

Civil Procedure

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Summary Judgment

1 Basic Principles

1.1 Standard

Rule 56(a)

Requirements:

- There is no genuine dispute as to any material fact, and
- Moving party is entitled to judgment as a matter of law

Burden is on the moving party to establish both conditions.

Court must “view the facts and draw all reasonable inferences ‘in the light most favorable to party opposing the motion.’” *Scott v. Harris* (US 2007); *U.S. v. Diebold, Inc.* (US 1962)

- Cf. Motion to Dismiss under Rule 12(b)(6)

1.2 Procedure

1.2.1 Establishing Absence/Existence of Factual Dispute

Rule 56(c)

A party may establish the absence or presence of a factual dispute in either of two ways:

- Rule 56(c)(1)(A): Cite to material in record (i.e. discovery responses, affidavits, declarations, stipulations).
 - N.B. Court may consider any materials in the record, even if not cited. Rule 56(c)(3).
- Rule 56(c)(1)(B): Show that,
 - Cited materials do not establish absence/presence of dispute, or
 - Adverse party can't produce admissible evidence to support the fact

1.2.2 Form of Evidence

- The evidence cited to show absence/presence of a factual dispute need not be in admissible form.
 - e.g. Use of affidavits instead of live testimony under cross-examination.
- But opposing party may object that the evidence cannot be presented in admissible form at trial. Rule 56(c)(2)

2 Genuine Issue of Material Fact

2.1 Material fact

Slaven v. City of Salem (Mass. 1982)

Materiality of facts depends on the substantive law governing the claim(s) or affirmative defense(s).

2.2 Genuine Issue

Scott v. Harris (US 2007)

“[O]pponent must do more than show that there is some metaphysical doubt as to the material facts.”

2.2.1 Burden of Production & Proof

Celotex Corp. v. Catrett (US 1986)

- Moving party has initial burden of identifying absence of genuine issue of material fact.
- Not required to rely on affidavits or other material negating opposing party’s claim/defense.
- Burden of production on summary judgment rests with party who would have burden as to that issue at trial.
 - Plaintiff normally has burden as to elements of claim.
 - Defendant normally has burden as to affirmative defenses.
- If burden of production is on opposing party, moving party only has to point to the absence of supporting evidence in the non-moving party’s case.

Anderson v. Liberty Lobby, Inc. (US 1986)

- Moving party must satisfy the burden of production/proof that it would have at trial.
- Where claim requires heightened degree of proof (e.g. clear & convincing evidence of actual malice, for defamation claim by public figure), that substantive standard applies on summary judgment.
- Credibility is not a proper issue for summary judgment.
 - Jury question
 - See *Nanty-Glo v. American Surety Co.*, 163 A. 523 (Pa. 1932)
 - No summary judgment where moving party relies exclusively upon oral testimony (affidavits or depositions) to establish the absence of a genuine issue of material fact.”
 - But see *Scott v. Harris* (US 2007)
 - “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.”

Matsushita Elec. Indust. Co. v. Zenith Radio Corp. (US 1986)

- In determining existence of genuine issue of material fact, court should consider defendant’s “absence of a plausible motive to engage in predatory pricing”.

- Court relies on economic theory to conclude defendants would have no motive to engage in alleged conspiracy.
 - Where defendants had “no rational economic motive to conspire” & “conduct is consistent with other, equally plausible explanation”, defendants’ pricing and market practices cannot support inference of conspiracy.
 - cf. *Twombly*

2.2.2 Examples

1. Two drivers, Manny and Moe, approach an intersection at right angles. They enter the intersection at the same time and collide. Both of them die instantly. Manny’s estate sues Moe’s estate for wrongful death, alleging that Moe’s negligence caused the accident. Moe’s estate asserts a counterclaim for wrongful death, alleging that Manny’s negligence caused the accident.
 - There were no eyewitnesses.
 - The only evidence is that there was a working traffic light, so either Manny or Moe (but only one of them) must have run the red light.
2. Mort must take a pill every day to remain alive. The pills are highly toxic, and taking two within 24 hours is fatal.
 - Mort is found dead, and the evidence shows Mort took two pills that day.
 - Mort had a life insurance policy that would pay benefits to Mort’s estate if he died by accident, but not if he committed suicide.
 - A few weeks before Mort’s death, he made out new will.
 - The day before he died, Mort made plans for fishing trip the following week.

3 Scope of Summary Judgment

3.1 Partial Summary Judgment

Rule 56(a)

A party may move for summary judgment as to entire claim or defense, or as to a part thereof.

- i.e. may request summary judgment as to particular issue, where the undisputed facts conclusively determine that issue, but other issues remain for trial.

Rule 56(g)

If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item or damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

In re FedEx Ground Package Syst., Inc., 734 F.Supp.2d 557 (N.D. Ind. 2010)

Facts & Issue

- Delivery drivers sued FedEx Ground, asserting claims for unpaid wages under state law.

- The drivers' claims turned on whether they were employees of FedEx (as the drivers contended) or independent contractors (as FedEx contended).
- The parties filed cross-motions for partial summary judgment on the issue of employee status.
 - If the court granted summary judgment in favor of the drivers on this issue, the case would proceed to trial on any remaining issues (e.g. whether FedEx had failed to pay the drivers as required under the statute).
 - If the court granted summary judgment in favor of FedEx on this issue, the case would be dismissed (because employee status was an essential element of the claims).

Decision

- The court denied the drivers' motion and granted FedEx Ground's motion.
- "Upon review of the evidence in the light most favorable to the plaintiffs, the only reasonable inference is that FedEx hasn't retained the right to direct the manner in which drivers perform their work."
 - N.B. Because the suit was brought as a class action, the court considered only evidence that was common to all members of the plaintiff class (primarily FedEx's standard "Operating Agreement" and written policies/procedures), and declined to consider evidence of actual control that FedEx exercised over individual drivers.