

1952

Use of Summary Judgment by Type of Case

Minn. L. Rev. Editorial Board

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Recommended Citation

Editorial Board, Minn. L. Rev., "Use of Summary Judgment by Type of Case" (1952). *Minnesota Law Review*. 2698.
<https://scholarship.law.umn.edu/mlr/2698>

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Minnesota Law Review

Journal of the State Bar Association

Published monthly, December to June, inclusive, by the Faculty and Students of the Law School, University of Minnesota

Subscription Price \$5.50 per annum. One dollar per number

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NOTE

USE OF SUMMARY JUDGMENT BY TYPE OF CASE

Rule 56 of the Minnesota Rules of Civil Procedure introduces the summary judgment to the courts of the State of Minnesota. Since Rule 56 is an exact counterpart of Federal Rule of Civil Procedure 56, this procedural device will not be unfamiliar to those Minnesota lawyers who frequently appear in federal court. Prior to its adoption in the Federal Rules, the summary judgment in varying forms had been adopted in several jurisdictions, including New York, Michigan, Connecticut and the District of Columbia.¹ Before that it was tried in England in 1855 but was limited to suits on promissory notes.² Adoption of the Field Code halted the use of

1. See Clark and Samenow, *The Summary Judgment*, 38 Yale L. J. 423, 440, 445, 456, 457 (1929).

2. 18 & 19 Vict. c. 67 (1855).

a form of summary judgment that had been used in South Carolina since 1773 and in Kentucky since 1805.³ Virginia has continuously used a form of the device since 1849.⁴ As a result there is an abundant source of commentary and precedent, particularly in respect to the Federal Rules.⁵

Generally, the summary judgment offers no serious problems. It may be initiated by the motion of either the plaintiff or defendant, or both,⁶ and judgment may be granted to the party opposing the motion though he himself has not moved for summary judgment.⁷ It may be used to partially adjudicate the issues in any case,⁸ to settle an issue of liability leaving the measure of damages for trial⁹ and to serve as a pre-trial order settling certain issues of fact if no judgment on all the issues can be made.¹⁰ It may be initiated by a claimant after the twenty-day period following the commencement of the action, or upon service of a motion for summary judgment by the adverse party,¹¹ who may move for summary judgment at any time.¹² A judgment is appealable if it disposes of a whole claim but an order denying judgment is not appealable.¹³

No case is ripe for summary judgment unless there is no "genuine issue as to any material fact."¹⁴ Both parties should be armed with affidavits as to the facts at the hearing on the motion, for the movant has the burden of showing there is no issue of fact,¹⁵ and

3. See Millar, *Three American Ventures in Summary Civil Procedure*, 38 Yale L. J. 193 (1928).

4. *Id.* at 213.

5. 3 Barron and Holtzoff, *Federal Practice and Procedure* §§ 1231-1247 (1950); 3 Moore, *Federal Practice* § 56 (1938); 3A Ohlinger, *Federal Practice* 297 (1948); 10 Cyclopaedia of Federal Procedure 175 (3d ed. 1952); Clark, *Summary Judgments*, 2 F. R. D. 364 (1943); Clark and Samenow, *supra* note 1; Shientag, *Summary Judgment*, 4 Ford L. Rev. 186 (1935) (New York experience).

6. Minn. R. Civ. P. 56.01 (1952); Johnston-Crews Co. v. United States, 38 F. Supp. 544 (E.D. S.C. 1941).

7. Commercial Credit Corp. v. California Shipbuilding Corp., 71 F. Supp. 936 (S.D. Cal. 1947); Northland Greyhound Lines v. Amalgamated Ass'n, 66 F. Supp. 431 (D. Minn. 1946).

8. Minn. R. Civ. P. 56.04 (1952).

9. Minn. R. Civ. P. 56.03 (1952).

10. See Note of Advisory Committee on Amendment to Fed. R. Civ. P. 56(d).

11. Minn. R. Civ. P. 56.01 (1952). See *Krug v. Santa Fe Pac. R. R.*, 158 F. 2d 317 (D.C. Cir. 1946), decided before amendment, where plaintiff's motion for summary judgment was stricken as premature, since defendant had filed no answer yet had moved for summary judgment.

12. Minn. R. Civ. P. 56.02 (1952); *Gifford v. Travelers Protective Ass'n*, 153 F. 2d 209 (9th Cir. 1946).

13. *Jones v. St. Paul Fire & Marine Ins. Co.*, 108 F. 2d 123 (5th Cir. 1939). See *Clark v. Taylor*, 163 F. 2d 940 (2d Cir. 1947).

14. Minn. R. Civ. P. 56.03 (1952).

15. *Ramsouer v. Midland Valley R. R.*, 135 F. 2d 101 (8th Cir. 1943); 3 Moore, *Federal Practice* § 56.08 (1938).

the adverse party may have judgment entered against him if he offers no evidence raising a dispute as to the facts.¹⁶ The court may consider the pleadings, depositions, admissions and affidavits in deciding whether there is a genuine issue as to any material fact.¹⁷

What constitutes a genuine issue of material fact is apt to be most perplexing. A strictly logical answer may not be controlling in all cases, but rather the tendency might be to restrict summary judgment to those situations that have been historically regarded as appropriate for summary judgment.¹⁸ While not discouraging the use of this remedy, the Supreme Court has clearly taken the position that possible disputable issues must be tried.¹⁹ A leading case in the federal courts of appeal, *Arnstein v. Porter*,²⁰ ruled that a trial was required unless "it could be shown beyond possible question that there was no dispute as to the facts." On the other hand, it has been observed that ostensible issues on the face of the pleadings are to be expected,²¹ and that summary judgment is designed to cut through sham defenses.²² Early experimentations with this remedy were limited to promissory notes and liquidated claims, since sham defenses were common in these types of cases.²³ Other types of cases have been found not suitable for summary judgment, *e.g.*, suits against the administrator of a decedent's estate²⁴ and garnishment proceedings.²⁵ Therefore, to determine whether any type of case is more appropriate for the remedy, and thereby whether no genuine issue as to material facts is more likely to be found in any type of case, the appended study was made of the Third and Fourth Divisions of the Minnesota Federal District Court for the years 1948-1949.

Because of the paucity of instances of the use of summary judgment during that period, a few definite conclusions can be drawn.

16. See *Rotberg v. Dodwell & Co.*, 152 F. 2d 100 (2d Cir. 1945); *Engl v. Aetna Life Ins. Co.*, 139 F. 2d 469 (2d Cir. 1943).

17. Minn. R. Civ. P. 56.03 (1952).

18. See *Arnstein v. Porter*, 154 F. 2d 464, 474 (2d Cir. 1946); see also Judge Clark's dissent, *id.* at 479.

19. *Lillie v. Tompson*, 332 U. S. 459 (1947); *Sartor v. Arkansas Nat. Gas Corp.*, 321 U. S. 620 (1944). Both cases reversed an affirmance by a court of appeals of summary judgment in the trial court.

20. 154 F. 2d 464 (2d Cir. 1946).

21. 3 Moore, *Federal Procedure* § 56.04 (1938). See *Arnstein v. Porter*, 154 F. 2d 464, 475 (1946) (dissent by Clark, J.). Note, 55 *Yale L. J.* 810 (1946).

22. See the Preamble to 18 & 19 Vict. c. 67 (1855), reprinted in Clark and Samenow, *supra* note 1.

23. See Clark and Samenow, *supra* note 1.

24. *Caswell v. Stearns*, 257 Mich. 461, 241 N. W. 165 (1932).

25. *Hoffman v. Professional Underwriters*, 256 Mich. 622, 239 N. W. 295 (1932).

The most significant aspect of the study is the almost complete absence of employment of summary judgment in personal injury and death actions. Though this tends to support a conclusion that summary judgment is inappropriate in such cases, it could be explained by the possibility that (1) this remedy's full value has not been realized, for there is ample precedent elsewhere for the use of summary judgment in such cases,²⁶ and, (2) the uncrowded condition of the calendar would give rise to no need for a prompt decision. The remedy was not sought in any of the 66 cases that concerned promissory notes and suits on judgment, although 53 per cent of these cases went by default. Since this type of case was the first to which summary judgments were applied, the total absence of the use of this remedy may mean that ordinary trial procedures are adequate to cope with sham defenses when the delay of a crowded calendar is lacking. Federal housing matters, most frequent in the use of summary judgment, might be analagous to the summary procedure in unlawful detainer action in municipal and justice courts, except that the Rules do not apply to these courts.²⁷ The incidence of use in contract and insurance cases, 3.4 per cent, allows no definite conclusion in comparison to other types of cases.

Historically the summary judgment appears to have been resorted to as a means of clearing up crowded court calendars.²⁸ Because the Minnesota Federal District Court is not far behind on its calendar, any comparison to state district courts that are overcrowded may be unwarranted. Aside from the valuable objective of cutting through sham defenses, the summary judgment has great value in that it reduces the costs of preparation for trial. This objective has application even where court calendars are not crowded. The study shows that summary judgments are not used frequently in the Federal Court and that the uses to which it is put there bear little analogy to Minnesota practice. The appropriateness of summary judgment to a particular type of case cannot be predicted by reference to experience of the Minnesota Federal District Court. An uncrowded court calendar has probably prevented fullest exploitation of this remedy. However, summary judgments in Minnesota practice will probably not meet a similar fate.

26. *E.g.*, *King v. United States*, 178 F. 2d 320 (5th Cir. 1949), *cert. denied*, 339 U. S. 964 (1950); *Thomas v. Furness, Ltd.*, 171 F. 2d 434 (9th Cir. 1948), *cert denied*, 337 U. S. 960 (1949); *Seward v. Nissen*, 2 F. R. D. 545 (D. Del. 1942).

27. *Minn. R. Civ. P. 1* (1952).

28. See Clark and Samenow, *supra* note 1.

USE OF SUMMARY JUDGMENT IN THE MINNESOTA FEDERAL DISTRICT
COURT DURING 1948-1949*

<i>Type of Case</i>	<i>Div. 3</i>	<i>Div. 4</i>	<i>Total Cases</i>	<i>Motions for Summary Judgment Granted</i>	
Personal Injury, Death Actions, FELA and Fed. Tort Claims	134	158	292	1	0
Other Tort	6	20	26	3	1
Contract and Insurance Matters	49**	101	150	8	2
Housing and Price Control ..	23	100	123	13	7
Promissory Notes and Suits on Judgments	11	55	66	0	0
Condemnation (mostly under Food & Drug Act)	19	38	57	0	0
Commerce Matters	22	19	41	0	0
Patent, Trade Mark and Copyright	3**	24	27	2	1
Taxation	9	11	20	1	0
Labor Relations and FLSA ..	11	5	16	1	0
Anti-Trust and Restraint of Trade	0	9	9	0	0
Other	7	11	18	0	0
Totals	294	551	845	29	11

*All cases initiated during the years 1948-1949 were used regardless of the disposition. It was assumed that the docket was correct on its face unless mistake was obvious.

**Two cases had more than one major issue, and were placed in both categories.