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Summary Judgment: Is It A Lawyer's Shortcut?

Summary judgment is a judgment or decree by a court in a case pending before it when as a matter of law the proceedings show that there is no issue to be resolved between the litigants. The purpose of the remedy is to relieve litigants and courts of the expense and delay of a jury trial on an unnecessary suit when a party is unable to support by competent evidence any material issue of fact. As long as all material facts are admitted, and a party is unable to support a fact contention by any sufficient evidence which might raise an issue, a summary judgment can be used successfully in order to avoid the expense and delays which accompany a trial.

The problem facing the courts in the administration of the rule is generally that of determining whether or not there is any genuine issue as to any material fact. If such an issue exists, the party opposing the motion is entitled to a full trial with all the common law safeguards. Thus, the courts are confronted with two opposing policies. On the one hand, if there be no issue of fact in the case, a judgment on summary proceedings must be given in order to secure a speedy effectuation of rights. On the other hand, neither party should be foreclosed if there are real issues to be tried, for in the absence of a full hearing, injustice may result.

By examining the nature of summary judgment proceedings, the aspect of its administration and correlative inequities will be self-evident. One may readily observe the great burden which the courts place on the moving party to establish his case to such a high degree of probability that the judge will be convinced that a trial would be a useless formality. On the other hand, the burden on the opponent is much simpler. He need do nothing unless the movant has met his burden of producing evidence sufficient to indicate that a trial is unnecessary. If the movant does arrive at this position, the opponent may then rely upon persuasion to establish that doubt remains as to the existence of a triable issue.

It appears that the party moving for summary judgment has a greater burden than simply establishing his claim or defense by showing that no factual issue exists. The implication is that he has the burden of establishing that his opponent has no case.

Many courts throughout the United States have been zealous in protecting the defendant from any injustice that might result from summary

dispositions. Permitting the defendant to defeat the motion with little more than a pleading is questionable practice, since the plaintiff has a right to a prompt effectuation when there is no fact issue involved in the case, and since the presence of a fact issue can be determined, in many cases, only by compelling the defendant to make a disclosure of his evidence. On the other hand, the courts have not been nearly as solicitous where plaintiffs are concerned. There is a danger that in certain cases when the plaintiff relies on evidence drawn from the defendant, the requirement of producing evidence sufficient to establish a prima facie case will defeat the plaintiff unjustly.

Prevailing View—Florida as an Example

It must be emphasized that summary judgment is not a substitute for a trial. Thus, on a motion for summary judgment the judge should not decide any factual questions. He should decide the case purely on the strength of the legal questions raised. "Summary judgment applies only in cases where the pleadings, interrogatories, depositions, and other admissions on file show that there is no controversy between the parties in regard to the basic facts of the case."¹ The judge then has the authority to decide the questions of law without waiting for the trial. Should there be any doubt as to the existence or non-existence of a material fact, such doubt must be resolved against the movant.²

In negligence proceedings, courts infrequently uphold a motion by the plaintiff for summary judgment. With such questions as probable cause, or whether the defendant acted negligently as evidence from the facts of the case, a summary judgment is normally precluded. In certain jurisdictions, issues of negligence are considered not susceptible to summary adjudication and may be granted only where the facts are not only undisputed but are such that all reasonable men in exercise of fair and impartial judgment must draw inference and conclusion therefrom of non-negligence. To say the least, courts are extremely careful in granting a summary judgment in negligence cases. However, should there be no trace or scintilla of a genuine issue presented by the litigants, a summary judgment may be granted in negligence cases as evidenced by a Wisconsin case.³ In this instance, the time and expense of a trial were eliminated

¹ Richmond v. Florida Power and Light Co., 58 So. 2d 687 (Fla. 1952).

² Quinn v. Helmy Furniture Co., 141 So. 2d 302 (Fla. 1962).

³ Bohlmann v. Penn Electric Corp., 232 Wisc. 232, 286 N.W. 552 (1939).

The judge did not decide any factual questions. He merely decided the case on the strength of the legal questions raised.

In addition to negligence proceedings, summary judgments are normally not applied to cases involving fraud or probate matters. However, a stronger rationale for the penchant of most courts to look skeptically at a motion for summary judgment is admittedly found in certain cases. In cases involving fraud, there must necessarily be a full explanation of the facts and circumstances of the alleged wrong in order to determine if they collectively constitute a fraud. This can seldom be done without a trial.⁴ According to *Aleppo Corp. v. Pozin*, summary judgment must be cautiously granted in cases of fraud due to the fact that all evidence in summary judgment must be viewed in a light most favorable to the adverse party. In fraud proceedings, conflict usually appears if the plaintiff must admit every conclusion or inference favorable to the party against whom the motion is made and which might reasonably be inferred.⁵

Although the plaintiff may be awarded a summary judgment when the evidence adduced in support of his claim consists of undisputed documentary evidence, injustice may result when the plaintiff, as moving party, substantiates his case by testimonial evidence. Generally speaking, the defendant need make only such a showing at the hearing of the motion for summary judgment as will raise a suspicion that an issue of fact exists. Such a misgiving may be raised by persuading the court that conflicting inferences may be drawn from the evidence or that the credibility of the plaintiff's witnesses is questionable, or by producing controverting evidence. Such a judicial trend is not only disheartening to a plaintiff, but at times quite inequitable.

Finally, any test or standard, no matter how exact in statement, is applied by a judge, in the exercise of his discretion, and since this is a matter of human judgment, precision is impossible. Thus, success in making a correct compromise between the burden on plaintiffs and the quest for justice to the defendants must be measured with impartiality, exactitude, and a great sense of delicacy.

Admittedly, the intention of a motion for summary judgment is to avoid the time, labor and expense to counsel, parties, court and jury of an unnecessary trial. A summary judgment proceeding is not a trial of

⁴ *Aleppo Corp. v. Pozin*, 114 So. 2d 645 (Fla. 1959).

⁵ *Id.*, p. 646.

issues, but instead is a determination whether there are issues to be tried. Certainly, the remedy is not available to adjudicate cases by a short-cut method, and it cannot be employed unless the court perceives clearly and has no doubt that a trial in the familiar sense of the word would be unavailing, and that a directed verdict for the movant would result if a trial were had. Yet, when there is nothing in fact to be adjudicated the applicable procedure to be employed by counsel *and accepted by the court* is a motion for summary judgment.

Racial Discrimination in the Creation of Charitable Trust

One of the most important and current issues concerning the law of trusts is racial discrimination in the creation of a charitable trust. The problem is more acute if the court upholds the validity of a trust which is created for the purpose of racial discrimination.

On May 20, 1968, one case involving this problem finally came to an end, when the United States Supreme Court opened the doors of Girard College, located in the city of Philadelphia, Commonwealth of Pennsylvania, to qualified orphan boys of all races. By denying certiorari to the United States Court of Appeals, Third Circuit, the United States Supreme Court has ended a fourteen year battle in the federal courts involving racial discrimination in the admittance of Negroes to Girard College.¹

This problem, to be understood thoroughly, must be studied through its various stages. It first came to light in 1844 in the case of *Vidal v. Girard's Ex'rs.*² The facts are stated below:

Stephen Girard created a trust for the establishment of Girard College, in the city of Philadelphia, Commonwealth of Pennsylvania. The trust stated that the money should be used by the City of Philadelphia for the purpose of erecting and operating a school for poor, white male orphans. The next of kin objected to the trust for two reasons: First, because of the exclusion of all ecclesiastics, missionaries, and ministers of any sect, from holding or exercising any station or duty in the college. Second, because it limits the instruction to be given the scholars thereby excluding, by implication, all instruction in the Christian religion.³ The

¹ *Brown v. Commonwealth of Pennsylvania*, 392 F.2d 120 (1968).

² *Vidal et al. v. Girard's Executors*, 12 Howard 126 (1844).

³ *Id.*, p. 128.