West's Florida Statutes Annotated
Florida Rules of Civil Procedure (Refs & Annos)

Fla.R.Civ.P. Rule 1.510

Rule 1.510. Summary Judgment

Effective: May 1, 2021
Currentness

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.

(b) Time to File a Motion. A party may move for summary judgment at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. The movant must serve the motion for summary judgment at least 40 days before the time fixed for the hearing.

(c) Procedures.

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(5) *Timing for Supporting Factual Positions.* At the time of filing a motion for summary judgment, the movant must also serve the movant's supporting factual position as provided in subdivision (1) above. At least 20 days before the time fixed for the hearing, the nonmovant must serve a response that includes the nonmovant's supporting factual position as provided in subdivision (1) above.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by rule 1.510(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. 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 of damages or other relief--that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court--after notice and a reasonable time to respond--may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Credits

Amended Dec. 13, 1976, effective Jan. 1, 1977 (339 So.2d 626); July 16, 1992, effective Jan. 1, 1993 (604 So.2d 1110); Dec. 15, 2005, effective Jan. 1, 2006 (917 So.2d 176); Sept. 8, 2010, effective Jan. 1, 2011 (52 So.3d 579); Oct. 18, 2012, effective, *nunc pro tunc*, Sept. 1, 2012 (102 So.3d 505); Sept. 1, 2016, effective Jan. 1, 2017 (199 So.3d 867); Oct. 25, 2018, effective Jan. 1, 2019 (257 So.3d 66); Dec. 5, 2019, effective Jan. 1, 2020 (292 So.3d 660); Dec. 31, 2020, effective May 1, 2021 (309 So.3d 192); April 29, 2021, effective May 1, 2021 (317 So.3d 72).

Editors' Notes

COURT NOTES

2021 Amendment. The rule is amended to adopt almost all the text of Federal Rule of Civil Procedure 56. The "federal summary judgment standard" refers to the principles announced in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986), and more generally to case law interpreting Federal Rule of Civil Procedure 56.

COMMITTEE NOTES

1976 Amendment. Subdivision (c) has been amended to require a movant to state with particularity the grounds and legal authority which the movant will rely upon in seeking summary judgment. This amendment will eliminate surprise and bring the summary judgment rule into conformity with the identical provision in rule 1.140(b) with respect to motions to dismiss.

1992 Amendment. The amendment to subdivision (c) will require timely service of opposing affidavits, whether by mail or by delivery, prior to the day of the hearing on a motion for summary judgment.

2005 Amendment. Subdivision (c) has been amended to ensure that the moving party and the adverse party are each given advance notice of and, where appropriate, copies of the evidentiary material on which the other party relies in connection with a summary judgment motion.

2012 Amendment. Subdivision (c) is amended to reflect the relocation of the service rule from rule 1.080 to Fla. R. Jud. Admin. 2.516.

AUTHORS' COMMENT--1967

The rule is substantially the same as former Rule 1.36 as amended and Federal Rule 56. In terms of former Rule 1.36, there has been much rephrasing of its contents, with *decrees* being deleted from the application of the present rule because of the non-existence of such an instrument. The present rule now allows answers to interrogatories to be the basis to establish that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, such being in accord with the Federal Rule and the 1965 Florida amendment.

Third party claimants or defendants now have the right to utilize summary judgment practice in order to expedite the administration of justice in the same manner as other parties.

The 20 day time limit allows the defending party to file his answer and defense. The 20 day period may be extended by the court so that in such circumstances the motion for summary judgment by the claimant cannot be made until the extended time has expired. The defending party can move at any time and need not wait 20 days. If the defending party does move for a summary judgment, the claimant is not required to wait the 20 days before moving for a summary judgment.

The function of summary judgment procedure is to supply an efficient procedural device for the prompt disposition of actions, be they legal or equitable, if there be no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Its purposes are those expressed in rule 1.010, i.e. “to secure the just, speedy and inexpensive determination” of the action.

The moving party has the burden of proof in establishing his right to a summary judgment. The procedure utilized for obtaining this relief is not a substitute for a trial of disputed issues of fact. The court is to examine the evidence, not for the purpose of trying the fact issues, but to determine whether there is a genuine issue of fact to be tried; and if there is any issue of fact over which the parties are in disagreement the motion is to be denied. The summary judgment procedure does not include a summary trial of disputed fact issues.

While the rule makes no specific provision for a case in which it develops that the opposing, nonmoving party, is entitled to a summary judgment, the Florida courts now recognize that there are circumstances when such should be done. See Carpineta v. Shields, 70 So.2d 573 (S.Ct.1954), King v. L. & L. Investors, Inc., 133 So.2d 744 (D.C.A.3d 1961), and City of Pinellas Park v. Cross-State Utilities Co., 176 So.2d 384 (D.C.A.2d 1965). These decisions recognize that the advisable procedure is a cross-motion by the successful party, although such is not required. See also John K. Brennan Co. v. Central Bank & Trust Co., 164 So.2d 525 (D.C.A.2d 1964) for a full discussion of the due process elements in entering a summary judgment for a nonmoving party.

The fact that both parties move for summary judgment does not establish that there is no issue of fact. Although a party may on his own motion assert that, accepting his legal theory, the facts are undisputed, he may be able and should be allowed to show that if his opponent's theory is adopted a genuine issue of fact exists.

If the movant sustains his initial burden, the opponent has the burden to come forward with counter-evidence revealing a factual issue. The movant need not exclude every possible inference that the opposing party might have other evidence available to prove his case. Should the opponent not come forward with any affidavit or other proof in opposition to a motion for summary judgment, the movant need only establish a prima facie case, whereupon the court may enter such judgment. See Harvey Building, Inc. v. Haley, 175 So.2d 780 (S.Ct.1965).

Not only is it the duty of the trial judge to exclude facts which would be inadmissible in evidence as recognized in Lake v. Konstantinu, 189 So.2d 171, (D.C.A.2d 1966), the decisions further bear out that the Florida Rule does not permit the taking of any testimony at a hearing on a motion for summary judgment. See Ogden Trucking Company v. Heller Bros. & Co., 130 So.2d 295 (D.C.A.3d 1961).

The question of whether a summary judgment can be entered on a plaintiff's motion prior to the filing of defendant's answer has been settled affirmatively by the Supreme Court of Florida, provided that 20 days had expired from the commencement of the action before the motion for summary judgment was filed. The Supreme Court set for the admonition that such a motion is granted with caution, however, in Coast Cities Coaches, Inc. v. Dade County, 178 So.2d 703 (Fla.1965), and adhered to the federal decisions which uniformly hold that a plaintiff need not wait for a defendant to file answer before moving for a summary decree. Moreover, a motion to dismiss before answer does not prevent a motion for summary judgment since the latter may well be after 20 days have expired.

The new rule requires that a motion for summary judgment be served at least 20 days before the time fixed for hearing, and based upon decisions construing the prior 10 day rule, it would be reversible error to grant relief on shorter notice.

When affirmative defenses are pleaded sufficiently, and such are not contradicted or opposed properly, this will preclude a plaintiff from obtaining a summary judgment.

Under this rule, a summary judgment can be entered as to part of a pleading and the case continues as to the balance. The rule contemplates by its language entertainment of a partial summary judgment and the appellate courts have so held. In Berry v. Pyrofax Gas Corporation, 121 So.2d 447 (D.C.A.1st 1960), the Court upheld the authority to enter partial summary judgment on one of three claims stated in separate paragraphs of a counterclaim. However, such a judgment is interlocutory in character and not appealable, but it may be assigned as error upon an appeal from the final judgment. Moreover, an order denying a motion for summary judgment in its entirety is not a final judgment, but is interlocutory in nature.

Although Florida Appellate Rule 4.2a does not presently permit an interlocutory appeal from an order denying a motion by the plaintiff for a summary judgment on liability in a "law" action, the desirability of such an appeal seems apparent and would in many instances result in the avoidance of a costly and lengthy trial. An excellent commentary construing the similar provisions of Federal Rule 56 is found in 3 Barron and Holtzoff, Federal Practice and Procedure, Rules Edition (West 1958) which should be consulted to determine the federal courts' interpretations of the analogous Federal Rule. In view of the close adherence of the Florida Courts to the federal interpretations, these volumes are of great value to successful utilization of the Florida rule.

Related Motions--Distinguished

It is sometimes difficult to distinguish between a motion for a summary judgment under this rule, a motion to dismiss under Rule 1.140(b), and a motion for judgment on the pleadings under Rule 1.140(c). Technically these three motions have distinct functions. A motion to dismiss for lack of jurisdiction, improper venue, insufficiency of process, insufficiency of service, and failure to join an indispensable party contemplates a dismissal of the claim and not a judgment on the merits for either party. A motion to dismiss for failure to state a cause of action, besides asking for a dismissal, is by its terms a contention that the pleading to which it is addressed does not in itself sufficiently state a case. A motion for judgment on the pleadings is based upon the ground that the moving party is entitled to a judgment on the face of the pleadings themselves. On the other hand a party moving for summary judgment contends that on the basis of the entire record--pleadings, depositions, admissions, answers to interrogatories, and affidavits of both parties--there is no genuine issue as to any material fact and that he is entitled to a judgment as a matter of law. In practice, however, many courts have disregarded these distinctions. In view of the purpose of the rules to secure the just, speedy, and inexpensive determination of every action, the courts have been reluctant to refuse to make the proper disposition of the case merely because of the form of the motion.

Use by Defendant

A defending party is not required to serve his responsive pleading before moving for summary judgment. He may make the motion at any time, setting out his defenses by affidavit, and thus effect a speedy termination of the action if no genuine issue exists as to any fact or facts pertaining to a defense that would defeat the claim.

The defendant party may likewise, before pleading, test the sufficiency of the claim by a motion for dismissal for failure to state a cause of action. If matters outside the pleading are presented to the court on the motion and not excluded, the motion is to be treated as one for summary judgment testing the sufficiency of the claim in fact.

The defending party is not required to wait 20 days. If the defending party moves for a summary judgment and has a hearing on same, Rule 1.420(a)(1) prevents the claimant from voluntarily dismissing his action. Unlike similar Federal Rule 41, Rule 1.420 requires a voluntary dismissal to be taken before a summary judgment hearing, whereas the federal rule and former Florida Rule 1.35(a)(1) allow a voluntary dismissal at any time prior to service of a motion for summary judgment.

Determination of Undisputed Facts

The decisions are not clear whether a motion for summary judgment is available to a party who cannot contend that there is no issue of fact and who makes the motion only to secure an order under Rule 1.510(d) that certain facts appear without substantial controversy and shall be deemed established at the trial. Rules 1.510(a) and 1.510(b) authorize a motion upon any part of a claim, and it is clear by the last sentence of Rule 1.510(c) that the party may seek a summary judgment solely upon the issue of liability, admitting that a controversy exists as to the amount of damages. But it is not clear whether the motion can be made solely for the purpose of obtaining the order provided for in Rule 1.510(d), or whether the order is intended to be only ancillary to a motion seeking a summary judgment as to the whole claim, or at least as to all factual issues bearing on liability.

The court is obliged to make the order provided for by paragraph (d) of this rule. The entire rule is mandatory. Actually an order must be entered--an oral ruling is not sufficient. The order must specify the facts which are not controverted. Upon the trial the order is used to indicate the facts which are established and as to which no proof is necessary. The object is to shorten the trial by eliminating the fact issues shown to be without substantial controversy. The effect of the order is the same as an order under Rule 1.200 for formulation of issues. It is interlocutory in character and therefor non-appealable in a common law claim. To call it a “partial summary judgment” is a misnomer.

Affidavits

Affidavits can be used by any party, be it the claimant, the defending party or a third party claimant or defendant. Such instruments may be in support of or in opposition to a motion for summary judgment. They are the weakest form of evidence and not ordinarily admissible at trial. Their function is to show that there is available competent testimony which can be introduced at the trial.

An affidavit substantially in the form of testimony admissible at a trial should satisfy the requirements that it be made upon personal knowledge and set forth such facts as would be admissible in evidence. The requirement that it show affirmatively that the affiant is competent to testify to the matters stated therein is not satisfied by the statement that he has personal knowledge; there should be stated in detail the facts showing that he has personal knowledge.

If a document is referred to in an affidavit, and the affiant does not have the document or a copy of it, he should so state in the affidavit, describe the document, state when and where he saw it and under what circumstances, who has possession, and what efforts have been made to obtain it or a copy of it.

A movant's affidavits are viewed strictly, whereas counter-affidavits are read more liberally by the courts as a matter of practice. See Holl v. Talcott, 191 So.2d 40 (S.Ct.1966).

If in support of a motion for summary judgment, the affidavit should be filed with the motion so as to allow opposing parties time to controvert it. If the affidavit is in opposition to a motion for summary judgment, it must be filed prior to the day of the hearing.

Under some circumstances, as recognized in Jones v. Stoutenburgh, 91 So.2d 299 (S.Ct.1957), pre-trial discovery procedures can be utilized to reveal that a defending affiant actually has no competent evidentiary support for his affidavit.

A statement in an affidavit which is physically impossible in the light of common knowledge or scientific principles may be disregarded and does not create a genuine issue of fact. Watley v. Florida Power and Light Company, 192 So.2d 27 (D.C.A. 1st 1966).

Affidavits Unavailable

The purpose of Rule 1.510(f) is to protect a party opposing a motion for summary judgment who is unable at the time of the hearing to establish that there is a genuine issue of fact. To be entitled to protection, the party must show by affidavit good grounds why he has been unable to present his proof; the affidavit should show what the proof is and what steps have been taken to obtain it. The court is given wide discretion to deal with the various circumstances, e.g., refuse the application for judgment, order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or make such other order as is just.

Affidavits In Bad Faith

Under paragraph (g) summary judgment affidavits filed for the purpose of delay will subject the party filing them to costs and counsel fees. The court may adjudge the attorney who files such affidavits in contempt if the court finds that he has acted in bad faith or solely for the purpose of delay.

Answers to Interrogatories

Answers to interrogatories can be the basis to establish that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. This element is new to the Florida Rule by the 1965 amendment to former Rule 1.36, effective January 1, 1966, and became a part of similar Federal Rule 56 in 1963.

Important distinctions exist between answers to interrogatories and affidavits which should be noted. An affidavit is the weakest form of evidence and ordinarily is not admissible at trial, as noted above. Its function on a motion for summary judgment is to show that there is available competent testimony which can be introduced at trial. The answer to an interrogatory, however, similar to an admission, is admissible at trial when offered by the opposing party, since it is an admission of an adverse party.

The rule now authorizes the Court to permit affidavits to be supplemented or opposed by answers to interrogatories. For an excellent discussion of the use of answers to interrogatories, prior to the new rule, as well as function, use and limitations of summary judgments, see Lake v. Konstantinu, *supra*.

Notes of Decisions (2453)

West's F.S.A. RCP Rule 1.510, FL ST RCP Rule 1.510
Current with amendments received through 6/15/2022. Some rules may be more current, see credits for details.