IT IS ORDERED as set forth below:

Date: July 29, 2013

James R. Sacca
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	}	CASE NO. 12-69799-JRS
	}	
OXLEY DEVELOPMENT COMPANY, LLC,	}	CHAPTER 11
	}	
Debtor.	}	

GERMAN AMERICAN CAPITAL CORPORATION,	}	
	}	
Plaintiff,	}	ADVERSARY PROCEEDING
	}	
v.	}	NO. 12-05568-JRS
	}	
OXLEY DEVELOPMENT COMPANY, LLC, CARL M. ("CHIP") DRURY, TIDEWATER PLANTATIONS, INC., DUCK POINT, LLC, and MARITIME FORESTS HOLDINGS, LLC,	}	
	}	
Defendants.	}	

ORDER

Before the Court is a request by Plaintiff German American Capital Corporation ("GACC") that the Court deem Defendants' failure to respond to its Requests for Admissions as conclusively establishing the facts set forth therein.

Background

On January 24, 2013, GACC served certain discovery requests on each of the Defendants, including Requests for Admissions (the "Requests"). [Doc. 20]. The Defendants did not respond to the Requests before the deadline to do so—February 25, 2013—had passed. Three days later, counsel for the Defendants asked GACC's counsel for an extension through March 7, 2013, and he agreed. This new deadline passed, and the Defendants still had not responded to the Requests or provided any other discovery materials. A week later, GACC filed a Motion to Compel Discovery Responses (the "Motion"). [Doc. 25]. In the Motion, GACC implored the Court to confirm that all of the requested admissions are deemed admitted. *Id.* The Court then held a telephonic hearing on the Motion and later entered an Order granting the Motion (the "Order"), except that the Court took under advisement GACC's request to have the facts contained in the Requests deemed admitted.[1] On March 29, 2013—the day after the telephonic hearing—Defendant Carl M. "Chip" Drury[2] responded to the Requests and filed a copy of his responses with the Court. [Doc. 44]. Drury amended these responses a few weeks later and filed a copy with the Court (the "Amended Responses"). [Doc. 54].

[1] The Court also took under advisement GACC's request for sanctions. This matter remains under advisement.

[2] Drury is a manager of all of the other Defendants.

Discussion

Federal Rule of Civil Procedure 36—which Bankruptcy Rule 7036 applies to this adversary proceeding—governs requests for admissions. This rule provides that if the party to whom the request for admissions is served fails to respond within 30 days, matters asserted in that request is deemed admitted. Fed. R. Civ. P. 36(a)(3). Once admitted, a matter is "conclusively established unless the court, on motion, permits the admission to be withdrawn or amended." Fed. R. Civ. P. 36(b). This rule further provides that "the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits." *Id.* The Eleventh Circuit has explained that this language requires[3] a trial court to consider a two-part test: (1) "whether the withdrawal [or amendment] will subserve the presentation of the merits," and (2) "whether the withdrawal [or amendment] will prejudice the party who obtained the admissions in its presentation of the case." *Perez v. Miami-Dade Cnty.*, 297 F.3d 1255, 1264 (11th Cir. 2002).

After considering this two-part test, the Court concludes that it is appropriate to allow Drury and the other Defendants to withdraw and amend their admissions, which they have already done. In the Amended Responses, Drury denies over half of the matters in the Requests, often with long explanations for each denial. Therefore, allowing these amendments will certainly promote a presentation of the merits of this case, since the facts of the case are more fully fleshed out following the Amended Responses than if the Court were simply to rely on the matters contained in the Requests alone. Also, GACC has failed to show how allowing the

[3] *See Perez v. Miami-Dade Cnty.*, 297 F.3d 1255, 1265 (11th Cir. 2002) ("We hold, therefore, that a district court abuses its discretion under Rule 36(b) in denying a motion to withdraw or amend admissions when it applies some other criterion beyond the two-part test-or grossly misapplies the two-part test-in making its ruling.") (citation omitted).

Amended Responses would prejudice it in the presentation of its case. GACC has had its discovery period extended through August 16, 2013, so it is still in the process of collecting facts for its case. The deposition of Drury—who will also be the corporate officer to testify for the other Defendants—has yet to occur, and ample time exists before trial. Thus the Court sees no reason why the withdrawal of the admissions and the Amended Responses should not be allowed.

Conclusion

For the reasons stated above, it is hereby

ORDERED that GACC's request—that the Defendants' failure to respond to GACC's Requests for Admissions constitutes admissions of the matters set forth therein—is DENIED. The Defendants admissions are withdrawn and the Amended Response is allowed.

[END OF ORDER]