d/b/a Wells Fargo Financial Capital Finance First Set of Interrogatories to Defendant ("Interrogatories"), as evidenced by Certificate of Service of Plaintiff Wells Fargo Financial Leasing Manufacturer Service Group, a Division of Wells Fargo Bank, N.A. d/b/a Wells Fargo Financial Capital Finance First Set of Interrogatories to Defendant (Doc. # 17). Because the parties do not address the Interrogatories in the Motion to Compel or the Motion for Leave, the Court will limit its analysis to the Requests for Production and the Requests for Admissions.

On January 3, 2013, Gruszka filed the Motion for Leave, in which she seeks leave to respond to Wells Fargo's Discovery Requests, *instanter*. For cause, Gruszka states that the parties agreed to conduct informal discovery in this proceeding. Gruszka further contends that her late responses to the Discovery Requests do not prejudice Wells Fargo because (i) the majority of the responsive documents are email communications between Gruszka and Wells Fargo's employees; and (ii) Gruszka admits most of the allegations contained in the Requests for Admissions.[3]

Contemporaneously with the Motion for Leave, Gruszka filed (i) Defendant's Responses to Requests for Admissions ("Response to Admissions") (Doc. # 33); (ii) Defendant's Responses to Plaintiff's Request for Production of Documents ("Response to Production Requests") (Doc. # 34); (iii) First Exhibit List Exhibits "A-E" (Doc. # 35)[4]; (iv) Exhibit "A1-A9" Email Correspondence (Doc. # 36); (v) Exhibit "B" Payment History Report (Doc. # 37); (vi) Exhibit "C" 2010 IRS (Doc. # 38); (vii) Exhibit "D" 2009 IRS (Doc. # 39); and (viii) Exhibit "E" U.S. Income Tax Return for S Corporation (Doc. # 40).

[3] Although Gruszka contends in the Motion for Leave that she only denies five of the twenty-two Requests for Admissions, her actual answers reflect that she denies six Requests for Admissions.

[4] Although this document purports to be Gruszka's exhibit list, it actually contains two duplicates of the Response to Production Requests. (*See* Doc. # 34.)

In the Response to Admissions, Gruszka admits sixteen of the twenty-two Requests for Admissions and denies the remaining six. Through Exhibits A-E to the Response to Production Requests, Gruszka produces a total of fifty-three pages of documents, which respond to six of Wells Fargo's seventeen Requests for Production. Over half of the produced documents are tax returns for Gruszka and AFM, and approximately one-fourth reflect email correspondence between Gruszka and Wells Fargo's employees. The remaining documents detail AFM's payment history to Wells Fargo.

II. LEGAL STANDARD

FED. R. CIV. P. 36(a)(3), made applicable to this procedure by FED. R. BANKR. P. 7036, governs requests for admissions, including the time in which to respond to requests and the effect of not responding. Specifically, Rule 36(a)(3) states:

> *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

FED. R. CIV. P. 36(a)(3) (West 2013) (emphasis added).

FED. R. CIV. P. 34(b)(2)(A), made applicable to this proceeding by FED. R. BANKR. P. 7034, governs the time in which to respond to requests for the production of documents. FED. R. CIV.

P. 34(b)(2)(A) states: "The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court." FED. R. CIV. P. 34(b)(2)(A) (West 2013) (emphasis added).

The discovery provisions of the Federal Rules of Civil Procedure are construed broadly in favor of resolution of cases on their merits. *See United States v. Petroff-Kline*, 557 F.3d 285, 293 (6th Cir. 2009).

Bankruptcy courts have broad discretion to manage discovery and to fashion remedies to discovery disputes. *See Prim Capital Corp. v. May (In re May)*, Case No. 06-8044, 2007 Bankr. LEXIS 2335, *27 (B.A.P. 6th Cir. July 19, 2007) (citing *Lewis v. ACB Bus. Servs.*, 135 F.3d 389, 402 (6th Cir. 1998)). A court may, at its discretion, permit a party to file answers to discovery requests that would otherwise be untimely. *See Broad. Music, Inc. v. Leyland Co., LLC*, Case No. 5:11CV2264, 2012 U.S. Dist. LEXIS 166344, *4 (N.D. Ohio Nov. 21, 2012); *see also Lucas v. Higher Educ. Assistance Found. (In re Lucas)*, 124 B.R. 57, 58 (Bankr. N.D. Ohio 1991). However, when "a party fails to comply with the terms of a scheduling order, the court may 'issue any just orders,' including 'prohibiting the disobedient party from supporting or opposing designated claims' . . . ." *Constr. Enters., Inc. v. Waterstone at Panama City Apartments, LLC*, Case

No. 3:10-00711, 2011 U.S. Dist. LEXIS 107882, *17 (M.D. Tenn. Sept. 22, 2011) (quoting FED. R. CIV. P. 37(b)(2)(A)(ii)).

III. ANALYSIS

Consistent with the liberal discovery principles espoused in the Federal Rules of Civil Procedure, the Court will grant the Motion for Leave, *instanter*. Although Gruszka failed to answer Wells Fargo's Discovery Requests within the time frame set forth in the Discovery Plan, Gruszka has since responded to the Requests for Admissions and Requests for Production. Accordingly, the Court will deem Gruszka's Response to Admissions and Response to Production Requests timely.

A. Response to Admissions

In the Response to Admissions, Gruszka admits the truth of the majority of Wells Fargo's Requests for Admissions. In so doing, Gruszka effectively gives Wells Fargo the very relief that it requests from this Court. Gruszka's responses obviate the need for the Court to deem the Requests for Admissions admitted against Gruszka, rendering moot that portion of the Motion to Compel relating to the sixteen admitted Requests for Admissions.

Moreover, the Response to Admissions streamlines the adversary process by resolving many of the factual issues raised in the Complaint. These factual stipulations conserve time and resources and eliminate the need to produce additional evidence

on uncontested matters. Because Gruszka admits the majority of the allegations against her, the Response to Admissions will not hinder the presentation of proof at a subsequent hearing or trial of this matter. As such, Gruszka's delay in responding to the Requests for Admissions does not prejudice Wells Fargo. The Court thus will deny, in part, the Motion to Compel to the extent that it requests the Court to deem Wells Fargo's Requests for Admissions admitted against Gruszka.

B. Response to Production Requests

The Response to Production Requests likewise satisfies the concerns raised in the Motion to Compel. Through Exhibits A-E, Gruszka submits fifty-three pages of documents that directly respond to six of Wells Fargo's Requests for Production. With the exception of Gruszka and AFM's tax returns, the majority of the responsive documents are equally available to Wells Fargo. Wells Fargo presumably has access to information regarding AFM's payment history as well as correspondence between its employees and Gruszka and/or AFM. As such, Wells Fargo should not be unduly surprised by the contents of the Response to Production Requests.

Additionally, the parties have not progressed past the discovery stage of this proceeding. While the parties proposed a trial date of August 30, 2012, in the Discovery Plan, the Court has given the parties flexibility to conduct necessary

discovery and has yet to schedule a firm trial date. Within this extended time frame, Wells Fargo will have sufficient opportunity to rebut any newly introduced evidence and, thus, is not prejudiced by Gruszka's late responses.

Given the procedural posture of this case and the substance of Gruszka's Response to Production Requests, the Court will accept as timely the Response to Production Requests and Exhibits A-E incorporated therein. Accordingly, the Court will deny, in part, the Motion to Compel to the extent that it requests the Court to prohibit Gruszka from introducing into evidence the documents produced as Exhibits A-E to the Response to Production Requests.

Notwithstanding the foregoing, the Court does not condone Gruszka's conduct. The Court is mindful that Wells Fargo timely complied with the discovery deadline; yet discovery has been ongoing in this matter for over nine months due to Gruszka's delay. Although Gruszka contends in the Motion for Leave that the parties agreed to conduct informal discovery, Gruszka cannot rely on this purported "gentlemen's agreement" to excuse her failure to respond to Wells Fargo's Discovery Requests. Regardless of any understanding by and between the parties to the contrary, Gruszka is bound by this Court's Adversary Case

Management Initial Order[5] and may not circumvent the Federal Rules of Civil Procedure.

Accordingly, Gruszka will be prohibited from introducing into evidence any documents that have not already been produced to Wells Fargo. Gruszka may rely only on those documents submitted as Exhibits A-E to defend Wells Fargo's allegations against her. Any additional documents that Gruszka may seek to introduce will not be admissible at an evidentiary hearing or trial of this matter. Such a result properly balances the liberal principles favoring discovery with the need to prevent prejudice to the unoffending party. As such, the Court will grant, in part, Wells Fargo's Motion to Compel to the extent that it requests the Court to prohibit Gruszka from introducing into evidence documents other than those identified as Exhibits A-E to the Response to Production Requests.

IV. CONCLUSION

For the reasons set forth above, the Court finds Gruszka's Motion for Leave well-taken. Albeit untimely, Gruszka substantially responded to the Requests for Admissions and Requests for Production. The Court's acceptance of the late responses does not prejudice Wells Fargo. The Response to Admissions reduces the number of disputed matters in this

[5] The Adversary Case Management Initial Order (Doc. # 4) provides at Section 2 that "Counsel conducts 'informal discovery' at his/her own peril because 'informal discovery' is no substitute for the formal discovery process."

proceeding and moots that portion of the Motion to Compel related to the Requests for Admissions. The Response to Production Requests likewise resolves the Motion to Compel and gives Wells Fargo ample opportunity to rebut Gruszka's proffered evidence. Accordingly, the Court will deem timely the Response to Admissions and the Response to Production Requests, including Exhibits A-E incorporated therein.

Although the Court will accept Gruszka's late responses to Wells Fargo's Discovery Requests, Gruszka may not disregard this Court's Adversary Case Management Initial Order. Gruszka's reliance on an agreement with Wells Fargo to conduct informal discovery does not excuse her failure to timely respond to Wells Fargo's Discovery Requests. Accordingly, Gruszka will be prohibited from introducing into evidence any documents other than those submitted as Exhibits A-E to the Response to Production Requests.

Based on the foregoing, the Court will (i) grant the Motion for Leave; (ii) accept as timely the Response to Admissions; (iii) accept as timely the Response to Production Requests and Exhibits A-E incorporated therein; (iv) deny, in part, the Motion to Compel to the extent that it requests the Court to deem the Requests for Admissions admitted against Gruszka; (v) deny, in part, the Motion to Compel to the extent that it requests the Court to prohibit Gruszka from introducing into

evidence the documents submitted as Exhibits A-E to the Response to Production Requests; and (vi) grant, in part, the Motion to Compel to the extent that it requests the Court to prohibit Gruszka from introducing into evidence any documents other than those submitted as Exhibits A-E to the Response to Production Requests.

An appropriate order will follow.

# # #

IT IS SO ORDERED.

Dated: March 8, 2013
11:07:57 AM

Kay Woods
Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
MELISSA A. GRUSZKA,	*	
	*	**CASE NUMBER 11-43575**
Debtor.	*	
*** * * * * * * * * * * * * * * ***	*	
WELLS FARGO FINANCIAL LEASING MANUFACTURER SERVICE GROUP, A DIVISION OF WELLS FARGO BANK, N.A., d/b/a WELLS FARGO BANK CAPITAL FINANCE,	*	**ADVERSARY NUMBER 12-4040**
Plaintiff,	*	
v.	*	
MELISSA A. GRUSZKA,	*	**HONORABLE KAY WOODS**
Defendant.	*	

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ORDER REGARDING (i) MOTION TO DEEM REQUESTS ADMITTED AND TO PROHIBIT INTRODUCTION OF UNPRODUCED DOCUMENTS INTO EVIDENCE; AND (ii) MOTION FOR LEAVE TO RESPOND TO REQUESTS FOR ADMISSION AND PRODUCTION OF DOCUMENTS, *INSTANTER*

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Before the Court are (i) Motion of Wells Fargo Financial Leasing Manufacturer Service Group, a Division of Wells Fargo Bank, N.A. d/b/a Wells Fargo Financial Capital Finance to Deem Requests to Admit Admitted and to Prohibit Introduction of Unproduced Documents into Evidence ("Motion to Compel") (Doc. # 29) filed by Plaintiff Wells Fargo Financial Leasing Manufacturer Service Group, a Division of Wells Fargo Bank, N.A., d/b/a Wells Fargo Financial Capital Finance ("Wells Fargo") on December 21, 2012; and (ii) Motion for Leave to File Answers to Requests for Admission and Responses to Request for Production of Documents, Instanter ("Motion for Leave") (Doc. # 32) filed by Defendant Melissa A. Gruszka on January 3, 2013.

For the reasons set forth in this Court's Memorandum Opinion Regarding (i) Motion to Deem Requests Admitted and to Prohibit Introduction of Unproduced Documents into Evidence; and (ii) Motion for Leave to Respond to Requests for Admission and Production of Documents, *Instanter* entered on this date, the Court hereby:

1. Finds that Gruszka substantially responded to the Requests for Admissions and the Requests for Production;
2. Finds that Gruszka's late responses do not prejudice Wells Fargo;
3. Grants the Motion for Leave;

4. Accepts as timely the Response to Admissions;

5. Accepts as timely the Response to Production Requests and Exhibits A-E incorporated therein;

6. Denies, in part, the Motion to Compel to the extent that it requests the Court to deem the Requests for Admissions admitted against Gruszka;

7. Denies, in part, the Motion to Compel to the extent that it requests the Court to prohibit Gruszka from introducing into evidence the documents submitted as Exhibits A-E to the Response to Production Requests; and

8. Grants, in part, the Motion to Compel to the extent that it requests the Court to prohibit Gruszka from introducing into evidence any documents other than those submitted as Exhibits A-E to the Response to Production Requests.

# # #