IP 04-0854-C T/K Carter v Citizens Gas [2]
Magistrate Tim A. Baker Signed on 1/19/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THOMAS CARTER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	1:04-cv-0854-JDT-TAB
	)	
CITIZENS GAS & COKE UTILITY,	)	
	)	
Defendant.	)	

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SOUTHERN DISTRICT OF INDIANA
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THOMAS CARTER,	)	
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Plaintiff,	)	
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CITIZENS GAS & COKE UTILITY,	)	
	)	
Defendant.	)	

ENTRY ON PENDING MOTIONS

This Court's local rules were amended in 2002 to provide much-needed streamlining of what had become a rather cumbersome and unwieldy summary judgment process. These amendments were not overly complicated, yet this case demonstrates that summary judgment practice in this district continues to go astray from time to time. As a result, the quest for consistently focused and streamlined summary judgment briefing remains elusive.

In the present case, two motions to strike have been filed in connection with the summary judgment briefing. A review of these motions and related filings reveals that Plaintiff's counsel does not adequately comprehend the revised summary judgment process, so some clarification of this procedure is in order. However, both sides have requested leave to file oversized summary judgment briefs in a case that appears to contain employment discrimination allegations and issues that could hardly be categorized as extraordinary. In fact, Defendant sought to file an oversized initial and reply brief. So this entry is intended not only to remove any lingering clouds of confusion that envelop the summary judgment process, but also as a reminder to all counsel to properly focus the briefing process.

The two pending motions to be resolved in this entry are Defendant's motion to strike and Plaintiff's belated motion for leave to file an oversized brief. [Docket Nos. 69, 70.] These two motions have their origin in a motion for summary judgment Defendant filed on October 11, 2005. [Docket No. 47.] Plaintiff previously moved to strike this motion as untimely, but the District Judge denied that motion as meritless, trifling, and a waste of time. [Docket No. 57.] Accordingly, Plaintiff responded to the Defendant's summary judgment motion. That response, however, prompted Defendant to file its own motion to strike [Docket No. 69], claiming that Plaintiff filed an oversized summary judgment response without first seeking leave to do so. Plaintiff responded by filing a belated motion for leave to file an oversized brief. [Docket No. 70.]

Defendant is correct that Plaintiff's response is oversized. Plaintiff concedes this fact, but for the wrong reason. Plaintiff's summary judgment response consists of a 23-page[1] response brief [Docket No. 62] and a separate 41-page statement of disputed facts. [Docket No. 63]. In Plaintiff's belated motion for leave to file oversized brief, Plaintiff states that the response brief is oversized because it exceeds the 20-page limit for a reply brief contained in Local Rule 7.1(b). Plaintiff is in error. Local Rule 7.1(b)'s 35-page limit on briefs applies to both summary judgment briefs and response briefs. The 20-page limit to which Plaintiff refers applies to summary judgment reply briefs – that is, briefs filed by the moving party in support of their original motion and responding to arguments raised in the non-moving party's response brief. Thus, Plaintiff's 25-page summary judgment response brief was well within the 35-page limit imposed for such responses by Local Rule 7.1(b).

[1]A review of Plaintiff's brief reveals that pages 10 and 14 are missing. Plaintiff would be well advised to promptly seek leave to correct this omission.

Instead, Plaintiff went awry by filing a separate 41-page statement of disputed facts. Plaintiff contends that it is consistent with "standard practice" and the local rules to file a "Statement of Disputed Material Facts" section separate from the party's summary judgment brief. [Docket No. 70.] Plaintiff is again in error. Local Rule 56.1(b) specifically states that the brief "shall *include* a section labeled 'Statement of Material Facts in Dispute . . . .'" (Emphasis added.) The Local Rules Advisory Committee Notes further explain that the local rules were amended in 2002 "to reduce the length of briefs related to motions for summary judgment, particularly the statement of undisputed material facts." The advisory notes further state that including the statement of facts in the brief itself "will require the parties to discipline their presentation." As the foregoing makes abundantly clear, the factual statements are to be contained within the brief, not filed separately, and are subject to the page limitations of Local Rule 7.1(b).

Although Defendant has asked the Court to strike the Plaintiff's brief, Defendant's motion alternatively seeks leave to file an oversized brief. Attached to Defendant's motion is a 39-page brief with more than 50 pages of exhibits. This is in addition to Defendant's initial brief, consisting of 47 pages and more than 350 pages of exhibits. Add to this Plaintiff's 23-page response brief, 41-page statement of disputed facts, and 185 pages of exhibits, and the result is a prodigious pile of pleadings, to say the least. This situation is reminiscent of *Volovsek v. Wisconsin Department of Agriculture*, 344 F.3d 680, 686 (7th Cir. 2003), in which the court lamented that "the parties appear to have simply collected the sum total of all the unpleasant events in Volovsek's work history, dumped them into the legal mixing bowl of this lawsuit, set the Title VII-blender on puree and poured the resulting blob on the court."

Pending further scrutiny of these filings, it remains to be seen whether the parties

reflexively reached for the Title VII blender. The sheer volume of briefs and exhibits in a case such as this, however, suggests that counsel made insufficient efforts to "discipline their presentation" or otherwise streamline their summary judgment submissions as contemplated by the 2002 amendments to the local rules. *See* Local Rules Advisory Committee Comments, Rule 56.1. Counsel also fell short of the admonition of Local Rule 56.1(f), which provides in relevant part that collateral motions in the summary judgment process, such as motions to strike, are "disfavored." As a result of this shortcoming, the Court has now had to address two motions to strike and consider the prolixity of counsel before reviewing the merits of the Plaintiff's allegations.

But the merits of this dispute must await another day. All that is before the Court at this time are Defendant's motion to strike and Plaintiff's belated motion for leave to file an oversized brief. [Docket Nos. 69, 70.] Since the Defendant was given leave to file an oversized initial brief, Plaintiff should be allowed the same opportunity. Accordingly, Plaintiff's belated motion for leave to file oversized brief [Docket No. 70] is granted. Defendant's motion to strike [Docket No. 69] is denied to the extent it seeks to strike Plaintiff's response, but granted to the extent it seeks leave to file an oversized reply. The reply brief submitted with Defendant's motion to strike shall be deemed filed as of the date of this entry.

Dated:

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