

RESOLUTION 09-01-08

DIGEST

Summary Adjudication: Permitted on Different Theories of Liability

Amends Code of Civil Procedure section 437c, subdivision (f)(1), to permit summary adjudication of each separate theory of liability alleged in the pleading.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 437c, subdivision (f)(1), to permit summary adjudication of each separate theory of liability alleged in the pleading. This resolution should be approved in principle because a motion for summary adjudication is intended to address separate theories of liability, even if those theories are combined with other theories of liability in a single cause of action.

Motions for summary adjudication dispose of non-meritorious portions of pleadings before trial, and are in the interest of both the litigants and judicial economy. Only legally meritorious allegations should proceed to trial. Occasionally, a poorly drafted pleading will include more than one theory of liability in a single cause of action. This resolution is based on existing case law. (*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848.) *Lilienthal's* validity has been questioned by subsequent case law, as it was based upon an earlier version of section 437c, subdivision (f)(1). This amendment would make the *Lilienthal* analysis applicable to section 437c, as amended, and permit summary adjudication of each separate theory of liability, whether or not it arises from the invasion of a single primary right.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend section 437c of the Code of Civil Procedure to read as follows:

- 1 §437c
- 2 [Subdivisions (a) through (e) remain unchanged.]
- 3 (f)(1) A party may move for summary adjudication as to one or more causes of
- 4 action within an action, one or more affirmative defenses, one or more claims for damages,
- 5 or one or more issues of duty, if that party contends that the cause of action has no merit or
- 6 that there is no affirmative defense thereto, or that there is no merit to an affirmative
- 7 defense as to any cause of action, or both, or that there is no merit to a claim for damages,
- 8 as specified in Section 3294 of the Civil Code, or that one or more defendants either owed
- 9 or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall
- 10 be granted only if it completely disposes of a cause of action, an affirmative defense, a

11 claim for damages, or an issue of duty. For purposes of summary adjudication, a “cause of
12 action” shall refer to a separate theory of liability rather than the invasion of a primary
13 right. Summary adjudication may be granted where recovery is sought on separate and
14 distinct obligations which give rise to separate claims, even if those claims are grouped
15 together and pled as a single purported “cause of action” in the pleading which is the
16 subject of the motion.

17 [Subdivisions (f)(2) through (s) remain unchanged.]

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

PROPONENT: Beverly Hills Bar Association

STATEMENT OF REASONS:

Existing Law: Current law is uncertain as to whether a motion for summary adjudication can be granted when the motion either (a) addresses a separate theory of liability even though other causes of action involve the same “primary right”; or (b) addresses one or more separate and distinct obligations giving rise to separate claims which happen to be grouped together in a pleading and denominated a single “cause of action.”

This Resolution: Amends Code of Civil Procedure section 437c(f)(1) to define “cause of action” in the context of summary adjudication. It specifically permits summary adjudication where a separate theory of liability is legally deficient or factually unsupported even though other causes of action are viable and supported and involve invasion of the same primary right. It also permits summary adjudication where one or more separate and distinct obligations which give rise to separate claims happen to be grouped together in a pleading and denominated a single “cause of action.”

The Problem: This proposed statutory amendment is intended to address a body of inconsistent case law which defines a “cause of action” in different ways for purposes of determining whether summary adjudication may be granted. In *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, the Court of Appeal for the First District, Division Two, rejected the “primary right” definition, and instead defined “cause of action” for purposes of summary adjudication as referring to a group of related paragraphs in the complaint reflecting a separate theory of liability. *Lilienthal* specifically permitted summary adjudication on the merits of motions addressing separate and distinct wrongful acts which are combined in the same purported cause of action in a complaint but which could have been pled as separate causes of action. However *Lilienthal* was questioned by the Court of Appeal for the Second District, Division One, in *Bagley v. TRW, Inc.* (1999) 73 Cal.App.4th 1092, 1094-95 n.2, and the Court of Appeal for the Second District, Division Seven, revived the “primary right” theory in *Hindin v. Rust* (2004) 118 Cal.App.4th 1247, 1257. The case law remains divided. Application of the primary rights theory of *Hindin*, for example, would have precluded separate adjudication of a “negligent entrustment” theory of liability in *Jeld-Wen, Inc. v. Superior Court* (2005), 131 Cal.App.4th 853, since it merely addressed a single theory of liability but did not completely dispose of the

invasion of a single primary right (i.e., the right to be free from the alleged harm inflicted by the defendant). This resolution opts for the approach advanced by Lilienthal. It serves judicial economy and the administration of justice to try cases only on those theories which have legal support and only on those distinct wrongful acts giving rise to a separate claim which have factual support.

IMPACT STATEMENT:

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

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