

2004 WL 434203

Only the Westlaw citation is currently available.
United States District Court,
N.D. Illinois, Eastern Division.

Lisa ELLIS, et al., Plaintiffs,
v.
ELGIN RIVERBOAT RESORT, et al., Defendants.

No. 98 C 7093. | Feb. 19, 2004.

Attorneys and Law Firms

Cecile Singer, Kenneth N. Flaxman, Chicago, IL, for Plaintiffs.

Jane M. McFetridge, Joel W. Rice, Fisher & Phillips, L.L.P., Chicago, IL, for Defendants.

Opinion

MEMORANDUM OPINION AND ORDER

ASHMAN, Magistrate J.

*1 Defendants Elgin Riverboat Resort d/b/a Grand Victoria Riverboat, Nevada Landing Partnership, and RBG, Ltd. have filed a motion for summary judgment against Plaintiffs Lisa Ellis and Marcia English who are presently proceeding pro se. Because Plaintiffs were still represented by counsel when the motion for summary judgment was filed, Defendants did not comply with Local Rule 56.2, which provides that a form notice must be given to pro se litigants opposing a motion for summary judgment. We find that notice must be given to Plaintiffs who are now proceeding pro se. *See Timms v. Frank*, 953 F.2d 281, 285 (7th Cir.1992) (holding that pro se litigants are entitled to notice of the consequences of failing to respond to a summary judgment motion and the court must provide such notice if the moving party does not). Accordingly, we will give notice to Plaintiffs in accordance with the requirements of *Timms*.

Plaintiffs are hereby notified that under the Federal Rules of Civil Procedure and the Local Rules of this district, the Court will take as true any of Defendants' factual allegations which are supported by admissible evidence, unless Plaintiffs contradict those factual allegations. In responding to the motion for summary judgment, Plaintiffs cannot rely on the allegations in the complaint or their briefs, but must produce evidence such as counter-affidavits or other documentary evidence to contradict the facts asserted by Defendants. Affidavits submitted by Plaintiffs must contain sworn statements based on personal knowledge of the affiant (the person making the affidavit) and must show that the affiant is competent to testify about the statements.

Plaintiffs are directed to Federal Rule of Civil Procedure 56(e) which explains these requirements as follows:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, but set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Ellis v. Elgin Riverboat Resort, Not Reported in F.Supp.2d (2004)

Plaintiffs must comply with the remaining sections of Rule 56, as well as with the Local Rules, including Local Rule 56.1, in responding to Defendants' motion for summary judgment.

Local Rule 56.1 sets forth the requirements that both Defendants and Plaintiffs must follow. Rule 56.1(b)(3)(a) requires that Plaintiffs respond to each numbered paragraph in Defendants' statement of facts, including in the case of any disagreement, specific references to the affidavits, parts of the record, and other supporting materials relied upon. Any factual statement contained in Defendants' statements of facts which is not disputed by Plaintiffs will be deemed admitted. *See* Local R. 56.1(b)(3)(B). Enclosed with this order are copies of Federal Rule of Civil Procedure 56 and Local Rules 56.1 and 56.2.

***2** Plaintiffs are reminded that on February 13, 2004, this Court set the following briefing schedule for Defendants' motion for summary judgment: Plaintiffs' responses to Defendants' motion for summary judgment to be filed on or before April 4, 2004; Defendants' reply due May 11, 2004; and oral argument to be held on May 20, 2004.