

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

RICKY D. JOHNSON,	:	APPEAL NO. C-170122
	:	TRIAL NO. A-1506594
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RODNEY BROWN,	:	
	:	
and	:	
MORTON BROWN LLC,	:	
	:	
Defendants-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellee Ricky D. Johnson filed a complaint against defendants-appellants Rodney Brown and Morton Brown LLC (collectively “Brown”) alleging breach of contract and fraud. Johnson also alleged that Brown had acted willfully and wantonly and with fraudulent intent. Therefore, he sought punitive damages and attorney fees. After Brown failed to respond to Johnson’s request for admissions, the trial court deemed them admitted and granted summary judgment in favor of Johnson. The court awarded Johnson compensatory damages of \$15,505.91, punitive damages of \$25,000, and attorney fees of \$5,000. This appeal followed.

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In his sole assignment of error, Brown contends that the trial court erred in awarding Johnson punitive damages and attorney fees in a breach-of-contract case without a hearing to determine actual malice or fraud. This assignment of error is not well taken.

Under Civ.R. 36, if a party fails to timely respond to requests for admission, the requests are deemed admitted. *Cleveland Trust Co., N.K.A. v. Willis*, 20 Ohio St.3d 66, 67, 485 N.E.2d 1052 (1985); *Depaz v. Bahramian*, 1st Dist. Hamilton Nos. C-130128 and C-130317, 2013-Ohio-5510, ¶ 13; *Sandler v. Gossick*, 87 Ohio App.3d 372, 377-378, 622 N.E.2d 389 (8th Dist.1993). Johnson moved to have the requests for admission deemed admitted when Brown had not responded after more than 50 days. Contrary to Brown's assertion, the court did hold a hearing, and Brown provided no explanation for his repeated failure to respond to the request for admissions. Under the circumstances, the trial court did not abuse its discretion in deeming the request for admissions to be admitted. See *Ohio CAT v. Stoneman*, 2015-Ohio-3546, 41 N.E.3d 833, ¶ 14-15 (11th Dist.); *Furnier & Thomas LLP v. Business Information Solutions, Inc.*, 1st Dist. Hamilton Nos. C-010780 and C-010786, 2002-Ohio-4934, ¶ 9-10.

Any matter admitted under Civ.R. 36 is conclusively established. Therefore, the trial court may grant summary judgment on facts deemed to be admitted. *Cleveland Trust Co.* at 67; *Depaz* at ¶ 13; *Sandler* at 378.

A court may award punitive damages and attorney fees in cases involving fraud, even if the case incidentally involves a contract. *Zappitelli v. Miller*, 114 Ohio St.3d 3251, 2007-Ohio-3251, 868 N.E.2d 968, ¶ 4-6; *Curran v. Vincent*, 175 Ohio App.3d 146, 2007-Ohio-3680, 885 N.E.2d 964, ¶ 20 and 23 (1st Dist.). Punitive damages require actual malice. *Curran* at ¶ 23.

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Brown is deemed to have admitted that he acted with fraudulent intent and actual malice and that he owed Johnson \$25,000 in punitive damages and \$5,000 in attorney fees. Consequently, no material issues of fact existed for trial and the trial court did not err in granting summary judgment in favor of Brown on all his claims, including those for punitive damages and attorney fees. *See Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977); *Troja v. Pleatman*, 2016-Ohio-7683, 65 N.E.3d 809, ¶ 7 (1st Dist.).

We realize that Brown was acting pro se. But pro se litigants are bound by the same rules and procedures as those litigants who retain counsel. *Kidz Bop LLC v. Broadhead*, 1st Dist. Hamilton No. C-140686, 2015-Ohio-3744, ¶ 13. We overrule Brown's assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**MOCK, P.J., CUNNINGHAM and ZAYAS, JJ.**

To the clerk:

Enter upon the journal of the court on March 28, 2018  
per order of the court \_\_\_\_\_.

Presiding Judge