

HOW TO RESPOND TO A SUMMARY DISPOSITION OR SUMMARY JUDGMENT

First, what is a Summary Motion and why is it being filed.

Depending on whether it is Federal or State Court, a Summary Motion is filed to either test your pleadings, claims or defense or it is trying to end the case completely. Timing is everything..

Early Filings.

The early filing right out of the gate by the other side usually means they are attacking how you filed a claim or defense either with not enough material or it is difficult to understand. Usually, even if you lose an early Summary Motion, the court rules allow an amendment of the claim or action your filed.

ATTITUDE:

This is not always a negative, especially in Federal Court. Even in law, **it is all about your attitude.** I like early summary motions, no matter how hostile. As the court rules either allow you to respond with an amendment to your claim or defense instead of responding to the Motion to Dismiss, the Motion is a great way for another attorney to give you a free analysis of your case and its faults. If you are open minded about this, you can use their motion to file a better lawsuit or defense based on what mistakes you made.

So, in federal court or in state court, you can commonly lose the motion for summary but still have a right to amend. You get a free lesson on possibly something you failed to do in your action and your opponent is actually helping you fix the thing and beat them.

So, why would an Opponent do this when the outcome is generally positive and gives you a free analysis that helps you beat the other side?

Honest answer, those big law buildings and law firms require a lot of revenue to run. It's all about the fees. My experience is they know they are not going to win but don't care about the bigger picture that it eventually helps you beat their client with a free lesson on how to do it. The rules allow it, so they do it and justify the expense by telling their client they are going to beat you with it. That is very rare in early motions. This is what they do. My attitude is, unless you know you are going to win, don't file something that only helps the person you file against. But filing a Motion for Summary will generate \$2500-\$5,000 for the lawyer or law firm that files it. And they always have an associate do the work and a senior partner put their name on it for more billing of the file. The work I see is rarely about the truth.

The other reason is you did a bad job in your initial filings and their motion is the right thing to do. In State Court, if you go unrepresented and file an Answer on a collection case, expect the collection law firm to immediately file a Motion to Dismiss to purposely overwhelm you. The early filing right out of the gate by the other side usually means they are attacking how you filed a claim or defense either with not enough material or it is difficult to understand.

Motions against Unrepresented litigants are done for two reasons.

1. To overwhelm you and cause you to settle.
2. Set up the eventual win for the collector based upon the fact that you did not do something required under the Account Stated Statute. They will say you did not file the required Account Stated Affidavit that is mandatory to avoid the burden of proof that shifted from the person filing the action to the debtor. Technically, you are liable, and the only part of the case left is a discussion of what you owe.

Second Reason you are facing a Summary Motion is the court rules allow one to be filed and some point in the litigation, usually after discovery and it is to kill the whole case.

When you go to the first Pre-Trial, you will hear the Collection Attorney specifically ask the Court the dates when they can file the Motion for Summary to end the case. It's everything to them. So, when you hear that, ask for 60 or 90 days for discovery to use in finding out about the debt collector's lawsuit. That's where your defense to that motion and way to win your case comes from.

They generally will attach an Affidavit to the Motion, so you had better depose that person or Affiant if they are going to be speaking out against you in an Affidavit.

Glass Half Full or Half Empty.

The rules require the collection attorney to bring in a witness to personally verify all of their evidence or they can provide you with a certified copy all of the evidence and information and a sufficient time to review to review and do discovery on it if someone verifies under oath of their personal knowledge of that material. So, you had better read and review that stuff because it is here you will find ways to both win the summary motion or at trial with that information.

How to win against the Summary Motion:

First Identify why you have received a Summary Motion and what it is based upon. If you have done the work, it is 50/50 generally that they are bringing the Motion based upon a winning argument. Also, Courts love kicking cases and look at the Summary Motion as a good reason and that ups the odds you will lose.

One approach to handling the Court's desire to kick cases rather than give both sides a fair and neutral shake is to file your own summary motion. Court is not playing favorites, per se. A summary motion lets

them shrink their docket and work. So, up your odds by giving the Court options to rule your way with your motion. It makes the court have to choose based on real arguments and not just docket concerns. If you did the discovery of the package you received earlier from the other side, that will be all you need to overcome the general rule in these things.

General Rule in Winning or Losing a Summary Motion.

The Motion for Summary Disposition or Judgment is a Motion based upon law. It is saying there is no MATERIAL issue of fact, so the law is the only thing to look at and the law covering the action favors the Motion filer along with case law supporting the Motion against you.

So, have generous and material reasons to show *genuine* and material issues of fact. Mere disputes on picky items don't win against a Motion for Summary. An Affidavit saying, I don't owe the debt, I never took out the debt, I don't owe it to this debt collector, I owe the debt but there are Statute of Limitation issues, etc. are hardcore reasons and material and genuine reasons for the court to go your way. You owe it but don't own the exact amount is not a material and genuine issue of fact.

Unfortunately, you have to do a better job than the collection attorney filing against you because you are also trying to prevent the court from kicking your case when it wants your case gone. So, have heaving emphasis on your approach to showing the court it would be appealed if it goes against you.

TEAR UP THE MOTION:

So, tear up the Motion and write in the borders anything you know be false. Write down those things. Tip the first cases or ones the Filer of the Motion rely upon are their strongest. So, pull their cases and look for how they DON'T apply or find cases, hopefully ruled upon after the cases the other side filed that maybe trump those cases.

Check the citations of the cases used against you. Could be false.

Check to see if random facts in their Motion belong someone else or are just plain wrong or from another motion not connected to your case.

Scan the Motion and then cut and paste sections to your brief you know are false show the Court and say, this is their page five, and it is clearly wrong.

Highlight with a bright pen things you want emphasized. Write on the page with an arrow pointed to the thing you cut and pasted from the other Motion and say why it is wrong or false. Why not? Really, you are fighting the Court's desire to kick the case more than the other side.

ChatGPT. DON'T. RELY. ON. IT. unless you do the work checking each case out. 4.0 better than 3.5.

You better have a damn good defense to their arguments in the Motion. **So fully Identify the issues you are facing, and they claim beats your case.** Have a Preliminary Statement right up front as to why you should win because the Court may be too busy to read anything else but that and the conclusion at the end. They should be the same.

Eye Candy:

Use the pink sticky notes to focus the Courts attention on your really important stuff. They will look. Pink looks like candy. The court is too busy to read it all and candy grabs attention.

AFFIDAVIT: Must have an Affidavit.

Emails: commonly, attorneys say dumb things or admissions. See my Podcast+

Always be closing with your Preliminary Statement (Hopefully you wrote it already in your Answer) repeating the same thing you should have started saying every time the court saw you. Courts will give a case a theme if you keep repeating it and will write it on the file.

BONUS:

Securitization is the ultimate Genuine Material Issue in Dispute.