

What Is Summary Judgment in California?

By: Doron F. Eghbali
Senior Partner
Law Advocate Group, LLP
Litigation Series
May 2015

Summary judgment could be a potent tool to substantially damage the case against the defendant or cause a favorable settlement. Nonetheless, not always a Summary Judgment motion is viable or prudent. In this article, we explore, in some detail, the authority, strategy, and alternatives to a Summary Judgment motion in California.

Statutory Authority for Summary Judgment Adjudication

Summary Judgment motion is a creature of statute, CA Civil Code of Procedure section 473(c) provides in pertinent part:

The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Unlike federal court, where in principle any issue may be summarily adjudicated, *CA Civil Code of Procedure section 473(c) (f)* limits summary adjudication motions to four types of issues:

A party may move for adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a defendant's either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

When Summary Adjudication Might Be Proper

- No issue of material fact can be found from the admissible evidence for the matters the party has the burden of proof;
- No admissible evidence to prove any material fact the other party has the burden of proof;

- No reasonable jury would accept the other party's argument on a factual issue that is an essential element of the other party's claim or defense; and
- No reasonable jury would find clear and convincing evidence of malice, fraud, or oppression, or approval by a principal against whom punitive damages are sought.

Whether Early Summary Judgment Motion Is Prudent

Counsel might contemplate pursuing a summary judgment motion prior to completion of discovery. However, not only this pursuit, despite mounting pressure from clients, could generally be counterproductive; courts are reluctant to rule on such motion before at least the gravamen of the case has been investigated and addressed in discovery.

In fact, if evidence is found after the court has granted a summary judgment motion, the evidence could be used as grounds to set aside the grant of summary judgment. The party against whom the summary judgment has been granted may file a motion under *CA Code of Civil Procedure Section 657*, if the newly discovered evidence is material and could not, with reasonable diligence, have been discovered and produced earlier. *Aguilar v Atlantic Richfield Co.* (2001) 25 C4th 826, 858.

Unless the court orders otherwise for good cause, motions for summary judgment cannot be heard later than **30 days** before the trial date. *CA Code of Civil Procedure Section 437 (a)*; *Robinson v Woods* (2008) 168 CA4th 1258, 1268.

Burden of Proof for Moving Party

The moving party has the burden of:

1. Production (*CA Evidence Code Section 110*);
2. Persuasion (*Aguilar v Atlantic Richfield Co.* (2001) 25 C4th 826, 850); and
3. Proof (*CA Evidence Code Section 115*).

In other words, the moving party must:

1. Produce sufficient evidence (burden of production); AND
2. Persuade the judge (burden of persuasion) that there is no triable issue as to any material fact on each element of the cause of action or defense that is the subject of the motion.

Other Notes

Summary judgment may also be appropriate if all parties agree that there are no disputed facts and the sole question before the court is one of law. Then, the trial court must hear and decide the disputed legal issues. See, e.g., *Blanco v Baxter Healthcare Corp.* (2008) 158 CA4th 1039 (federal law preemption defense decided on summary judgment motion.)

In addition, when there are no disputed facts, the parties may seek leave of court to allow for trial based on stipulated facts, as an alternative to filing competing summary judgment motions. Such a motion is less stringent and need not comply with the procedural requirements of summary judgment motions.

Salient Point

This article NEITHER supplants NOR supplements the breadth or depth of such rarefied topic. In fact, this article ONLY provides a rudimentary analysis of such esoteric subject matter.

***DORON EGHBALI** is a Partner at the Beverly Hills Offices of Law Advocate Group, LLP. Doron Primarily Practices Business, Real Estate and Entertainment Law. Doron Can Be Reached at: 310-651-3065. For More information, Please, Visit: [HERE](#).*