

matter of law." Fed. R. Civ. P. 56(c). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993). "A trialworthy issue exists if the evidence is such that there is a factual controversy pertaining to an issue that may affect the outcome of the litigation under the governing law, and the evidence is 'sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side.'" *De-Jesus-Adorno v. Browning Ferris Ind. Of Puerto Rico*, 160 F.3d 839, 841-42 (1st Cir. 1998) (quoting *National Amusements v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995)).

However, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at 30 (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

Plaintiff has not responded to Defendant's Motion for Summary Judgment. In this District, a party's failure to timely respond to a motion is generally construed to waive objection to the motion. D. Me. R. 7(c). However, the Federal Rules of Civil Procedure require us to examine the merits of a motion for summary judgment

regardless of the opposing party's failure to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991). Accordingly, we will examine the merits of Defendant's Motion for Summary Judgment based on Defendant's Statement of Material Facts, which reads in its entirety as follows:

Statement of Facts

On July 9, 1995, while employed by the Town of Rangeley as a part-time police officer, Nathan Bean was contacted by James Boutilier with respect to a problem at the home of Arthur Goldstein on Birches Road in Rangeley Plantation.[] Mr. Boutilier informed Officer Bean that he and Mr. Goldstein had some sort of dispute between them whereby Mr. Boutilier claimed that he had certain items of personal property located at Mr. Goldstein's house that Mr. Goldstein would not allow him to retrieve.[] Mr. Boutilier wanted to retrieve items from Mr. Goldstein's house and asked Officer Bean to contact the Franklin county Sheriff's Department for him.[]

Officer Bean informed the Sheriff's office that Mr. Boutilier wanted to retrieve tools from Mr. Goldstein's house and that he wanted a police officer to accompany him.[] Officer Bean was requested to keep the peace until a deputy arrived.[]

Officer Bean then followed Mr. Boutilier in his police cruiser to Mr. Goldstein's house in Rangeley Plantation.[] Upon arrival at Mr. Goldstein's house, Officer Bean waited in his cruiser at the end of the driveway for a deputy to arrive.[] Shortly thereafter, Deputy Raymond Meldrum arrived on the scene.[] Officer Bean then advised Deputy Meldrum of the situation.[]

Deputy Meldrum spoke to Messrs. Boutilier and Goldstein to see if the tools could be returned to Mr. Boutilier.[] Mr. Goldstein refused to return the tools requested.[] Deputy Meldrum then placed a call to the Franklin County District Attorney's Office.[] After that call, deputy Meldrum advised Mr. Goldstein that if he did not return the tools, he could be charged with theft.[] Officer Bean was simply a passive observer.[] Mr. Goldstein then threatened everyone present with a

lawsuit if he was charged with theft.[] Officer Bean then left the scene and filed a report about the incident shortly thereafter.[]

Deputies of the Franklin County Sheriff's Department executed a warrant at Mr. Goldstein's house on July 18, 1995.[] Officer Bean had no involvement in obtaining a search warrant for the search of Mr. Goldstein's house, nor was Officer Bean in any way involved in the execution of such a search warrant.[]

Defendant Bean correctly asserts that there is no evidence implicating him in the application for a search warrant, the search itself, or the disposition of items seized during the search. On these facts, Defendant is entitled to judgment as a matter of law on Plaintiff's claims, regardless of the legal theory under which Plaintiff seeks to raise them. The Court need not address Defendant's alternative arguments in light of this conclusion. Accordingly, I hereby recommend Defendant Bean's Motion for Summary Judgment be GRANTED in its entirety.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on: August 19, 1999