

**ORIGINAL**

CLERK'S OFFICE  
U.S. DISTRICT COURT  
ATLANTA

JUL 14 2003

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

LOUISIANA THOMAS, Clerk  
By: *Chelush*  
Deputy Clerk

CHEP USA, a New York Partnership,  
  
Plaintiff,  
  
v.  
  
MOCK PALLET COMPANY,  
a Georgia Corporation,  
  
Defendant.

Case No. 02-CV-2053-BBM

**PLAINTIFF CHEP USA'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, CHEP USA respectfully requests this Court grant summary judgment in its favor on all of the claims raised in its Complaint and counterclaims raised in Mock Pallet Co.'s Answer. The grounds for this Motion are that no genuine issues of material fact exist precluding the entry of judgment in CHEP's favor, as a matter of law. This Motion is based upon the pleadings, affidavits, deposition testimony and properly authenticated exhibits filed with the Court, and the accompanying Memorandum, supporting Affidavits and attachments thereto.

4

This 14<sup>th</sup> day of July, 2003.

Respectfully Submitted,  
KING & SPALDING, LLP



---

Chilton Davis Varner  
Georgia Bar No. 725450  
W. Randall Bassett  
Georgia Bar No. 041525  
Robert B. Friedman  
Georgia Bar No. 277711

Attorneys for CHEP USA

191 Peachtree Street  
Atlanta, Georgia 30303-1763  
(404) 572-4600

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CHEP USA, a New York	)	
Partnership,	)	
	)	
Plaintiff,	)	
	)	Case No. 02-CV-2053-BBM
v.	)	
	)	
Mock PALLET COMPANY,	)	
a Georgia Corporation,	)	
	)	
Defendant.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PLAINTIFF  
CHEP USA'S MOTION FOR SUMMARY JUDGMENT was served upon counsel  
for defendant via hand delivery to:

Eugene D. Butt, Esq.  
Ballard, Stephenson & Waters, LLP  
P.O. Box 29  
Covington, GA 30015

This 14<sup>th</sup> day of July, 2003.



Robert B. Friedman  
Georgia Bar No. 277711

ORIGINAL

N O T I C E  
- - - - -

To: Craig Edward Bertschi, Esq.  
Kilpatrick Stockton  
Suite 2800  
1100 Peachtree Street  
Atlanta, GA 30309-4530

July 15, 2003

UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Chep USA,

plaintiff

CIVIL ACTION

v.

NO. 1:2-cv-2053-BBM

Mock Pallet Company,

defendant

NOTICE TO RESPOND TO SUMMARY JUDGMENT MOTION  
-----

On 7/14/03, Chep USA,  
filed a motion for summary judgment in this Court, case document  
number 41.

Pursuant to this Court's order dated April 14, 1987, opposing coun-  
sel is hereby notified that within 20 days from the date said motion was

W/41

served, filing of all materials, including any affidavits, depositions, answers to interrogatories, admissions on file and any other relevant materials to be considered in opposition to the motion for summary judgment, is required. Federal Rules of Civil Procedure, Rule 56(c); Moore v. State of Florida, 703 F.2d 516, 519 (11th Cir. 1983).

Unless otherwise stated by the trial court, the Court will take said motion for summary judgment under advisement immediately upon the close of the aforesaid 20 day period. Id. at 519. See also Donaldson v. Clark, 786 F.2d 1570, 1575 (11th Cir. 1986); Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

The entry of a summary judgment by the trial court is a final judgment on the claim or claims decided. Finn v. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). Whenever the non-moving party bears the burden of proof at trial on a dispositive issue and the party moving for summary judgment has demonstrated the absence of any genuine issue of fact, the nonmoving party must go beyond the pleadings and must designate, by affidavit or other materials, "... specific facts showing that there is a genuine issue for trial." Federal Rules of Civil Procedure, Rule 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324; 106 S.Ct. 2548, 2552-53; 91 L.Ed.2d 265, 272-3.

Luther D. Thomas, Clerk  
United States District Court  
Northern District of Georgia

Copies to counsel of record

N O T I C E

- - - - -  
To: Burleigh Lavisky Singleton, Esq.  
Kilpatrick Stockton  
Suite 2800  
1100 Peachtree Street  
Atlanta, GA 30309-4530

July 15, 2003

UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Chep USA,

plaintiff

CIVIL ACTION

v.

NO. 1:2-cv-2053-BBM

Mock Pallet Company,

defendant

NOTICE TO RESPOND TO SUMMARY JUDGMENT MOTION  
-----

On 7/14/03, Chep USA,  
filed a motion for summary judgment in this Court, case document  
number 41.

Pursuant to this Court's order dated April 14, 1987, opposing coun-  
sel is hereby notified that within 20 days from the date said motion was

served, filing of all materials, including any affidavits, depositions, answers to interrogatories, admissions on file and any other relevant materials to be considered in opposition to the motion for summary judgment, is required. Federal Rules of Civil Procedure, Rule 56(c); Moore v. State of Florida, 703 F.2d 516, 519 (11th Cir. 1983).

Unless otherwise stated by the trial court, the Court will take said motion for summary judgment under advisement immediately upon the close of the aforesaid 20 day period. Id. at 519. See also Donaldson v. Clark, 786 F.2d 1570, 1575 (11th Cir. 1986); Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

The entry of a summary judgment by the trial court is a final judgment on the claim or claims decided. Finn v. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). Whenever the non-moving party bears the burden of proof at trial on a dispositive issue and the party moving for summary judgment has demonstrated the absence of any genuine issue of fact, the nonmoving party must go beyond the pleadings and must designate, by affidavit or other materials, "... specific facts showing that there is a genuine issue for trial." Federal Rules of Civil Procedure, Rule 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324; 106 S.Ct. 2548, 2552-53; 91 L.Ed.2d 265, 272-3.

Luther D. Thomas, Clerk  
United States District Court  
Northern District of Georgia

Copies to counsel of record

N O T I C E

- - - - -  
To: Matthew Henry Patton, Esq.  
Kilpatrick Stockton  
Suite 2800  
1100 Peachtree Street  
Atlanta, GA 30309-4530

July 15, 2003

UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Chep USA,

plaintiff

CIVIL ACTION

v.

NO. 1:2-cv-2053-BBM

Mock Pallet Company,

defendant

NOTICE TO RESPOND TO SUMMARY JUDGMENT MOTION  
-----

On 7/14/03, Chep USA,  
filed a motion for summary judgment in this Court, case document  
number 41.

Pursuant to this Court's order dated April 14, 1987, opposing coun-  
sel is hereby notified that within 20 days from the date said motion was

served, filing of all materials, including any affidavits, depositions, answers to interrogatories, admissions on file and any other relevant materials to be considered in opposition to the motion for summary judgment, is required. Federal Rules of Civil Procedure, Rule 56(c); Moore v. State of Florida, 703 F.2d 516, 519 (11th Cir. 1983).

Unless otherwise stated by the trial court, the Court will take said motion for summary judgment under advisement immediately upon the close of the aforesaid 20 day period. Id. at 519. See also Donaldson v. Clark, 786 F.2d 1570, 1575 (11th Cir. 1986); Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

The entry of a summary judgment by the trial court is a final judgment on the claim or claims decided. Finn v. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). Whenever the non-moving party bears the burden of proof at trial on a dispositive issue and the party moving for summary judgment has demonstrated the absence of any genuine issue of fact, the nonmoving party must go beyond the pleadings and must designate, by affidavit or other materials, "... specific facts showing that there is a genuine issue for trial." Federal Rules of Civil Procedure, Rule 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324; 106 S.Ct. 2548, 2552-53; 91 L.Ed.2d 265, 272-3.

Luther D. Thomas, Clerk  
United States District Court  
Northern District of Georgia

Copies to counsel of record

N O T I C E

- - - - -  
To: Chilton Davis Varner, Esq.  
King & Spalding  
191 Peachtree Street, N.E.  
Atlanta, GA 30303-1763

July 15, 2003

UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Chep USA,

plaintiff

CIVIL ACTION

v.

NO. 1:2-cv-2053-BBM

Mock Pallet Company,

defendant

NOTICE TO RESPOND TO SUMMARY JUDGMENT MOTION  
-----

On 7/14/03, Chep USA,  
filed a motion for summary judgment in this Court, case document  
number 41.

Pursuant to this Court's order dated April 14, 1987, opposing coun-  
sel is hereby notified that within 20 days from the date said motion was

served, filing of all materials, including any affidavits, depositions, answers to interrogatories, admissions on file and any other relevant materials to be considered in opposition to the motion for summary judgment, is required. Federal Rules of Civil Procedure, Rule 56(c); Moore v. State of Florida, 703 F.2d 516, 519 (11th Cir. 1983).

Unless otherwise stated by the trial court, the Court will take said motion for summary judgment under advisement immediately upon the close of the aforesaid 20 day period. Id. at 519. See also Donaldson v. Clark, 786 F.2d 1570, 1575 (11th Cir. 1986); Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

The entry of a summary judgment by the trial court is a final judgment on the claim or claims decided. Finn v. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). Whenever the non-moving party bears the burden of proof at trial on a dispositive issue and the party moving for summary judgment has demonstrated the absence of any genuine issue of fact, the nonmoving party must go beyond the pleadings and must designate, by affidavit or other materials, "... specific facts showing that there is a genuine issue for trial." Federal Rules of Civil Procedure, Rule 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324; 106 S.Ct. 2548, 2552-53; 91 L.Ed.2d 265, 272-3.

Luther D. Thomas, Clerk  
United States District Court  
Northern District of Georgia

Copies to counsel of record

N O T I C E  
- - - - -

To: W. Randall Bassett, Esq.  
King & Spalding  
191 Peachtree Street, N.E.  
Atlanta, GA 30303-1763

July 15, 2003

UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Chep USA,

plaintiff

CIVIL ACTION

v.

NO. 1:2-cv-2053-BBM

Mock Pallet Company,

defendant

NOTICE TO RESPOND TO SUMMARY JUDGMENT MOTION  
-----

On 7/14/03, Chep USA,  
filed a motion for summary judgment in this Court, case document  
number 41.

Pursuant to this Court's order dated April 14, 1987, opposing coun-  
sel is hereby notified that within 20 days from the date said motion was

served, filing of all materials, including any affidavits, depositions, answers to interrogatories, admissions on file and any other relevant materials to be considered in opposition to the motion for summary judgment, is required. Federal Rules of Civil Procedure, Rule 56(c); Moore v. State of Florida, 703 F.2d 516, 519 (11th Cir. 1983).

Unless otherwise stated by the trial court, the Court will take said motion for summary judgment under advisement immediately upon the close of the aforesaid 20 day period. Id. at 519. See also Donaldson v. Clark, 786 F.2d 1570, 1575 (11th Cir. 1986); Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

The entry of a summary judgment by the trial court is a final judgment on the claim or claims decided. Finn v. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). Whenever the non-moving party bears the burden of proof at trial on a dispositive issue and the party moving for summary judgment has demonstrated the absence of any genuine issue of fact, the nonmoving party must go beyond the pleadings and must designate, by affidavit or other materials, "... specific facts showing that there is a genuine issue for trial." Federal Rules of Civil Procedure, Rule 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324; 106 S.Ct. 2548, 2552-53; 91 L.Ed.2d 265, 272-3.

Luther D. Thomas, Clerk  
United States District Court  
Northern District of Georgia

Copies to counsel of record

N O T I C E  
- - - - -

To: Robert B. Friedman, Esq.  
King & Spalding  
191 Peachtree Street, N.E.  
Atlanta, GA 30303-1763

July 15, 2003

UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Chep USA,

plaintiff

CIVIL ACTION

v.

NO. 1:2-cv-2053-BBM

Mock Pallet Company,

defendant

NOTICE TO RESPOND TO SUMMARY JUDGMENT MOTION  
-----

On 7/14/03, Chep USA,  
filed a motion for summary judgment in this Court, case document  
number 41.

Pursuant to this Court's order dated April 14, 1987, opposing coun-  
sel is hereby notified that within 20 days from the date said motion was

served, filing of all materials, including any affidavits, depositions, answers to interrogatories, admissions on file and any other relevant materials to be considered in opposition to the motion for summary judgment, is required. Federal Rules of Civil Procedure, Rule 56(c); Moore v. State of Florida, 703 F.2d 516, 519 (11th Cir. 1983).

Unless otherwise stated by the trial court, the Court will take said motion for summary judgment under advisement immediately upon the close of the aforesaid 20 day period. Id. at 519. See also Donaldson v. Clark, 786 F.2d 1570, 1575 (11th Cir. 1986); Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

The entry of a summary judgment by the trial court is a final judgment on the claim or claims decided. Finn v. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). Whenever the non-moving party bears the burden of proof at trial on a dispositive issue and the party moving for summary judgment has demonstrated the absence of any genuine issue of fact, the nonmoving party must go beyond the pleadings and must designate, by affidavit or other materials, "... specific facts showing that there is a genuine issue for trial." Federal Rules of Civil Procedure, Rule 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324; 106 S.Ct. 2548, 2552-53; 91 L.Ed.2d 265, 272-3.

Luther D. Thomas, Clerk  
United States District Court  
Northern District of Georgia

Copies to counsel of record

N O T I C E  
- - - - -

To: Gregory Keith Smith, Esq.  
King & Spalding  
191 Peachtree Street, N.E.  
Atlanta, GA 30303-1763

July 15, 2003

UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Chep USA,

plaintiff

CIVIL ACTION

v.

NO. 1:2-cv-2053-BBM

Mock Pallet Company,

defendant

NOTICE TO RESPOND TO SUMMARY JUDGMENT MOTION  
-----

On 7/14/03, Chep USA,  
filed a motion for summary judgment in this Court, case document  
number 41.

Pursuant to this Court's order dated April 14, 1987, opposing counsel is hereby notified that within 20 days from the date said motion was

served, filing of all materials, including any affidavits, depositions, answers to interrogatories, admissions on file and any other relevant materials to be considered in opposition to the motion for summary judgment, is required. Federal Rules of Civil Procedure, Rule 56(c); Moore v. State of Florida, 703 F.2d 516, 519 (11th Cir. 1983).

Unless otherwise stated by the trial court, the Court will take said motion for summary judgment under advisement immediately upon the close of the aforesaid 20 day period. Id. at 519. See also Donaldson v. Clark, 786 F.2d 1570, 1575 (11th Cir. 1986); Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

The entry of a summary judgment by the trial court is a final judgment on the claim or claims decided. Finn v. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). Whenever the non-moving party bears the burden of proof at trial on a dispositive issue and the party moving for summary judgment has demonstrated the absence of any genuine issue of fact, the nonmoving party must go beyond the pleadings and must designate, by affidavit or other materials, "... specific facts showing that there is a genuine issue for trial." Federal Rules of Civil Procedure, Rule 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324; 106 S.Ct. 2548, 2552-53; 91 L.Ed.2d 265, 272-3.

Luther D. Thomas, Clerk  
United States District Court  
Northern District of Georgia

Copies to counsel of record

N O T I C E  
- - - - -

To: Eugene David Butt, Esq.  
Ballard Stephenson & Waters  
1148 Washington Street  
P.O. Box 29  
Covington, GA 30015

July 15, 2003

UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Chep USA,

plaintiff

CIVIL ACTION

v.

NO. 1:2-cv-2053-BBM

Mock Pallet Company,

defendant

NOTICE TO RESPOND TO SUMMARY JUDGMENT MOTION  
-----

On 7/14/03, Chep USA,  
filed a motion for summary judgment in this Court, case document  
number 41.

Pursuant to this Court's order dated April 14, 1987, opposing coun-  
sel is hereby notified that within 20 days from the date said motion was

served, filing of all materials, including any affidavits, depositions, answers to interrogatories, admissions on file and any other relevant materials to be considered in opposition to the motion for summary judgment, is required. Federal Rules of Civil Procedure, Rule 56(c); Moore v. State of Florida, 703 F.2d 516, 519 (11th Cir. 1983).

Unless otherwise stated by the trial court, the Court will take said motion for summary judgment under advisement immediately upon the close of the aforesaid 20 day period. Id. at 519. See also Donaldson v. Clark, 786 F.2d 1570, 1575 (11th Cir. 1986); Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

The entry of a summary judgment by the trial court is a final judgment on the claim or claims decided. Finn v. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). Whenever the non-moving party bears the burden of proof at trial on a dispositive issue and the party moving for summary judgment has demonstrated the absence of any genuine issue of fact, the nonmoving party must go beyond the pleadings and must designate, by affidavit or other materials, "... specific facts showing that there is a genuine issue for trial." Federal Rules of Civil Procedure, Rule 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324; 106 S.Ct. 2548, 2552-53; 91 L.Ed.2d 265, 272-3.

Luther D. Thomas, Clerk  
United States District Court  
Northern District of Georgia

Copies to counsel of record