

2006 WL 1660541

Only the Westlaw citation is currently available.

United States District Court, D. Colorado.

SECURITIES AND EXCHANGE

COMMISSION, Plaintiff,

v.

CAPITAL HOLDINGS, L.L.C., et al., Defendants,

and

Fast Track L.L.C., et al., Defendants

Solely for the Purpose of Equitable Relief.

Civil No. 03-cv-00923-REB-CBS.

|  
June 12, 2006.**Attorneys and Law Firms**[Marshall Milby Gandy](#), U.S. Securities & Exchange Commission, Fort Worth, TX, for Plaintiff.[Matthew T. Kirsch](#), U.S. Attorney's Office, Denver, CO, for Intervenor Plaintiff.

Heritage America, c/o Michael Vallone, Orland Park, IL, Pro Se.

Jeffrey D. Mitchell, Spokane, WA, Pro Se.

John J. Schlabach Spokane, WA, Pro Se.

Michael Vallone, Orland Park, IL, Pro Se.

National Marketing Solutions, LLC, North West Group, LLC, Spokane, WA, Pro Se.

[Declan Joseph O'Donnell](#), Declan Joseph O'Donnell, P.C., Castle Rock, CO, [Robert T. McAllister](#), [Daniel Charles Stiles](#), Isaacson Rosenbaum, P.C., [David A. Zisser](#), Isaacson Rosenbaum, P.C., [Matthew T. Kirsch](#), U.S. Attorney's Office, Denver, CO, for Defendants.[Glen Andrew Anderson](#), Washington State Attorney General's Office, Olympia, WA, for Movant.**ORDER DENYING JOHN SCHLABACH'S  
MOTION FOR SUMMARY JUDGMENT**[BLACKBURN, J.](#)

**\*1** The matter before me is **John Schlabach's Motion for Summary Judgment** [# 232], filed May 11, 2006. I deny the motion.

As an initial matter, I note that Schlabach's motion fails to comply with REB Civil Practice Standard V.H.3.b., which sets forth the formatting requirements for summary judgment motions filed in this court. The motion would be subject to being stricken on that basis alone.

More importantly, the violation here is so profound that I cannot meaningfully review the request for relief. Schlabach has failed to even identify any of the claims or defenses as to which he seeks summary judgment, much less set forth the elements of any such claim or defense or the party who bears the burden of proof. Indeed, Schlabach fails to cite to even a single legal precedent—other than those outlining the familiar standard for summary judgment—in support of his motion. *See D.C.COLO.LCIVR. 7.1* C. Nor has Schlabach specifically delineated how the evidence he attaches to his motion warrants the entry of summary judgment in his favor.<sup>1</sup> It is Schlabach's duty as the movant to specifically set forth the facts and law that arguably entitle him to relief. I am neither required nor inclined to peruse the record in this case in search of evidence that might support his motion. *See U.S. v. Dunkel*, 927 F.2d 955,956(7th Cir.1991) (“Judges are not like pigs, hunting for truffles buried in briefs.”). *See also Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir.1994) (litigant's *pro se* status does not excuse failure to follow fundamental rules of procedure), *cert. denied*, 115 S.Ct. 750 (1995).

I acknowledge that, because Schlabach is proceeding *pro se*, I must construe his motion more liberally and hold it to a less stringent standard than formal pleadings or papers drafted by lawyers. *See Hall v. Belmon*, 935 F.2d 1106, 1110 (10th Cir.1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972)). Nevertheless, *pro se* litigants still bear responsibility for developing the factual bases of their requests for relief, *see Whitney v. State of New Mexico*, 113 F.3d 1170, 1173–74 (10th Cir.1997); *Hall*, 935 F.2d at 1110, and it is neither necessary nor appropriate for the court to act as an advocate for a *pro se* party by making his case for him, *Hall*, 935 F.2d at 1110. Accordingly, Schlabach's motion for summary judgment must be denied.

**THEREFORE, IT IS ORDERED**, that **John Schlabach's Motion for Summary Judgment** [# 232], filed May 11, 2006, is **DENIED**.

All Citations

Not Reported in F.Supp.2d, 2006 WL 1660541

Footnotes

- 1 Plaintiff's failure to respond to the motion, although perplexing, is not dispositive. A party is not entitled to a "default" summary judgment. See [Murray v. City of Tahlequah, Oklahoma, 312 F.3d 1196, 1200 \(10th Cir.2002\)](#).

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.