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Qualifications and Standards: What Courts Require to Hold a Statement as a Judicial Admission

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Introduction

Judicial admissions are factual statements made by a litigant in their pleadings that become binding throughout a case. Judicial admissions serve an important function by foreclosing an admitting party from later disputing such fact or making a statement inconsistent with the admission. It is therefore necessary to distinguish between the types of statements courts will hold as judicial admissions and those they will not.

Recently, the Second Circuit expanded upon existing precedent to clarify that judicial admissions must be "deliberate, clear, and unambiguous," adopting language already embraced by other circuits.[1] This memorandum will explore the factors that a court will analyze in determining whether or not a statement constitutes a judicial admission.

I. Judicial Admissions are Important Litigation Tools

The Second Circuit has defined a judicial admission as "a statement made by a party or its counsel which has the effect of withdrawing a fact from contention and which binds the party

[1] *See* Pillars v. GM LLC *(In re* Motors Liquidation Co.), 957 F.3d 357, 360 (2d Cir. 2020).

making it throughout the course of the proceeding."[2] "[T]o constitute a judicial admission it must not only be a formal statement of fact but must also be intentional, clear, and unambiguous."[3]

Judicial admissions arise under multiple circumstances, including within the language of a party's pleadings, in motions for summary judgment, via admissions "in open court," and through admissions that are specifically made in response to a request for admission.[4] Without a party's judicial admission, the "factual matter" in question would "otherwise requir[e] evidentiary proof."[5] Once the judicial admission withdraws a fact from contention, that fact "may not be controverted at trial or on appeal."[6]

Furthermore, judicial admissions may appear during any stage of the litigation, since the focus is on the statement itself and not the timeline of the proceedings.[7] This may even extend as far as the appellate stages of litigation, where courts have found judicial admission language contained in appellate briefs.[8]

II. Judicial Admissions Must be True Statements of Fact

Courts have held that in order for a statement to qualify as a judicial admission, it must be a "statement of fact," as opposed to a "legal argument made to [the] court."[9] One such example of a legal argument is a party's interpretation of the language in a contract.[10] Similarly, the court

[2] *In re* Motors Liquidation Co., 957 F.3d at 360.
[3] *See id.* at 361.
[4] *See, e.g.*, Cooper v. Meridian Yachts, Ltd., 575 F.3d 1151, 1177–78 (11th Cir. 2009); *In re* McLain, 516 F.3d 301, 309 (5th Cir. 2008); Wheeler v. John Deere Co., 935 F.2d 1090, 1097–98 (10th Cir. 1991).
[5] *See* Glick v. White Motor Co., 458 F.2d 1287, 1291 (3d Cir. 1972).
[6] Keller v. United States, 58 F.3d 1194, 1198 n.8 (7th Cir. 1995).
[7] *See* Kohne v. Yost, 818 P.2d 360, 362 (Mont. 1991).
[8] *See* Postscript Enters. v. City of Bridgeton, 905 F.2d 223, 227–28 (8th Cir. 1990).
[9] New York State National Organization for Women v. Terry, 159 F.3d 86, 97 n.7 (2d Cir. 1998).
[10] *See In re* Wansdown Properties Corp. N.V., 620 B.R. 487, 499 (Bankr. S.D.N.Y. 2020), *rev'd on other grounds*, No. 19-13223 (SMB), 2021 WL 116207 (Bankr. S.D.N.Y. Jan. 6, 2021).

held that a partner's statements concerning "the legal effect of certain transactions" could not constitute a judicial admission.[11]

A judicial admission must also pertain to a *true* statement that represents reality.[12] The court has noted the importance of truth and accuracy of the statements.[13] In *In re Motors Liquidation Co.*, the court was particularly troubled by the lower court's allowance of a judicial admission where the "statement could not be true" due to its sole existence in a "superseded agreement and one that was never approved by the bankruptcy court."[14] The court was further concerned by the fact that documents filed on the same day featured inconsistencies that invited doubt as to their truth, and even noted the bankruptcy court's acknowledgment that the citation of language from a non-operative agreement was "'plainly' a mistake."[15]

III. A Statement must meet Formality and Conclusiveness Standards to Qualify as a Judicial Admission

Additionally, a statement should have "sufficient formality or conclusiveness to be a judicial admission."[16] When assessing whether there is sufficient formality to be considered a judicial admission, courts have considered the context surrounding the statement and the channel where the statement was made. The Second Circuit has categorized language that "appeared in both an answer and notice of removal" as sufficiently formal and conclusive.[17] However, an attorney's comments to the jury did not meet the standard for "sufficient formality or conclusiveness."[18]

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[11] Meehancombs Glob. Credit Opportunities Master Fund, LP v. Caesars Ent. Corp., 162 F. Supp. 3d 200, 212 (S.D.N.Y. 2015).
[12] *Cf.* PPX Enters., Inc. v. Audiofidelity, Inc., 746 F.2d 120, 123 (2d Cir. 1984) ("Of course, the parties may not create a case by stipulating to facts which do not really exist.").
[13] *See, e.g.*, Pillars v. GM LLC *(In re* Motors Liquidation Co.), 957 F.3d 357, 361 (2d Cir. 2020).
[14] *Id.*
[15] *Id.*
[16] Berner v. British Commonwealth Pac. Airlines, Ltd., 346 F.2d 532, 542 (2d Cir. 1965).
[17] *See In re* Motors Liquidation Co., 957 F.3d at 361.
[18] Berner v. Brit. Commonwealth Pac. Airlines, Ltd., 346 F.2d at 542.

IV. A Statement must also be Deliberate, Clear and Unambiguous

Recently, the Second Circuit found that a judicial admission also requires a statement to be "deliberate, clear and unambiguous."[19] This standard is in accordance with multiple other circuit courts. [20] To satisfy this standard, a movant has a high burden.[21]

As a result of the high burden for a judicial admission, a "plain mistake" of fact will not be deemed an admission.[22] In *Western Insurance Co.*, the court considered whether the party claimed to have made a judicial admission "moved to amend its amended answer" or "claim fraud or mistake," which might add doubt to its deliberateness.[23] A court has discretion where it determines that "an honest mistake has been made," and may "relieve [a] party of [an] otherwise binding consequence."[24]

With respect to unambiguous statements, courts have found that such statements must be "unequivocal."[25] Where a statement, part of a statement, or meaning of a word hinges on multiple interpretations, courts have found such statements to be ambiguous and not "unequivocal."[26] In *Crosby*, a wrongful death suit involving an underage driver, the court examined the multiple outcomes that could result from a minor's statement that she "permitted"

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[19] *See In re* Motors Liquidation Co., 957 F.3d at 360.
[20] *See id.* ("Today we join our sister circuits and hold that in order for a statement to constitute a judicial admission it must not only be a formal statement of fact but must also be intentional, clear, and unambiguous."); *see also* Choice Escrow and Land Title, LLC v. BancorpSouth Bank, 754 F.3d 611, 625 (8th Cir. 2014); Fraternal Order of Police Lodge No. 89 v. Prince George's County, MD, 608 F.3d 183, 190 (4th Cir. 2010); Robinson v. McNeil Consumer Healthcare, 615 F.3d 861, 872 (7th Cir. 2010).
[21] *See* Collins v. Putt, 979 F.3d 128, 142 (2d Cir. 2020), *cert. denied,* No. 20-920, 2021 WL 769716 (U.S. Mar. 1, 2021) (Menashi, J., concurring) (referring to the "intentional, clear, and unambiguous" requirements as a "high standard").
[22] *See In re* Motors Liquidation Co., 957 F.3d at 360 (citing Western World Ins. Co. v. Stack Oil, Inc., 922 F.2d 118, 122 (2d Cir. 1990) as a counterexample).
[23] *Western World Ins. Co.*, 922 F.2d at 122.
[24] Triumph Const. Corp. V. New York City Council of Carpenters Pension Fund, 29 F.Supp.3d 373, 380 (S.D.N.Y. 2014).
[25] *See, e.g.*, Matter of Corland Corp., 967 F.2d 1069, 1074 (5th Cir. 1992) (using the "deliberate, clear, and *unequivocal*" language) (emphasis added); *see also* Crosby v. Hummell, 63 P.3d 1022, 1027–28 (Alaska 2003).
[26] *See Crosby,* 63 P.3d at 1026–28.

another to drive the car.[27] Because the word "permitted" was "susceptible to more than one meaning" in this case, and as such, various interpretations of the statement would produce opposite outcomes under the state law, the court held that it was "not an unequivocal statement of fact and therefore [did] not qualify as a judicial admission."[28]

New York district courts have accordingly followed the Second Circuit's new "deliberate, clear, and unambiguous" standard. The Southern District of New York held that a videotape referenced in an interrogatory was a judicial admission when a defendant referred directly to the videotape, relying on the tri-pronged criteria adopted by the Second Circuit.[29] The Southern District also relied on the same three conditions when it ruled that uncontested language featured in an amended complaint regarding a worker's role in a kitchen and his duties constituted a "formal judicial admission."[30]

Conclusion

In determining whether a statement is a judicial admission, courts will consider the context and avenue of the statements, the intent of the parties, and whether the statements were truthful. The "deliberate, clear, and unambiguous" language seems to have solidified a slightly higher standard within the Second Circuit and has clarified that judicial admissions must be intended by the parties and that their meaning should be readily interpreted.

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[27] *See id.*
[28] *See id; see also* Philadelphia Reinsurance Corp. v. Emps. Ins. of Wausau, 61 F. App'x 816, 819 (3d Cir. 2003) ("An unequivocal statement is one that . . . expresses only one meaning.").
[29] *See* Shim-Larkin v. City of New York, No. 16CV6099AJNKNF, 2020 WL 5534928, at *17 (S.D.N.Y. Sept. 14, 2020) (quoting *In re* Motors Liquidation Co., 957 F.3d at 360–61) ("[I]n order for a statement to constitute a judicial admission it must not only be a formal statement of fact but must also be intentional, clear, and unambiguous.").
[30] Cox v. German Kitchen Ctr. LLC, No. 17CV6081GBDKNF, 2020 WL 5235748, at *10 (S.D.N.Y. Sept. 2, 2020).