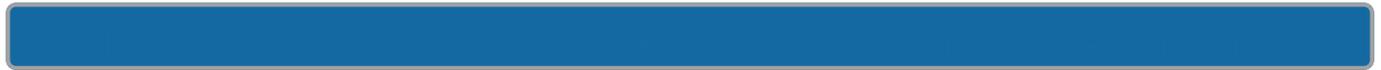




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Monday, August 19, 2002

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In re

VINCENT M. DEDOMINICO,
[Debtor](#) (s).

No. 01-10563

_____/

LAURA GOMEZ EASTWOOD,
[Plaintiff](#) (s),

v.

A.P. No. 01-1077

VINCENT M. DEDOMENICO,
[Defendant](#) (s).

Memorandum on Motion for Assessment of Fees and Expenses

At trial, the court resolved most ultimate issues in favor of defendant. He now requests an assessment of fees and expenses under FRCP 37(c)(2) based on the theory that his requests for admission of these issues had been denied during discovery.

The requested admissions had nothing to do with specific documents or readily ascertainable facts. Rather, they went to the ultimate issues upon which the case centered. To award sanctions for denial of such requested admissions would be tantamount to determining that this action was brought in bad faith. The true test under Rule 37(c) is not whether a party prevailed at trial but whether he acted reasonably in believing that he might prevail. In re *Mercy Medical Center*, 22 F.3d 933, 937 (9th Cir. 1994). While the court came out in favor of

defendant, the action was not meritless and plaintiff's denials were reasonable even though she did not prevail on the issues at trial.

For the foregoing reasons, plaintiff is not liable for fees and expenses under FRCP 37(c)(2). The motion will accordingly be denied. Either side may submit an appropriate form of order.

Dated: August 19, 2002

Alan Jaroslovsky

U. S. [Bankruptcy Judge](#) 

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