

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

_____,
Debtor(s).

Chapter _____
Case # _____

[*Plaintiff's Name*],
Plaintiff,
v.
[*Defendant's Name*].
Defendant.

Adversary Proceeding
_____

**NOTICE TO *PRO SE* LITIGANT
SERVED WITH A MOTION FOR SUMMARY JUDGMENT**

The [*Plaintiff or Defendant*] in this case has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure as incorporated into this case by Federal Rule of Bankruptcy Procedures 7056. This means that the [Plaintiff or Defendant] has asked the Court to decide this case without a trial, based on written materials, including affidavits, they submit in support of their motion. **UNDER A SUMMARY JUDGMENT PROCEDURE, THE COURT MAY RULE ON THE CLAIMS ASSERTED IN THE COMPLAINT WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION.**

PLEASE TAKE NOTICE that in order to respond to this motion effectively you **MUST** file your own affidavits or other papers in support of your position, as required by Federal Rule 56(e). (An affidavit is a sworn statement of fact based on personal knowledge that would be admissible as evidence at trial.) The full text of Federal Rule 56 is attached. In short, Rule 56 provides that you may **NOT** oppose summary judgment simply by relying upon the allegations in your Answer. Rather, you must submit evidence, such as witness statements or documents relevant to your claims, countering the facts your opponent has asserted and raising issues of fact that you believe require a trial. You must file written support, in the form of affidavits or other documentary evidence, for any issue of fact you wish to raise in opposition to the Motion for Summary Judgment (and the Statement of Undisputed Material Facts) your opponent has filed.

YOUR RESPONSE IS DUE WITHIN 21, DAYS PURSUANT TO VERMONT BANKRUPTCY LOCAL RULE 7056-1. If you do not respond to the Motion for Summary Judgment on time, with affidavits or documentary evidence contradicting the facts asserted by your opponent, the Court may (i) accept your opponent's factual assertions as true, (ii) enter judgment in your opponent's favor, and (iii) close the lawsuit without a trial.

The Court staff cannot give you legal advice. You are urged to retain an attorney to protect your rights. If you cannot afford an attorney, you should obtain, read, and follow the Court's Local Rules, and pay special attention to Local Rules 7056-1 and 7056-2, which both provide information about motions for summary judgment.

REPRINT OF FEDERAL RULE OF CIVIL PROCEDURE 56
CURRENT AS OF FEBRUARY 23, 2018

Rule 56. Summary Judgment

- (a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense - or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.
- (b) **Time to File a Motion.** Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.
- (c) **Procedures.**
- (1) **Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
- (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
- (2) **Objection That a Fact Is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
- (3) **Materials Not Cited.** The court need consider only the cited materials, but it may consider other materials in the record.
- (4) **Affidavits or Declarations.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.
- (d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.
- (e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (4) issue any other appropriate order.
- (f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:
- (1) grant summary judgment for a nonmovant;
- (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.
- (g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.
- (h) **Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions