

## RESOLUTION 11-14-2003

### DIGEST

#### Demurrer: Conversion to Motion for Summary Judgment or Immediate Trial

Adds Code of Civil Procedure section 430.15 to allow conversion of a demurrer into a motion for summary judgment or an immediate trial.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

Related to resolutions 11-15-03, 11-16-03, 11-17-03 and 11-18-03.

#### Reasons:

This resolution adds Code of Civil Procedure section 430.15 to allow conversion of a demurrer into a motion for summary judgment or an immediate trial. This resolution should be disapproved because it would conflict with the purpose and timing of a demurrer.

The changes proposed in this resolution cause practical problems that are not adequately addressed. It does not make clear when this conversion is to take effect or how many oppositions are required. It merely provides for the court, on its own motion, to convert the demurrer and provide the parties 30 days notice. But once a demurrer is converted to a summary judgment motion, all the procedural details of Code of Civil Procedure section 437c should become applicable, including the requirement of a separate statement by the moving party, the right of a responding party to additional discovery, and the 75-day notice requirement. These very different procedures defeat the stated purpose of the resolution, i.e., streamlining litigation.

A demurrer is concerned solely with the sufficiency of the allegations of the complaint, not with evidence or other extrinsic matters. In contrast, a summary judgment motion is designed to dispose of issues summarily and completely, with a final decision. A party opposing summary judgment or summary adjudication must be given a full opportunity to conduct discovery to ensure a reasonable opportunity to investigate before facing termination of all or part of that party's case.

If a party has extrinsic evidence that conclusively determines the merits of a cause of action or defense, that party may move for summary judgment at the first opportunity. Treating a demurrer as a motion for summary judgment is not an advisable means of streamlining litigation.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Code of Civil Procedure section 430.15 to read as follows:

- 1 §430.15
- 2 In the interests of expeditious resolution of disputes, when the issues appear ripe for rapid
- 3 resolution, upon the filing of a demurrer, the trial court upon its own motion and thirty-days notice to
- 4 the parties, may convert the demurrer into a motion for summary judgment or an immediate trial.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: The Lawyers' Club of San Francisco

## STATEMENT OF REASONS

Existing Law: Does not permit a trial or motion for summary judgment at this stage of the litigation.

This Resolution: Permits an immediate trial or motion for summary judgment upon the filing of a demurrer. This would occur when there are few factual disputes in the case which the court believes could be expeditiously determined either through a short trial or a limited motion for summary judgment.

The Problem: Some cases, absent a provision of this nature, regardless of their unmeritorious nature, are permitted to linger in the judicial system at great expense to the state and the parties. In the rare instances when a case is essentially "cut and dried," the court should be able to rapidly dispose of the case through a short quick trial or a limited motion for summary judgment. Additionally, when a plaintiff's case is so straightforward and clear, with very limited factual issues to be resolved, the court should be able to dispose of that case quickly as well. Presently, simple, straight forward cases clog the courts and eat up the state's valuable resources. Lengthy litigation should be left for those cases that actually have "issues" to be decided.

## IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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## COUNTERARGUMENTS

### **BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY:**

Amendment of Article 1 of Chapter 3 of Title VI of the Code of Civil Procedure, pertaining to demurrers, is not the proper medium for the attainment of the goal described by the proponent of this resolution. In theory, a demurrer is intended to do nothing more than test the sufficiency of the pleadings, and, on appeal, the facts alleged are deemed to be true. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 814.) If the proponent has the proverbial "smoking gun" that would conclude the case in a way that renders discovery and other due process protections for trial on the merits unnecessary, then a Motion to Strike under Code of Civil Procedure sections 435, *et seq.* might be available. If the proponent believes that matters amenable to simple trials should be simply tried, perhaps the solution is to increase the Small Claims jurisdictional limit.

### **SAN DIEGO COUNTY BAR ASSOCIATION**

This resolution would effectively eliminate the ability of parties to develop their cases properly through the use of discovery and to present their cases for decision upon the facts. A demurrer should properly attest only the validity of the pleadings, not the substance of the entire case. This resolution, and related

Resolutions 11-15-2003, 11-16-2003, 11-17-2003 and 11-18-2003, should be disapproved.

**BAR ASSOCIATION OF SAN FRANCISCO**

We oppose this resolution until and unless resolution 04-10-03 is enacted into law, so that attorneys may speed to immediate trials in HOV lanes.