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Reshaping the paradigm: How the Florida Supreme Court's adoption of the federal summary judgment standard will improve the Florida court system

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Effective May 1, 2021, as a result of the Florida Supreme Court's sua sponte opinion, Florida courts will apply the federal summary judgment standard in all cases, joining the "supermajority of states" that have already done so.[1]

> Practitioners and judges might be surprised to learn that summary judgment procedures were originally devised to assist poorer plaintiffs in recovering what was rightfully theirs.

Specifically, the Florida Supreme Court's decision amended Rule 1.510 to "adopt[] the summary judgment standard articulated by the United States Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)."[2]

This amendment to Florida's summary judgment procedure has fueled a debate in Florida legal circles (mostly divided into two camps: the plaintiffs' bar and the defense bar): is this good or bad for the Florida court system? I say it is good.

This is a positive change for Floridians — litigants, attorneys, and judges alike — and it should be seen that way. The federal standard originated as, and remains today, a tool used to resolve disputes more efficiently, or at the very least to whittle down the claims and defenses for a more focused and manageable trial. True, many practitioners and judges view the federal summary judgment procedure as being "pro-defendant" or "anti-plaintiff." But does it really favor one side? Or does it favor a result?

This article aims to reshape the federal summary judgment paradigm from one that might favor one side over the other, to one that furthers the stated purpose of the Florida and federal rules of civil procedure "to secure the just, speedy, and inexpensive determination of every action."[3]

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Today, however, there seems to be a popular belief that summary judgment procedures — particularly those outlined in the famous "trilogy" — aid defendants. But, statistically speaking, the so-called federal summary judgment "trilogy" has not resulted in any significant changes to how often federal judges grant or deny summary judgment in favor of or against defendants (or plaintiffs).[5]

How frequently courts grant summary judgment in favor of a particular class of litigants should not matter at all. The inquiry should focus on the frequency in which courts get it right. In other words, if courts routinely grant summary judgment in favor of plaintiffs in particular cases (and they get it right), then it seems that the procedure is furthering the objective of ensuring a speedy right to recovery.

The Florida Supreme Court's adoption of the federal summary judgment standard, therefore, should be viewed as a positive shift towards streamlining litigation if one can accept the premise that it will assist Florida courts in their endeavor to "get it right."

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In its opinion adopting the federal summary judgment standard, the Florida Supreme Court noted "three particularly consequential differences" between Florida and federal court summary judgment jurisprudence, notwithstanding that the federal rule (Rule 56) and the Florida rule (Rule 1.510) share "the same overarching purpose" and the critical sentences of each rule "are materially indistinguishable."[6]

First, the Court noted that Florida courts have declined to recognize that the substantive inquiry is the same for both summary judgment and directed verdict: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law."[7]

One can hardly quarrel with the proposition that a jury is not needed when the evidence favors overwhelmingly one side over the other. That is true at the summary judgment and trial stages, and it is true for both plaintiffs and defendants.

Second, "Florida courts have required the moving party conclusively to disprove the nonmovant's theory of the case in order to eliminate any issue of fact."[8] The *Celotex* decision, on the other hand, made it possible for the movant to prevail at summary judgment by showing the trial court "that there is an absence of evidence to support the nonmoving party's case."[9] That holding seems beyond reproach no matter whether it is a defendant prevailing against a nonmeritorious claim or a plaintiff overcoming similarly infirm defenses.

It is difficult to criticize a standard that clears the state dockets by eliminating the need to devote jury trial resources to cases where the only factual disputes that exist are "incredible" or "trivial."

Finally, the Florida Supreme Court noted that "Florida courts have adopted an expansive understanding of what constitutes a genuine (i.e., triable) issue of material fact."[10]

In contrast with the federal standard, which requires a nonmoving party to "do more than simply show that there is some metaphysical doubt as to the material facts,"[11] the Florida standard had permitted the existence of "any" evidence to create an issue of fact, "however credible or incredible, substantial or trivial ... so long as the slightest doubt is raised."[12]

The Florida state court system has been backlogged for years, and the pandemic is only making matters worse. It is difficult to criticize a standard that clears the state dockets by eliminating the need to devote jury trial resources to cases where the only factual disputes that exist are "incredible" or "trivial."

In adopting the federal standard, Florida litigants with a "genuine dispute as to any material" fact will have their day in court. This standard has worked well for the federal courts, and the "supermajority" of state courts that have adopted it. There is no good reason to believe it would benefit Florida courts any less.

The Florida Supreme Court should be lauded for its effort to streamline litigation in Florida state courts. There is no doubt that there will be critics of this newly adopted standard.[13] Let us see how this unfolds. Hopefully all litigants — plaintiffs and defendants — will better achieve "the just, speedy, and inexpensive determination of every action."[14]

Notes

[1] *In re Amendments to Fla. Rule of Civil Procedure 1.510*, No. SC20-1490, 2020 WL 7778179, at *1 (Fla. Dec. 31, 2020) (internal citations omitted).

[2] *Id.*

[3] Fla. R. Civ. P. 1.010; Fed. R. Civ. P. 1.

[4] *Procedural History: The Development of Summary Judgment as Rule* 56, 5 N.Y.U. J. L. & Liberty 173, 175-184 (detailing history of summary judgment procedures designed to "facilitate[] plaintiff's retrieval of their money without needless litigation"); *The Evolution of the Summary Judgment Procedure: An Essay Commemorating the Centennial Anniversary of Keating's Act*, 31 Ind. L.J. 329 (1956) (explaining that the English summary judgment procedures came in response to please from laypersons who complained about the "delays and technicalities of common law procedure").

[5] *See* Joe Cecil et al., Fed. Judicial Ctr., Trends in Summary Judgment Practices: 1975-2000 (2007) (finding that, in nearly all cases, the rate of filing and granting summary judgment changed very little after the "trilogy").

[6] *In re Amendments to Fla. Rule of Civil Procedure 1.510*, No. SC20-1490, 2020 WL 7778179, at *1.

[7] *Id.* (internal citations omitted).

[8] *Id.* (internal citations omitted).

[9] 477 U.S. 317 at 325.

[10] *In re Amendments to Fla. Rule of Civil Procedure 1.510*, No. SC20-1490, 2020 WL 7778179, at *2.

[11] *Matsushita*, 475 U.S. 574 at 586.

[12] *In re Amendments to Fla. Rule of Civil Procedure 1.510*, No. SC20-1490, 2020 WL 7778179, at *2 (internal citations omitted).

[13] *See In re Amendments to Fla. Rule of Civil Procedure 1.510*, No. SC20-1490, 2020 WL 7778179, at *3 (Labarga, J., dissenting) ("Fully recognizing the imperative that Florida's state courts operate efficiently, I nonetheless dissent to today's decision, which infringes upon the role of the jury in deciding disputes in civil cases.").

[14] *See* Fla. R. Civ. P. 1.010; Fed. R. Civ. P. 1.

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