

## RESOLUTION 04-07-05

### DIGEST

#### Motions for Judgment on The Pleadings: Shortened Time for Motions

Amends Code of Civil Procedure section 438 to shorten the time for bringing motions for judgment on the pleadings in forcible entry and detainer actions.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Code of Civil Procedure section 438 to shorten the time for bringing motions for judgment on the pleadings in forcible entry and detainer actions. This resolution should be approved in principle because the time frames currently provided in forcible entry, forcible detainer, and unlawful detainer actions are not appropriate in these cases.

Code of Civil Procedure section 438 prohibits parties from moving for judgment on the pleadings after a pretrial conference order or within thirty days of the date an action is initially set for trial. (Code Civ. Proc., §438, subd. (e).) If the court decides to grant a motion and gives leave to amend, an additional thirty days must be given for the filing of such amendment. (Code Civ. Proc., §438, subd. (h)(2).) However, these time frames are not appropriate given the otherwise expedited nature of these proceedings.

The resolution would benefit parties and courts by eliminating inappropriate claims and defenses prior to trial and encouraging resolution of actions at the pleading stage.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Code of Civil Procedure section 438 to read as follows:

- 1 § 438
- 2 (a) As used in this section:
- 3 (1) "Complaint" includes a cross-complaint.
- 4 (2) "Plaintiff" includes a cross-complainant.
- 5 (3) "Defendant" includes a cross-defendant.
- 6 (b)(1) A party may move for judgment on the pleadings.
- 7 (2) The court may upon its own motion grant a motion for judgment on the pleadings.
- 8 (c)(1) The motion provided for in this section may only be made on one of the following rounds:
- 9 (A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or
- 10 causes of action against the defendant and the answer does not state facts sufficient to constitute a
- 11 defense to the complaint.
- 12 (B) If the moving party is a defendant, that either of the following conditions exist:
- 13 (i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.
- 14 (ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.
- 15 (2) The motion provided for in this section may be made as to either of the following:
- 16 (A) The entire complaint or cross-complaint or as to any of the causes of action stated therein.
- 17 (B) The entire answer or one or more of the affirmative defenses set forth in the answer.
- 18 (3) If the court on its own motion grants the motion for judgment on the pleadings, it shall be one of
- 19 the following bases:
- 20 (A) If the motion is granted in favor of the plaintiff, it shall be based on the grounds that the complaint

21 states facts sufficient to constitute a cause or causes of action against the defendant and the answer  
22 does not state facts sufficient to constitute a defense to the complaint.

23 (B) If the motion is granted in favor of the defendant, that either of the following conditions exist:

24 (i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

25 (ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

26 (d) The grounds for motion provided for in this section shall appear on the face of the challenged  
27 pleading or from any matter of which the court is required to take judicial notice. Where the motion is  
28 based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the  
29 Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and  
30 authorities, except as the court may otherwise permit.

31 (e) No motion may be made pursuant to this section if a pretrial conference order has been entered  
32 pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is  
33 later, unless the court otherwise permits, except in a forcible entry, forcible detainer or unlawful  
34 detainer actions in which case the motion may be made at any time, including at trial.

35 (f) The motion provided for in this section may be made only after one of the following conditions has  
36 occurred:

37 (1) If the moving party is a plaintiff, and the defendant has already filed his or her answer to the  
38 complaint and the time for the plaintiff to demur to the answer has expired.

39 (2) If the moving party is a defendant, and the defendant has already filed his or her answer to the  
40 complaint and the time for the defendant to demur to the complaint has expired.

41 (g) The motion provided for in this section may be made even though either of the following  
42 conditions exist:

43 (1) The moving party has already demurred to the complaint or answer, as the case may be, on the  
44 same grounds as is the basis for the motion provided for in this section and the demurrer has been  
45 overruled, provided that there has been a material change in applicable case law or statute since the  
46 ruling on the demurrer.

47 (2) The moving party did not demur to the complaint or answer, as the case may be, on the same  
48 grounds as is the basis for the motion provided for in this section.

49 (h)(1) The motion provided for in this section may be granted with or without leave to file an amended  
50 complaint or answer, as the case may be.

51 (2) Where a motion is granted pursuant to this section with leave to file an amended complaint or  
52 answer, as the case may be, then the court shall grant 30 days, or five days in the case of forcible  
53 entry, forcible detainer, or unlawful detainer actions, to the party against whom the motion was  
54 granted to file an amended complaint or answer, as the case may be.

55 (3) If the motion is granted with respect to the entire complaint or answer without leave to file an  
56 amended complaint or answer, as the case may be, then judgment shall be entered forthwith in  
57 accordance with the motion granting judgment to the moving party.

58 (4) If the motion is granted with leave to file an amended complaint or answer, as the case may be,  
59 then the following procedures shall be followed:

60 (A) If an amended complaint is filed after the time to file an amended complaint has expired, then the  
61 court may strike the complaint pursuant to Section 436 and enter judgment in favor of that defendant  
62 against that plaintiff or a plaintiff.

63 (B) If an amended answer is filed after the time to file an amended answer has expired, then the court  
64 may strike the answer pursuant to Section 436 and proceed to enter judgment in favor of that plaintiff  
65 and against that defendant or a defendant.

66 (C) Except where subparagraphs (A) and (B) apply, if the motion is granted with respect to the entire  
67 complaint or answer with leave to file an amended complaint or answer, as the case may be, but an  
68 amended complaint or answer is not filed, then after the time to file an amended complaint or answer,  
69 as the case may be, has expired, judgment shall be entered forthwith in favor of the moving party.

70 (i)(1) Where a motion for judgment on the pleadings is granted with leave to amend, the court shall  
71 not enter a judgment in favor of a party until the following proceedings are had:

72 (A) If an amended pleading is filed and the moving party contends that pleading is filed after the time  
73 to file an amended pleading has expired or that the pleading is in violation of the court's prior ruling

74 on the motion, then that party shall move to strike the pleading and enter judgment in its favor.  
75 (B) If no amended pleading is filed, then the party shall move for entry of judgment in its favor.  
76 (2) All motions made pursuant to this subdivision shall be made pursuant to Section 1010.  
77 (3) At the hearing on the motion provided for in this subdivision, the court shall determine whether to  
78 enter judgment in favor of a particular party.

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

PROPONENT: Bar Association of San Francisco

#### STATEMENT OF REASONS

Existing Law: Is unclear as to whether motions for judgment on the pleadings are available in forcible entry, forcible detainer, or unlawful detainer actions.

This Resolution: Would shorten the time in which to move for judgment on the pleadings in forcible entry, forcible detainer and unlawful detainer actions, and provide shortened time for amendment of pleadings following the grant of such motions.

The Problem: Code of Civil Procedure section 438 prohibits parties from moving for judgment on the pleadings after a pretrial conference order or within thirty days of the date an action is first set for trial. (Code Civ. Proc., ' 438, subd. (e).) If the court grants a motion and gives leave to amend, it must allow an additional thirty days for the filing of any such amendment. (Code Civ. Proc., ' 438, subd. (h)(2).) These timeframes, however, are usually impossible to meet within the shortened timeframes provided form in forcible entry, forcible detainer, and unlawful detainer actions.

A statutory motion for judgment on the pleadings benefits parties and courts by eliminating non-cognizable and inapposite claims and defenses prior to trial. Amending the statute to provide for shortened timeframes for moving for judgment on the pleadings in summary actions would promote the similar resolution of suitable actions at the pleading stage.

In accordance with CDCBA rules, BASF timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

#### IMPACT STATEMENT

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

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