

§ 6.7 Motions for Summary Judgment and Summary Adjudication

Motions for summary judgment (“MSJ”) and motions for summary adjudication (“MSA”) are intended to either dispose of a case entirely (summary judgment) or to dispose of some, but not all, of the issues in a case (summary adjudication). They are used where material facts (the ones on which liability would turn) are undisputed. If facts are undisputed, there is no need for the court or jury (triers of fact) to determine those facts. Instead, the rights of the parties can be determined as a matter of law. Either party can file these motions.

For example, in our case, assume Mr. Wronged has sued Mr. Wrongdoer on only one theory, negligence, on the sole basis that Mr. Wrongdoer was exceeding the posted speed limit, that the speeding caused the accident, and the accident resulted in Mr. Wronged suffering damages. In order to prevail, Mr. Wronged’s lawyer has to prove every one of those elements. What if Mr. Wrongdoer’s lawyer can prove, and Mr. Wronged’s lawyer has absolutely no facts to dispute, that Mr. Wrongdoer was traveling at or under the posted speed limit? In that case, since a material element of the cause of action would be missing, the cause of action would fail. Given that Wronged only sued on that one cause of action, there would be nothing left for a trier of fact to determine. Thus, Mr. Wrongdoer should prevail on his MSJ, ending the lawsuit.

If there are no disputed facts as to one cause of action or a particular element of a cause of action, but there are disputed facts as to another cause of action or element of a cause of action, neither party would be entitled to summary judgment, but one may be entitled to summary adjudication. For example, assume Mr. Wronged alleged two causes of action against Mr. Wrongdoer, one for negligence for speeding, and one for breach of statutory duty as owner of the vehicle for failing to fix the car’s broken tail lights. If Mr. Wrongdoer can prove, and Mr. Wronged cannot dispute, that he was traveling at the speed limit, Wrongdoer could file an MSA as to the cause of action involving speeding, but the statutory duty cause of action would remain.

On the other hand, assume Mr. Wronged can prove, and Mr. Wrongdoer cannot dispute, that Mr. Wrongdoer was traveling 20 miles over the posted speed limit. In that case, Mr. Wronged may seek summary adjudication on the element of breach of duty; he would still have to prove at trial that the breach caused the accident and the resulting damages.

An MSA may be brought by itself or in the alternative to an MSJ. For example, if a party believes it can show that there are no disputed facts as to any of the four elements of a particular cause of action, but realizes that there might be disputed facts as to one or more of the elements, that party might move for summary judgment, and in the alternative for summary adjudication.

MSJ’s and MSA’s are governed by C.C.P. § 437c and C.R.C., Rules 3.1350-3.1354. Either party may bring these motions at any time after 60 days have elapsed since the appearance of the opposing party. **The motions must be heard at least 30 days before trial.** (C.C.P. § 437c(a))