

An actor brought a federal diversity action against a theater company for breach of contract. Twenty days after discovery closed, the company moved for summary judgment. The company attached to the motion affidavits of its managing director and artistic director and a verified copy of its contract with the actor. In their affidavits, the directors stated facts establishing that the company had fully performed the contract.

The actor's brief opposing the motion relied solely on the allegations of the complaint.

Should the court grant the summary-judgment motion?

- A. No, because in deciding the motion, the court must take the allegations and inferences of the complaint as true.
- B. No, because the company did not timely file the motion.
- C. Yes, because the actor filed no evidence in opposition to the motion.
- D. Yes, because there is no genuine dispute as to any material fact and the company is entitled to judgment as a matter of law.

## Explanation:

In a **summary-judgment motion**, the **movant has the initial burden** to show that there is **no genuine dispute of material fact** and the movant is entitled to **judgment as a matter of law**. The movant must support this motion with admissible facts contained in **pleadings**, affidavits, declarations, discovery, or other materials. Once the movant satisfies its initial burden, the **burden shifts** to the nonmovant to **avoid summary judgment by** either:

- requesting that the court **postpone** consideration of the motion **until additional discovery** can take place (not seen here) *or*
- **showing specific disputed facts** through affidavits, declarations, discovery, or other materials containing admissible evidence, but ***not* through pleadings**.

Here, the company supported its summary-judgment motion through its directors' affidavits, which stated facts establishing that the company had fully performed its contract with the actor. The actor then failed to show specific disputed facts because his brief opposing the motion relied solely on allegations in the complaint. This means that there is no genuine dispute of material fact and the company is entitled to judgment as a matter of law. Therefore, the court should grant the company's motion.

**(Choice A)** In deciding a summary-judgment motion, a court must view the evidence in the light most favorable to the nonmovant. However, a court is not required to take the complaint's allegations and inferences as true.

**(Choice B)** A summary-judgment motion may be filed at any time until 30 days after the close of discovery. Therefore, the company timely moved for summary judgment 20 days after discovery closed.

**(Choice C)** The fact that the actor filed no evidence in opposition to the motion is not, by itself, sufficient for the court to grant the motion. Instead, the motion should be granted because the company satisfied its burden.

## Educational objective:

The nonmovant can defeat a summary-judgment motion by showing specific disputed facts through affidavits, declarations, discovery, or other materials containing admissible evidence. However, the nonmovant cannot defeat the motion by relying on allegations in the pleadings.

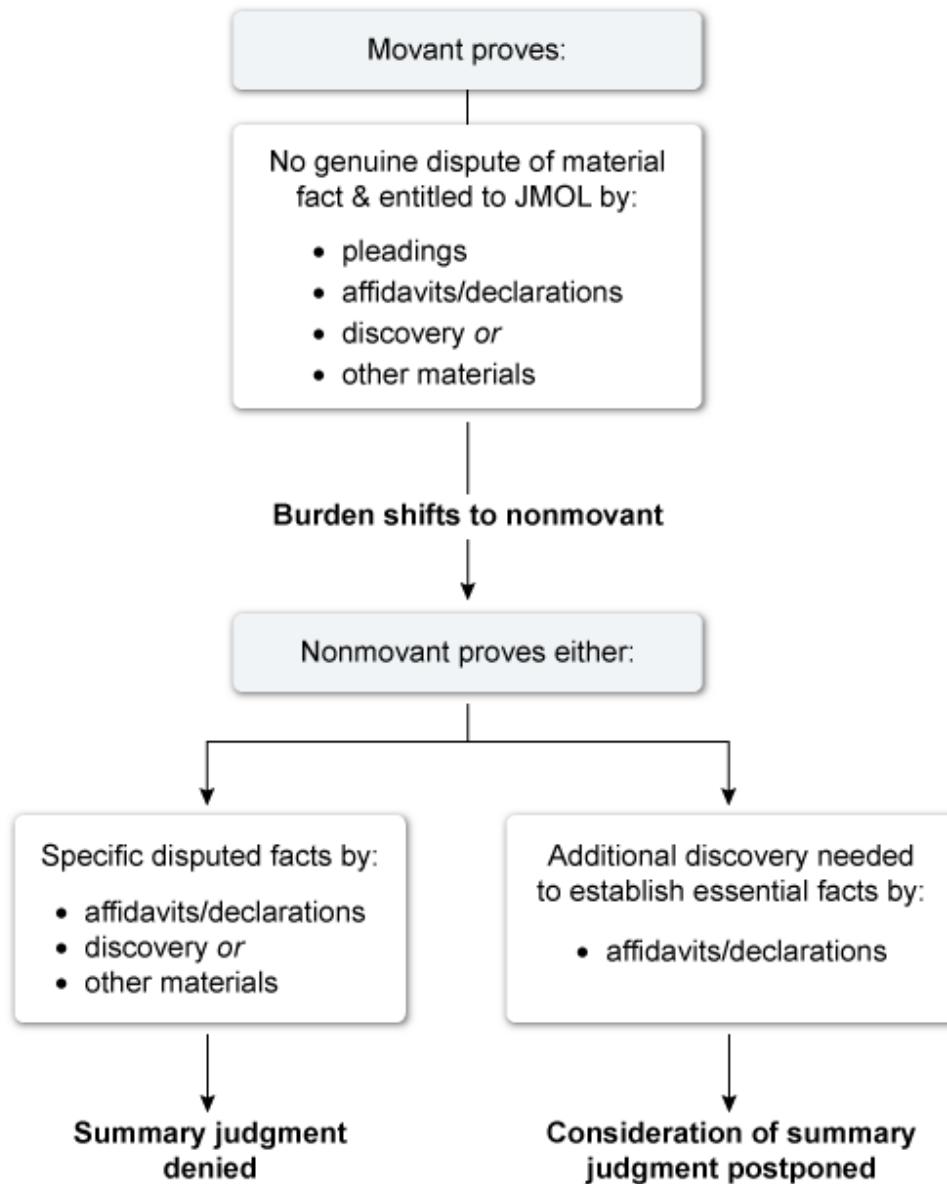
## References

- Fed. R. Civ. P. 56 (summary judgment).
- 10A Charles Alan Wright et al., Federal Practice and Procedure § 2727 (4th ed. 2020) (explaining the burden-shifting process of a motion for summary judgment).

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## Burden of proof for summary judgment



JMOL = Judgment as a matter of law.

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