

Spring 4-1988

Sellers v. M.C. Floor Crafters, Inc.

Manhattan Lawyer

SECOND CIRCUIT

*Summary judgment — Failure to exhaust
union grievance procedures — Pro se
plaintiff*

4-12 → 4-18-88

Sellers v. M.C. Floor Crafters, Inc.;

Miner, J.; No. 87-7151; March 23,
1988. *Manhattan
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Plaintiff appeals from a judgment granting summary judgment in favor of defendants because of plaintiff's failure to exhaust union grievance procedures. For the following reasons, this court reverses.

The court never advised plaintiff, who represented himself at the hearing on the motion — despite the court's repeated attempts to obtain appointed counsel for him — of the nature, procedures and consequences of a motion for summary judgment. A *pro se* party "is entitled to notice of the consequences of failing to respond to a motion to dismiss or for judgment on the pleadings which is being treated as a motion for summary judgment." **Maggette v. Dalsheim**, 709 F.2d 800, 802 (2d Cir. 1983).

Moreover, Rule 56 requires a motion for summary judgment to be supported with affidavits based on personal knowledge, **Schiess-Froriep Corp. v. S.S. Finnsailor**, 574 F.2d 123 (2d Cir. 1978), and the hearsay affidavit of defendant's counsel relied upon by the district court in the instant case is not a substitute for the personal knowledge of a party. **Chandler v. Coughlin**, 763 F.2d 110 (2d Cir. 1985).

Based on the foregoing, this court reverses and remands for further proceedings not inconsistent with this opinion.

ATTORNEYS: Rosemary C. Byrne (Cadwalader Wickersham & Taft of counsel) for plaintiff. Elliot J. Mandel (Kaufman, Frank, Schneider & Rosenweig of counsel) for defendant M.C. Floor Crafters. William J. Dealy (Lawrence H. Stone, Manning, Raab, Dealy & Sturm of counsel) for remaining defendants.