

A mechanic sued his former employer in federal court, claiming that the employer had discharged him because of his age in violation of federal law. The employer answered, denying the claims and promptly moving for summary judgment. In support of the motion, the employer attached the mechanic's employment evaluations for the past three years, which rated his skills and performance as poor and culminated in a recommendation for his discharge.

What is the mechanic's best argument to defeat the summary judgment motion?

- A. The allegations in the complaint conflict with the mechanic's employment evaluations, raising a genuine dispute as to material facts.
- B. The employer cannot rely in his motion on matters outside the pleadings.
- C. The essential facts are unavailable to the mechanic and therefore discovery is required.
- D. The motion was filed before the close of discovery.

Explanation:

A **motion for summary judgment** requests that the court enter judgment without a full trial because (1) there is no genuine dispute of material fact and (2) the movant is entitled to judgment as a matter of law. This motion may be filed at *any* time until 30 days after the close of discovery **(Choice D)**.^{*} The movant must support this motion with admissible facts contained in any of the following: **pleadings**, affidavits, declarations, discovery, or other materials containing admissible evidence (eg, employment evaluations) **(Choice B)**.

Once the movant satisfies this initial burden, the **burden shifts** to the nonmovant to **avoid summary judgment by** either:

- showing specific disputed facts through affidavits, declarations, discovery, or other materials containing admissible evidence *or*
- **requesting** that the court **postpone consideration** of the motion until **additional discovery** can take place, and including an affidavit or declaration that describes the desired discovery and why it is needed.

Since the employer promptly moved for summary judgment after submitting an answer, no discovery has taken place and the mechanic has not had time to acquire the essential facts needed to avoid summary judgment. Therefore, the mechanic's best argument to defeat this motion is that the essential facts are unavailable and discovery is required. The mechanic must also attach an affidavit or declaration describing the discovery needed to obtain these facts.

^{*}The court or a local rule may set a different deadline for filing a motion for summary judgment.

(Choice A) The nonmovant cannot rely on the pleadings in response to a motion for summary judgment because pleadings contain *general* allegations. Instead, the nonmovant must show *specific* disputed facts or request that the court postpone consideration.

Educational objective:

The nonmovant can request that the court postpone considering a motion for summary judgment until additional discovery can take place. This request must include an affidavit or declaration describing the desired discovery and why it is needed.

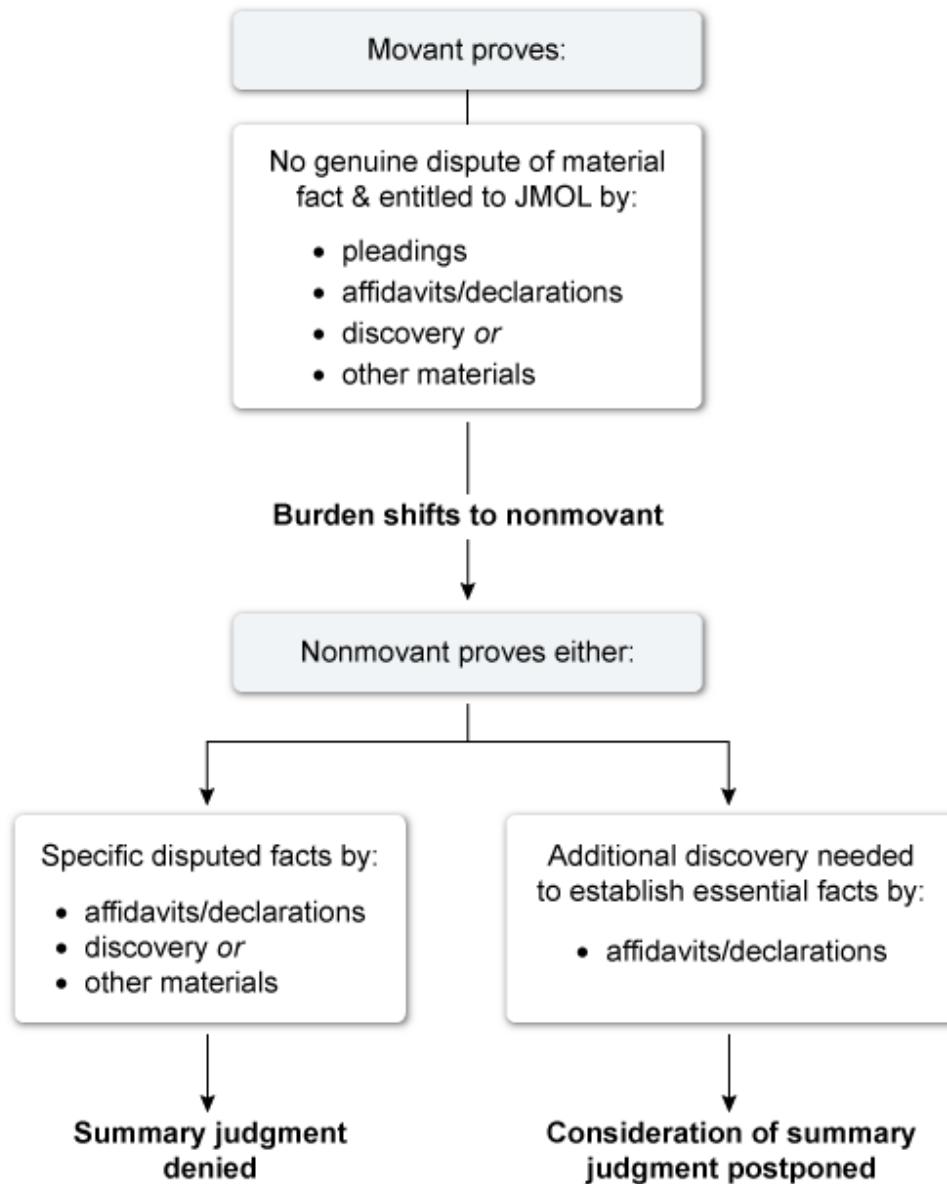
References

- Fed. R. Civ. P. 56 (summary judgment).
- 73 Am. Jur. 2d Summary Judgment § 27 (2020) (explaining summary judgment procedure when facts are unavailable to the nonmovant).

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Burden of proof for summary judgment



JMOL = Judgment as a matter of law.

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