

there is a genuine issue for trial." Id. at 249. The Court must determine if there are "any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Id. Of course, in ruling on a motion for summary judgment, all inferences drawn from the factual record are viewed in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

If the party moving for summary judgment carries its burden of producing evidence which tends to show there is "no genuine issue of material fact, the nonmovant must then direct the court's attention to evidence in the record sufficient to establish the existence of a genuine issue of material fact for trial." Eason v. Thaler, 73 F.3d 1322, 1325 (5th Cir. 1996). The nonmoving party may not rely upon mere conclusory allegations to defeat a motion because allegations of that type are not competent summary judgment evidence and are insufficient to defeat a proper motion. Id. In fact, if the "nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation," a motion for summary judgment may be granted even in cases "where elusive concepts such as motive or intent are at issue." Forsyth v. Barr, 19 F.3d 1527, 1533 (5th Cir.), cert. denied, 513 U.S. 871 (1994).

The party opposing the motion also may not rest on the allegations contained in the pleadings but "must set forth and support by summary judgment evidence specific facts showing the existence of a genuine issue for trial." Ragas v. Tennessee Gas Pipeline Co., 136 F.3d 455, 458 (5th Cir. 1998). In meeting this requirement, the party must "identify specific evidence in the record" and "articulate the precise manner in which that evidence supports his or her claim." Id. Rule 56 of the Federal Rules of Civil Procedure does not impose upon this Court the "duty to sift through the record in search of evidence to support a party's opposition to summary judgment." Id. (quoting Skotak v. Tenneco Resins, Inc., 953 F.2d 909, 915-16 & n.7 (5th Cir.),

cert. denied, 506 U.S. 832 (1992)). A summary judgment will only be precluded by disputed facts which are material, i.e. "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Factual disputes which are irrelevant or unnecessary to the issue will not preclude summary judgment. Id.

Based on the arguments and authorities contained in the Defendant's Motion for Summary Judgment and Reply and this Court's findings in its March 31 order (docket #96), IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment (docket #77) is GRANTED without prejudice to plaintiffs to raise future implementation issues should they arise.

Plaintiffs are advised to apply for permits early in order to avoid last minute egg beater pleadings. IT IS FURTHER ORDERED that this case is DISMISSED. Motions pending, if any, are also DISMISSED.

It is so ORDERED

SIGNED this 30th day of June, 2009.



FRED BIERY
UNITED STATES DISTRICT JUDGE