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2023 Edition

Motion for Summary Judgment

A Guide to Resources in the Law Library

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This guide links to advance release opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar **and Harvard's Case Law Access Project**. The online versions are for informational purposes only.

References to online legal research databases refer to in-library use of these databases. Remote access is not available.

See Also:

- [Answer, Special Defense, Counterclaim and Setoff to a Civil Complaint](#)
- [Motion to Dismiss](#)
- [Motion to Strike](#)
- [Oral Argument in Civil Matters](#)
- [Request to Revise](#)

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Introduction

A Guide to Resources in the Law Library

- **Motion for Summary Judgment:** **"In any action, including administrative** appeals which are enumerated in Section 14-7, any party may move for a summary judgment as to any claim or defense as a matter of right at any time if no scheduling order exists and the case has not been assigned for trial. If a scheduling order has been entered by the court, either party may move for summary judgment as to any claim or defense as a matter of right by the time specified in the scheduling order. If no scheduling order exists but the case has been assigned for trial, a party must move for permission of the judicial authority to file a motion for summary judgment. These rules shall be applicable to counterclaims and cross complaints, so that any party may move for summary judgment upon any counterclaim or cross complaint as if it were an independent action. The pendency of a motion for summary judgment shall delay trial only at the discretion of the trial judge" **Conn. Practice Book § [17-44](#)** (2023).
- **Supporting Documents:** "A motion for summary judgment shall be supported by appropriate documents, including but not limited to affidavits, certified transcripts of testimony under oath, disclosures, written admissions and other **supporting documents.**" Conn. Practice Book § [17-45\(a\)](#) (2023).
- **Opposition to Summary Judgment:** **"Unless otherwise ordered by the judicial** authority, any adverse party shall file and serve a response to the motion for summary judgment within forty-five days of the filing of the motion, including opposing affidavits and other available documentary evidence." Conn. Practice Book § [17-45\(b\)](#) (2023).
- **Affidavits:** **"Supporting and opposing affidavits shall be made on personal** knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be **attached thereto.**" **Conn. Practice Book § [17-46](#)** (2023).
- **Judgment:** **"The judgment sought shall be rendered forthwith if the** pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a **matter of law.**" **Conn. Practice Book § [17-49](#)** (2023).
- **Material Fact:** **"is a fact which will make a difference in the result of the case."** [Hospital of Central Connecticut v. Neurosurgical Associates, P.C.](#), 139 Conn. App. 778, 783, 57 A.3d 794 (2012).
- **Partial Summary Judgment as to Liability:** **"A summary judgment,** interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to damages. In such case the judicial authority shall order an immediate hearing before a judge trial referee, before the court, or before a jury, whichever may be proper, to determine the amount of the damages. If the determination is by a jury, the usual procedure for setting aside the verdict shall be applicable. Upon the conclusion of these proceedings, the judicial authority shall forthwith render the appropriate summary judgment." **Conn. Practice Book § [17-50](#)** (2023).

Section 1: Motion for Summary Judgment

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to general information on motions for summary judgment.

DEFINITIONS:

- Summary judgment: "is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a **matter of law**....The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried....The test for granting summary judgment is whether the moving party would be entitled to a directed verdict on the same facts.... The test for granting summary judgment is whether the moving party would be entitled to a directed verdict on the same facts." [Wilson v. New Haven](#), 213 Conn. 277, 279, 567 A.2d 829 (1989).
- Standard of Review: "Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.... In deciding a motion for summary judgment, the trial court must view the evidence in the light most **favorable to the nonmoving party.**" [Robinson v. Cianfarani](#), 314 Conn. 521, 524, 107 A.3d 375 (2014).
- Trial court function: "[T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment.... [Its] function is not to decide issues of material fact, but rather to determine whether any such **issues exist.**" [Vestuti v. Miller](#), 124 Conn. App. 138, 142, 3 A.3d 1046 (2010).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Connecticut Practice Book (2023)
 - § [11-10](#). Requirement That Memorandum of Law Be Filed with Certain Motions.
 - § [17-44](#). Summary Judgments; Scope of Remedy.
 - § [17-45](#). --Proceedings upon Motion for Summary Judgment; Request for Extension of Time to Respond.
 - § [17-46](#). --Form of Affidavits.
 - § [17-47](#). --When Appropriate Documents Are Unavailable
 - § [17-48](#). --Affidavits Made in Bad Faith
 - § [17-49](#). --Judgment
 - § [17-50](#). --Triable Issue as to Damages Only
 - § [17-51](#). --Judgment for Part of Claim
 - § [19-3](#). Reference to Judge Trial Referee

FORMS:

- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (Also available on Westlaw).
Form 106.15. Motion for Summary Judgment

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*
Margaret P. Mason, editor, 2022 ed., LexisNexis.
 - § 16.21. Form: Motion for Summary Judgment
 - § 16.22. Form: Memorandum of Law in Support of Motion for Summary Judgment
 - § 16.23. Form: Affidavit in Support of Motion for Summary Judgment

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, 2023 ed., Thomson West (Also available on Westlaw).
Chapter 3. Summary Judgment or Summary Adjudication
VI. Sample Forms
 - § 3:127. Sample supporting and opposition briefs

 - § 3:128. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Notice of motion for summary judgment

 - § 3:129. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Negligence action — Failure to produce evidence of injury caused by breach of duty — Motion

 - § 3:130. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Action alleging violation of franchise act and unfair trade practices act — **Defendant not a “franchise”** within meaning of statute — Motion

 - § 3:131. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Memorandum of points and authorities in support of motion for summary judgment — Defamation

 - § 3:132. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Memorandum of points and authorities in support of motion for summary judgment — Negligence action against municipal fire department

 - § 3:133. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Memorandum of points and authorities in support of motion for summary judgment — Negligence action against bus owner

§ 3:134. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Memorandum of points and authorities in support of motion for summary judgment – Negligence action against owner of premises

§ 3:135. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Memorandum of points and authorities in support of motion for summary judgment – Negligence action against power company barred by res adjudicata

§ 3:136. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Memorandum of points and authorities in support of motion for summary judgment – Negligence action against water authority

§ 3:139. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Request for judicial notice in support of motion for summary judgment

- *Library of Connecticut Collection Law Forms*, Robert M. Singer, Connecticut Law Tribune, 2016.
 - 6. Actions for Accounting
 - 6-012. Defendants Motion for Summary Judgment Liquidated Damages Provision, page 275
 - 9. Motions
 - 9-020. Motion for Summary Judgment (**plaintiff's** motion), page 499
 - 9-032. Motion for Summary Judgment (**defendant's** motion), page 549
 - 11. Special Defenses
 - 11-013. **Plaintiff's Motion for Summary Judgment—**Limitation of Liability Clause
 - 19. Attorney Collection of Fees
 - 19-006. Motion for Summary Judgment on Counterclaim—Based on Statute of Limitations, page 1133
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
 - Chapter 27. Motion for Summary Judgment
 - Example 3, Motion for Summary Judgment and Memorandum of Law pp. 257-260

CASE LAW:

- [Carolina Casualty Insurance Company v. Connecticut Solid Surface LLC.](#), 207 Conn. App. 525, 262 A.3d 885 (2021).

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

“The fundamental purpose of summary judgment is preventing unnecessary trials.... If a plaintiff is unable to present sufficient evidence in support of an essential element of his cause of action at trial, he cannot prevail as a matter of law.... To avert these types of ill-fated cases from advancing to trial, following adequate time for discovery, a plaintiff may properly be called upon at the summary judgment stage to demonstrate that he possesses sufficient counterevidence to raise a genuine issue of material fact as to any, or even all, of the essential elements of his cause of action....

‘It is not enough ... for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact ... are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court.... [T]ypically [d]emonstrating a genuine issue requires a showing of evidentiary facts or substantial evidence outside the pleadings from which material facts alleged in the pleadings can be warrantably inferred.... Only if the defendant as the moving party has submitted no evidentiary proof to rebut the allegations in the complaint, or the proof submitted fails to call those allegations into question, may the plaintiff rest upon factual allegations alone....

‘[I]ssue-finding, rather than issue-determination, is the key to the procedure.... [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment.... [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist.... Our review of the decision to grant a motion for summary judgment is plenary.... We therefore must decide whether the court's conclusions were legally and logically correct and find support in the record.’ (Citations omitted; footnote omitted; internal quotation marks omitted.) [Brown v. Otake](#), 164 Conn. App. 686, 699-701, 138 A.3d 951 (2016).”

- [Reilly v. Reilly](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FSTCV165015959S (February 21, 2018) (65 Conn. L. Rptr. 905) (2018 WL 1459933) (2018 Conn. Super. LEXIS 349). “There is no appellate authority settling the issue of the appropriateness of a motion for summary judgment in a probate appeal. There is a split of authority in the Superior Courts on this issue. In numerous decisions, Superior Court judges have determined that summary judgment motions are appropriate in probate appeals. . . . In other Superior Court cases, courts have held that summary judgment is not permitted in an appeal from probate. . . . This court adopts the reasoning of the

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cases which hold that a summary judgment motion is appropriate in a probate appeal.”

- Soderburg v. Unitrin Preferred Ins. Co., Superior Court, Judicial District of Tolland at Rockville, No. CV-166010893-S (July 24, 2018) (2018 WL 3862230) (2018 Conn. Super. LEXIS 1511). “For each of these three insurers, the latest possible manifestation date was the last day of the last policy period for which the policy was effective. . . . The present action commenced in 2016, more than one year after the latest possible trigger date for these liabilities under these policies. All three insurers utilized virtually the same one-year limitation of action language in their insurance contracts with the plaintiffs, and, consequently, these three defendants are entitled to summary judgment as a matter of law.

The motion by Covenant is denied because there exists a genuine factual dispute concerning whether the loss, purportedly covered by its policy, was triggered during the relevant policy period and was the type of loss for which Covenant is liable.”

- Kobylanska v. Northstar Condo. Ass'n, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. CV-146021406-S, (July 26, 2016) (62 Conn. L. Rptr. 757) (2016 WL 4507308) (2016 Conn. Super. LEXIS 2055). “**It is** unclear whether the defendant failed to apprehend the now-identified issues in the complaint when it was first reviewed, or whether the defendant decided, as a tactical matter, to raise the deficiency for the first time in order to prevent the plaintiffs from filing a substitute pleading. The Supreme Court has considered the circumstances under which it is appropriate to employ a motion for summary judgment in situations where the issues might have been addressed by a motion to strike. In Larobina v. McDonald, 274 Conn. 394, 400, 876 A.2d 522 (2005), the Supreme Court discussed at length the differences between a motion to strike and a motion for summary judgment. The court also noted that the use of a motion for summary judgment instead of a motion to strike may be unfair to the nonmoving party **because** “[t]he granting of a defendant’s motion for summary judgment puts the plaintiff out of court . . . [while the] granting of a motion to strike allows the plaintiff to replead his or her case With these authorities in mind, we conclude that the use of a motion for summary judgment to challenge the legal sufficiency of a complaint is appropriate when the complaint fails to set forth a cause of action and the defendant can establish that the defect could not be cured by repleading If it is clear on the face of the complaint that it is legally insufficient and that an opportunity to amend it would not help the plaintiff, we can perceive no reason why the defendant should be prohibited

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from claiming that he is entitled to judgment as a matter of law and from invoking the only available procedure for raising such a claim after the pleadings are closed.’ (Citations omitted; internal quotation marks omitted.) *Larobina v. McDonald*, supra, 400-02.

Accordingly, in order for the defendant to prevail in its motion for summary judgment the court must not only determine that allegations of the complaint are legally insufficient, but also that affording the plaintiffs the **opportunity to replead would not help them.**”

- [Brown v. Otake](#), 164 Conn App. 686, 708, 138 A.3d 951 (2016). “**According to the court's articulation, summary judgment was warranted on the negligent misrepresentation count because '[t]here were no facts presented that showed negligent representation on the part of these defendants.'** With respect to the count alleging intentional misrepresentation, the court articulated that it **granted summary judgment because '[t]here were no facts presented that any misrepresentations were made, negligent or false.'** On the basis of our review of the record, including the arguments of the parties at summary judgment, we construe the court's ruling as holding that the plaintiff failed to present any evidence rebutting the proof submitted by the defendants showing that the representations on which the plaintiff relies as misrepresentations were never made, thereby establishing a lack of a genuine issue of material fact on an essential element necessary to prevail at trial on either misrepresentation count. That conclusion is legally and logically correct, and supported by the record. Once the defendants presented evidence demonstrating the lack of a genuine issue of material fact regarding the existence of a misrepresentation of fact, the evidentiary burden shifted to the plaintiff, and he could no longer rely solely upon the allegations in his complaint. To survive summary judgment, the plaintiff needed to marshal some evidence countering that submitted by the defendants, and it was not the court's responsibility to search the evidentiary record provided by the moving party on his behalf. Having failed to present any evidence himself or to reference any portion of the evidence submitted by the defendants, the plaintiff failed to meet his burden. Accordingly, we conclude that the court properly granted summary judgment on the **misrepresentation counts as a matter of law.**”
- [Ramos v. J.J. Mottes Co.](#), Superior Court, Judicial District of Hartford, CV 09-6006373-S (December 1, 2015) (61 Conn. L. Rptr. 329) (2015 WL 9595342) (2015 Conn. Super. LEXIS 2949). “**Because a party may now file a motion for summary judgment even before the pleadings are closed, a party no longer must plead a time limitation as a special**

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defense prior to moving for summary judgment. 'If [the court] were to hold that a motion for summary judgment cannot be made prior to pleading a statute of limitations as a special defense, [the court] would negate that portion of §[17-44] that provides that a motion for summary judgment can be made "at any time," without the necessity of closing the pleadings.' (Footnote omitted.) [Girard v. Weiss](#), 43 Conn. App. 397, 416, 682 A.2d 1078, cert. denied, 239 Conn. 946, 686 A.2d 121 (1996). 'When there is no such material fact in dispute or where there is agreement of the parties as to every relevant fact, we conclude that the pleadings need not be closed in order to move for summary judgment.' *Id.*, 417. In *Girard*, the court held that since the parties did not disagree as to the facts, the trial court could properly consider the motion for summary judgment. *Id.*"

- [Glencore, Ltd. v. Winkler](#), Superior Court, Judicial District of Stamford-Norwalk, No. CV 13-5014052-S, (Aug. 11, 2015), (60 Conn. L. Rptr. 806) (2015 WL 5315410) (2015 Conn. Super. LEXIS 2107). "Essentially as a tautology, a motion for summary judgment is intended to lead to a 'judgment.' The court is unaware of any general authority in Connecticut for using the summary judgment procedure to eliminate a defense separate from consideration of the merits of the claim to which it is claimed to be applicable (as opposed to rendering judgment in favor of a defendant based on a defense)—deleting a defense but without issuance of any order coming within the scope of the concept of 'judgment.' Thus, Practice Book § 17-49, relating to the consequences of a successful motion for summary judgment, provides: 'The judgment sought shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' A judgment can enter on a successful motion for summary judgment by a defendant on a special defense (assuming it to be a complete defense, as opposed to a partial defense such as comparative negligence), as that would result in a judgment for the defendant on plaintiff's complaint. Summary judgment for a plaintiff successfully disproving a defense but not proving the merits of its own claim would result in a ruling characterized as...?"
- [Robinson v. Cianfarani](#), 314 Conn. 521, 524, 107 A.3d 375 (2014). "We begin by setting forth the applicable standard of review. 'The standards governing our review of a trial court's decision to grant a motion for summary judgment are well established. Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and

that the moving party is entitled to judgment as a matter of law.... In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.... The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law ... and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact.... A material fact ... [is] a fact which will make a difference in the result of the case.' (Internal quotation marks omitted.) [Rompney v. Safeco Ins. Co. of America](#), 310 Conn. 304, 77 A.3d 726 (2013). 'When ... the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record.' (Internal quotation marks omitted.) [Vendrella v. Astriab Family Ltd. Partnership](#), 311 Conn. 301, 313, 87 A.3d 546 (2014)."

- [Mott v. Wal-Mart Stores East, LP](#), 139 Conn. App. 618, 628, 57 A.3d 391, 397 (2012). "To prevail on a motion for summary judgment, however, the defendant had an obligation to negate the factual claims as framed by the complaint. To that end, it was incumbent on the defendant to provide the court with more than its belief that it was 'readily evident' that the plaintiff ultimately would be unable to meet his obligation at trial to produce evidence to prove that the defendant had actual or constructive notice of the alleged defect. In other words, before the plaintiff had acquired any obligation to produce evidence that would tend to show that the defendant, in fact, had notice of the defect, the defendant had the burden of producing evidentiary support for its assertion that its lack of notice was an undisputed fact."
- [Kindred Nursing Centers East, LLC v. Morin](#), 125 Conn. App. 165, 169-70, 7 A.3d 919, 921 (2010). "Before addressing the merits of the plaintiff's arguments, we must address our authority to consider them. Ordinarily, the denial of a motion for summary judgment is not appealable. [Brown & Brown, Inc. v. Blumenthal](#), 288 Conn. 646, 653, 954 A.2d 816 (2008). That rule does not apply, however, if the moving party was not afforded the opportunity to have a full trial on the merits. [Bristol v. Vogelsonger](#), 21 Conn.App. 600, 609, 575 A.2d 252 (1990). Because the trial court in this case granted the defendant's motion for summary judgment, the plaintiff's appeal falls within this exception to the general rule, and, accordingly, it is properly before us."
- [Maltas v. Maltas](#), 298 Conn. 354, 370, 2 A.3d (2010). "The trial court apparently concluded that, because as a general

matter, foreign judgments are presumed valid and the burden of proving that the foreign court lacked jurisdiction lies with the assailant; see [Packer Plastics, Inc. v. Laundon](#), supra, 214 Conn. 57; it was necessary for the defendant, at this stage of the proceedings, to satisfy that burden. We disagree with that determination. Rather, the burden of proof on a motion for summary judgment remains with the moving party even when, as here, the nonmoving party will bear the burden of persuasion at trial. 'Although the burden of setting aside [a foreign default] judgment rests upon the party against whom it is sought to be enforced ... where the personal jurisdiction issue is resolved on summary judgment, it is the moving party's burden to establish that there is no genuine issue of material fact, and an entitlement to prevail as a matter of law.... In resolving this question, we treat the proffered materials in the light most favorable to the nonmoving party.'....

Because the plaintiff sought summary disposition of this matter, thereby depriving the defendant of the right to a trial, *the plaintiff* bore the heavy burden of showing that there were no real issues to be tried and that judgment in his favor unquestionably was warranted as a matter of law. Because the plaintiff failed to make that showing, the trial court improperly rendered summary judgment in his favor. The judgment is reversed and the case is remanded for **further proceedings according to law.**"

- [Brown & Brown, Inc. v. Blumenthal](#), 288 Conn. 646, 653, 954 A.2d 816 (2008). "In the present case, the plaintiff appeals from the trial court's denial of its motion for summary judgment. The denial of a motion for summary judgment does not result in a judgment, however, and no judgment **therefore was rendered.** 'As a general rule, an interlocutory ruling may not be appealed pending the final disposition of a case. See, e.g., [Doublewal Corp. v. Toffolon](#), 195 Conn. 384, 388, 488 A.2d 444 (1985); see also [State v. Curcio](#), [supra, 191 Conn. at 30, 463 A.2d 566] (right of appeal is purely statutory and is limited to appeals by aggrieved parties from final judgments). The denial of a motion for summary judgment ordinarily is an interlocutory ruling and, accordingly, not a final judgment for purposes of appeal. See, e.g., [Connecticut National Bank v. Rytman](#), 241 Conn. 24, 34, 694 A.2d 1246 (1997).'"
- [Barasso v. Rear Still Hill Road, LLC, et al.](#), 81 Conn. App. 798, 802, 842 A.2d 1134 (2004). "Because litigants ordinarily have a constitutional right to have issues of fact decided by the finder of fact, the party moving for summary judgment is held to a strict standard. '[H]e must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine

issue of material fact.’ (Internal quotation marks omitted.) [Town Bank & Trust Co. v. Benson](#), 176 Conn. 304, 307, 407 A.2d 971 (1978). A material fact is a fact that will make a difference in the result of the case. [Hammer v. Lumberman’s Mutual Casualty Co.](#), 214 Conn. 573, 578, 573 A.2d 699 (1990). ‘[T]he burden of showing the nonexistence of any material fact is on the party seeking summary judgment It is not enough for the moving party merely to assert the absence of any disputed factual issue; the moving party is required to bring forward evidentiary facts, or substantial evidence outside the pleadings to show the absence of any material dispute.’ (Emphasis in original; citation omitted; internal quotation marks omitted.) [Doty v. Shawmut Bank](#), 58 Conn. App. 427, 430, 755 A.2d 219 (2000). The party opposing summary judgment must present a factual predicate for his argument to raise a genuine issue of fact. [Wadia Enterprises, Inc. v. Hirschfeld](#), 224 Conn. 240, 250, 618 A.2d 506 (1992). Once raised, if it is not conclusively refuted by the moving party, a genuine issue of fact exists, and summary judgment is inappropriate.

The court is required to view the facts presented in a motion for summary judgment in the light most favorable to the party opposing the motion. [Mingachos v. CBS, Inc.](#), 196 Conn. 91, 111, 491 A.2d 368 (1985). ‘[I]ssue-finding, rather than issue-determination, is the key to the procedure.’ (Internal quotation marks omitted.) [Michaud v. Gurney](#), 168 Conn. 431, 433, 362 A.2d 857 (1975). ‘[T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist.’ (Internal quotation marks omitted.) [Kroll v. Sebastian](#), 58 Conn. App. 262, 265, 753 A.2d 384 (2000).”

- [Krevis v. City of Bridgeport](#), 262 Conn. 813, 823, 817 A. 2d 628 (2003). “In the present case, the colloquy between the plaintiff’s counsel and the court reveals that the plaintiff’s counsel was well aware of the procedural requirements for a motion for summary judgment. Nevertheless, after having conferred with his client, the plaintiff’s counsel asked the court to rule immediately on the question of law in order to avoid presenting evidence for several days, after which the court might grant a motion for a directed verdict. We are satisfied on this record that the plaintiff’s counsel knowingly waived compliance with the procedural provisions of the **Practice Book relating to motions for summary judgment.**”
- [Dugan v. Mobile Medical Testing Services, Inc. et al.](#), 265 Conn. 791, 814, 830 A.2d 752 (2003). “Viewing the evidence in the light most favorable to the plaintiff, as we are required to do in determining the propriety of a ruling

on a defendant's motion for summary judgment, we cannot reject the plaintiff's interpretation of Keefe's actual statement. We conclude that, in light of the nature of the services performed, as well as the totality of the circumstances of this case, the plaintiff's interpretation of Keefe's statement certainly is a fair and reasonable one.

Therefore, we conclude that the trial court's decision is inconsistent with the proper standards governing rulings on motions for summary judgment. We have held that summary judgment 'is appropriate only if a fair and reasonable person could conclude only one way.' [Miller v. United Technologies Corp.](#), 233 Conn. 732, 751, 660 A.2d 810 (1995);"

- [R.I. Waterman Prop., Inc. v. Misiorski](#), 51 Conn. App. 659, **661, 725 A.2d 340, 341 (1999)**. "We agree with the defendants that until the motion for permission to file a summary judgment motion is granted, § 17-45 does not come into effect. Once notice is given of the granting of permission to file a summary judgment motion, the motion for summary judgment should be placed on the short calendar not fewer than fifteen days from the giving of the notice. This gives the adverse party the opportunity to file opposing affidavits and other available documentary evidence as set forth in § 17-45."
- [Mac's Car City, Inc. v. American National Bank](#), 205 Conn. **255, 262, 532 A.2d 1302 (1987)**. "Accordingly, we hold that it is within the trial court's discretion to consider a renewed motion for summary judgment that has previously been denied where, as here, additional or new evidence has been submitted which was not before the court in ruling upon the earlier motion for summary judgment. See 73 Am. Jur.2d 733, Summary Judgment § 12. We must caution, however, that our holding today should not be construed to condone future unnecessary piecemeal litigation brought on by the repeated filing of successive motions for summary judgment."

WEST KEY
NUMBERS:

- 368H Summary Judgment
 - I. In General, k1-k10
 - II. Questions Considered on Summary Judgment, k11-k40
 - III. Grounds for Summary Judgment; Factors Considered, k41-k70
 - IV. Ascertaining Whether Fact Issue Exists, k71-k100
 - V. Particular Cases and Contexts, k101-k270
 - VI. Proceedings, k271-k365

ENCYCLOPEDIAS:

- 73 *Am. Jur. 2d* Summary Judgment, Thomson West, 2023 (Also available on Westlaw).
 - I. In general

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- II. Actions, Matters, and Proceedings in Which Authorized or Available
- III. Application or Motion; Opposition; Effect of Failure to Properly Support or Address Fact
 - A. Application or Motion
 - C. Establishing that Particular Fact is or Cannot be Genuinely Disputed
- IV. Determination; Governing Rules, Principles, and Considerations
- V. Scope of Relief; Order and Judgment

- 49 *C.J.S. Judgments*, Thomson West, 2021 (Also available on Westlaw).
 - X. Judgment on Motion or Summary Proceedings
 - A. In general
 - B. Cases in Which Allowed
 - C. Proceedings on Motion for Summary Judgment
- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice* Margaret P. Mason, editor, 2022 ed., LexisNexis.
 - Chapter 16. Summary Judgment
 - Part I: Statute and Rule Locator
 - § 16.01. Statutes and Practice Book Rules
 - Part II: Practical Guidance
 - § 16.02. Overview of Grounds for Summary Judgment
 - § 16.03. There Must Be No Genuine Issue of Material Fact
 - § 16.04. Partial Summary Judgment is Allowed
 - § 16.05. Timing of Motion for Summary Judgment
 - § 16.06. Preparation, Filing and Service of Motion for Summary Judgment
 - § 16.07. Filing and Serving Opposition to Motion for Summary Judgment
 - § 16.08. Filing and Serving Reply in Support of Motion for Summary Judgment
 - § 16.09. Overview of Evidence and Hearing on Summary Judgment
 - § 16.10. Submitting Affidavit in Support of Motion, Opposition, or Reply
 - § 16.11. Hearing on Motion for Summary Judgment
 - § 16.12. Overview of Decision on Motion for Summary Judgment
 - § 16.13. Determine Whether Summary Judgment Order is Final Judgment
 - § 16.14. Overview of Reconsideration or Correction of, or Relief from, Decision on Motion for Summary Judgment
 - § 16.15. Decision Granting Summary Judgment is Subject to Motion to Reconsider or Reargue

§ 16.16. Denial of Summary Judgment Motion is Subject to Motion to Renew

§ 16.17. Summary Judgment is Subject to Motion to Open or Set Aside

§ 16.18. Overview of Appeal of Decision on Motion for Summary Judgment

§ 16.19. Grant of Summary Judgment on All Claims Against a Party is Appealable

§ 16.20. Denial of Summary Judgment is Generally Not Appealable

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, 2023 ed., Thomson West (Also available on Westlaw).
Chapter 3. Summary Judgment or Summary Adjudication
- 2 Dupont on Connecticut Civil Practice, by Ralph Dupont, 2022-2023 ed., LexisNexis.
Chapter 17. Judgments.
G. Summary Judgments
§ 17-44. Summary Judgments; Scope of Remedy
§ 17-44.1 In General
§ 17-44.2 Available in Most Civil Actions, and Certain Appeals, Including Probate
§ 17-45. Proceedings Upon Motion for Summary Judgment; Request for Extension of Time to Respond
§ 17-45.1. Summary Judgment; Order of Pleading
§ 17-45.2 Technical Defects in Motion or Proceedings
§ 17-45.3 Supporting Documents; Unsworn Statements and Reports Prohibited
§ 17-49. Judgment [On Motion for Summary Judgment]
§ 17-49.1 Absence of Genuine Issue of Material Fact
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, Kimberly A. Peterson, Prentice Hall, 1998.
Chapter 27. Motions for Summary Judgment
- *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators*, Jeanine M. Dumont, Connecticut Law Tribune, 1998 ed.
Chapter XI. Motion for Summary Judgment
- *Stephenson's Connecticut Civil Procedure*, by Renee Bevacqua Bollier, Atlantic Law Book Co., 1997, with 2014 supplement.
Chapter 9. Disposition Short of Trial.

§ 100. Summary Judgment.

- *Connecticut Law of Torts*, 4th ed., by Hon. Douglass B. Wright et al., Atlantic Law Book Company, 2018, with 2022 supplement.

Chapter XXIII – Procedural and Collateral Matters

§ 193. Summary Judgments in Negligence Actions

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- Alexander I. Platt, Unstacking the Deck: Administrative Summary Judgment and Political Control, *Yale Journal on Regulation*, Volume 34, Issue 2, 439, 2017.
- Corey M. Dennis, [Roadmap to Connecticut Procedure](#), *Connecticut Bar Journal*, Volume 83, Issue 4, 271 (2009).
- Samuel Issacharoff and George Loewenstein, [Second Thoughts about Summary Judgment](#), *Yale Law Journal*, Volume 100, Issue 1, 73, 1990.
- Gale Keane Busemeyer, Summary Judgment and the ADEA Claimant: Problems and Patterns of Proof [comments] *Connecticut Law Review*, Volume 21, Issue 1, 99, (Fall 1988).

Figure 1: Motion for Summary Judgment (Form)

Form 105.1, Heading and Form 106.15, Motion for Summary Judgment.

| | |
|-------------------------|----------------------------|
| No. _____ | Superior Court |
| _____ | Judicial District of _____ |
| (First Named Plaintiff) | |
| v. | at _____ |
| _____ | _____ |
| (First Named Defendant) | (Date) |

Motion for Summary Judgment

(Motion By the Plaintiff)

The plaintiff claims that there is no genuine issue as to any material fact in the complaint and moves for a summary judgment and submits herewith the following affidavits and other documentary proof:

(list items attached)

(Motion By the Plaintiff – Liability Only)

The plaintiff claims that there is no genuine issue as to any material fact with respect to liability and moves for a summary judgment interlocutory in character on the issue of liability alone, and submits herewith the following affidavits and other documentary proof:

(list items attached)

The plaintiff further moves for an order for an immediate hearing before a referee (*or* the court *or* the jury) to determine the amount of the damages.

(Motion By the Defendant)

The defendant claims that

the action is barred by the statute of limitations

or

the action is res adjudicata

or

the action is barred by laches

or

the plaintiff is estopped from making the claims set forth in the complaint

or

he was not the owner of the automobile involved in the collision, as alleged in the complaint

or

there is no genuine issue as to the utterance of the alleged slander

or

(other defense claimed)

and moves for a summary judgment, and submits herewith the following affidavits and other documentary proof:

(list items attached)

AFFIDAVIT

(Name and residence) being duly sworn, does hereby depose and say

1. This affidavit is made on my own personal knowledge.
2. I am ____ years of age and competent to testify to the matters stated herein.
3. *(Set forth facts relevant and admissible in evidence)*

Subscribed and sworn to before me *(date)*

([Title of Person Taking Oath])

[Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto (Rules, § 17-46).]

(P.B.1963, Form 536; P.B.1978, Form 106.15 see Rules, §§ 17-44 through 17-51.)

[Indicate at bottom of first page whether oral argument or testimony is requested, per P.B. § 11-18]

Table 1: Motion for Summary Judgment or Motion to Strike

[Larobina v. McDondald](#), 274 Conn. 394, 399-403, 876 A.2d 522 (2005). “We first address the plaintiff’s claim that a motion for summary judgment is an improper vehicle by which to test the legal sufficiency of a complaint. ‘Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. Practice Book [§ 17-46].’ (Citations omitted; internal quotation marks omitted.) [Witt v. St. Vincent’s Medical Center](#), 252 Conn. 363, 368, 746 A.2d 753 (2000).

In contrast, ‘[a] motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court. . . . We take the facts to be those alleged in the complaint . . . and we construe the complaint in the manner most favorable to sustaining its legal sufficiency. . . . [I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Thus, we assume the truth of both the specific factual allegations and any facts fairly provable thereunder. In doing so, moreover, we read the allegations broadly, rather than narrowly.’ (Citation omitted; internal quotation marks omitted.) [Craig v. Driscoll](#), 262 Conn. 312, 321, 813 A.2d 1003 (2002).

Our case law addressing the question of whether a motion for summary judgment may be used instead of a motion to strike to challenge the legal sufficiency of a complaint and, if so, under what circumstances, requires some clarification. In [Boucher Agency, Inc. v. Zimmer](#), 160 Conn. 404, 408-409, 279 A.2d 540 (1971), this court suggested that, in light of the similarities between the procedures, the use of a motion for summary judgment for such a purpose is proper. See also [Pane v. Danbury](#), 267 Conn. 669, 674 n.7, 841 A.2d 684 (2004) (allowing use of motion for summary judgment to challenge legal sufficiency of complaint when plaintiff did not raise objection in trial court); [Haynes v. Yale-New Haven Hospital](#), 243 Conn. 17, 32 n.17, 699 A.2d 964 (1997) (treating motion for summary judgment as motion to strike); [Hossan v. Hudiakoff](#), 178 Conn. 381, 382 n.1, 423 A.2d 108 (1970) (court declined to consider whether use of motion for summary judgment instead of motion to strike was procedurally proper when motion to strike properly would have been granted); [Gaudino v. East Hartford](#), 87 Conn. App. 353, 357-58, 865 A.2d 470 (2005) (motion for summary judgment may be used to challenge legal sufficiency of complaint); but see [Burke v. Avitabile](#), 32 Conn. App. 765, 772, 630 A.2d 624 (purpose of motion for summary judgment is not to test legal sufficiency of complaint but to test for presence of contested factual issues), cert. denied, [228 Conn. 908](#), 634 A.2d 297 (1993). We also have recognized, however, that the use of a motion for summary judgment instead of a motion to strike may be unfair to the nonmoving party because ‘[t]he granting of a defendant’s motion for summary judgment puts the plaintiff out of court . . . [while the] granting of a motion to strike allows the plaintiff to replead his or her case.’ (Citation omitted; internal quotation marks omitted.) [Pane v. Danbury](#), supra, 674 n.7, quoting [Rivera v. Double A Transportation](#),

Inc., 248 Conn. 21, 38 n.3, 727 A.2d 204 (1999) (Berdon, J., dissenting); cf. Kroll v. Steere, 60 Conn. App. 376, 384 n.6, 759 A.2d 541 (motion for summary judgment may be treated as motion to strike when plaintiff did not claim that she should have been allowed to replead), cert. denied, 255 Conn. 909, 763 A.2d 1035 (2000).

With these authorities in mind, we conclude that the use of a motion for summary judgment to challenge the legal sufficiency of a complaint is appropriate when the complaint fails to set forth a cause of action and the defendant can establish that the defect could not be cured by repleading. See Boucher Agency, Inc. v. Zimmer, supra, 160 Conn. 410. If it is clear on the face of the complaint that it is legally insufficient and that an opportunity to amend it would not help the plaintiff, we can perceive no reason why the defendant should be prohibited from claiming that he is entitled to judgment as a matter of law and from invoking the only available procedure for raising such a claim after the pleadings are closed. See Practice Book § 10-7 (filing of answer constitutes waiver of **right to file motion to strike complaint**). **'It is incumbent on a plaintiff to allege some recognizable cause of action in his complaint. . . . Thus, failure by the defendants to demur to any portion of the . . . complaint does not prevent them from claiming that the [plaintiff] had no cause of action and that a judgment [in favor of the defendants was] warranted.'** (Citation omitted; internal quotation marks omitted.) Brill v. Ulrey, 159 Conn. 371, 374, 269 A.2d 262 (1970). **Moreover, this court repeatedly 'has recognized that the desire for judicial efficiency inherent in the summary judgment procedure would be frustrated if parties were forced to try a case where there was no real issue to be tried.'** Fernandez v. Estate of Ayers, 56 Conn. App. 332, 334-35, 742 A.2d 836 (2000) (citing cases).

In addition, we will not reverse the trial court's ruling on a motion for summary judgment that was used to challenge the legal sufficiency of the complaint when it is clear that the motion was being used for that purpose and the nonmoving party, by failing to object to the procedure before the trial court, cannot demonstrate prejudice. A plaintiff should not be allowed to argue to the trial court that his complaint is legally sufficient and then argue on appeal that the trial court should have allowed him to amend his pleading to render it **legally sufficient**. **'Our rules of procedure do not allow a [party] to pursue one course of action at trial and later, on appeal, argue that a path he rejected should now be open to him. . . . To rule otherwise would permit trial by ambush.'** (Internal quotation marks omitted.) State v. Reynolds, 264 Conn. 1, 207, 836 A.2d 224 (2003), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, L. Ed. 2d 254 (2004).

In the present case, the plaintiff stated in his brief to the trial court that the defendants were using the motion for summary judgment to challenge the legal sufficiency of his complaint. He then argued that the complaint was legally sufficient. We conclude, therefore, that he has waived any objection to the use of the motion for that purpose and any claim that he should be permitted to replead. Moreover, it is clear that the plaintiff has no further facts to allege that would cure the legal defects identified in this complaint. Accordingly, we consider the merits of the trial court's determination that the complaint **was legally insufficient**. **'Because a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review of the court's ruling on the [defendants' motion] is plenary.'** (Internal quotation marks omitted.) Commissioner of Labor v. C.J.M. Services, Inc., 268 Conn. 283, 292, 842 A.2d 1124 (2004)."

Section 2: Objection to Motion for Summary Judgment

A Guide to Resources in the Law Library

- SCOPE: Bibliographic resources relating to objections to motions for summary judgment.
- DEFINITIONS:
- “Unless otherwise ordered by the judicial authority, any adverse party shall file and serve a response to the motion for summary judgment within forty-five days of the filing of the motion, including opposing affidavits and other available **documentary evidence.**” **Conn. Practice Book** § [17-45](#)(b) (2023).
 - “A party opposing a motion for summary judgment must provide an *evidentiary foundation* to demonstrate the existence of **a genuine issue of material fact.**” [Barlow v. Palmer](#), 96 Conn. App. 88, 92, 898 A.2d 835, 837-38 (2006).
- COURT RULES:
- Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).
- Connecticut Practice Book (2023)
 - § [11-10](#). Requirement That Memorandum of Law Be Filed with Certain Motions.
 - § [17-44](#). Summary Judgments; Scope of Remedy.
 - § [17-45](#). --Proceedings upon Motion for Summary Judgment; Request for Extension of Time to Respond.
 - § [17-46](#). --Form of Affidavits.
 - § [17-47](#). --When Appropriate Documents Are Unavailable
 - § [17-48](#). --Affidavits Made in Bad Faith
 - § [17-49](#). --Judgment
 - § [17-50](#). --Triable Issue as to Damages Only
 - § [17-51](#). --Judgment for Part of Claim
- FORMS:
- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice* Margaret P. Mason, editor, 2022 ed., LexisNexis.
 - Chapter 16. Summary Judgment
 - § 16.24. Form: Opposition to Motion for Summary Judgment
 - § 16.25. Form: Affidavit in Support of Opposition to Motion for summary Judgment
 - § 16.26. Form: Reply in Support of Motion for Summary Judgment
 - 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, 2023 ed., Thomson West (Also available on Westlaw).
 - Chapter 3. Summary Judgment or Summary Adjudication
 - VI. Sample Forms

§ 3:141. Sample supporting and opposition briefs — Motion for summary judgment — Plaintiff's opposition — Memorandum of points and authorities in opposition to motion for summary judgment

§ 3:142. Sample supporting and opposition briefs - Motion for summary judgment — Plaintiff's opposition — Memorandum of points and authorities in opposition to motion for partial summary judgment — Negligent and intentional infliction of emotional distress

§ 3:143. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Plaintiff's opposition — Written objections to evidence submitted in support of motion for summary judgment

§ 3:144. Sample supporting and opposition briefs — Motion for summary judgment by defendant — Plaintiff's opposition — Reply memorandum in support of motion — Dispute arising from supply of municipal water to restaurant

- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
Chapter 27. Motion for Summary Judgment
Example 2, Objection to Motion for Summary Judgment Interlocutory in Character, p. 256.
- *Library of Connecticut Employment Law Forms*, Joseph D. Garrison, editor, Connecticut Law Tribune, 2011.
Chapter 11. Summary Judgment.
11-002. Memo of Law in Opposition to Motion for Summary Judgment – Wrongful Termination – C.G.S. 31-51q
- *Library of Connecticut Personal Injury Forms*, 2nd ed., Joshua Koskoff, editor, Connecticut Law Tribune, 2014.
Chapter 6. Objection to Motions/Requests
6-012. Objection to Motion for Summary Judgment—Statute of Limitations
6-013. Objection to Defendants Motion for Summary Judgment
- *Library of Connecticut Personal Injury Forms*, 3d ed., Carey B. Reilly, Connecticut Law Tribune, 2022.
Chapter 7. Pending Litigation
7-032. Summary Judgment, Objection to
- [Squeo v. Norwalk Hosp. Ass'n](#), 316 Conn 558, 594, 113 A.3d 932 (2015). "As a general rule, then, '[w]hen a motion for summary judgment is filed and supported by affidavits

CASE LAW:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

and other documents, an adverse party, by affidavit or as otherwise provided by ... [the rules of practice], must set forth specific facts showing that there is a genuine issue for trial, and if he does not so respond, summary judgment **shall be entered against him.'** (Footnote omitted.) [Farrell v. Farrell](#), 182 Conn. 34, 38, 438 A.2d 415 (1980). 'Requiring the nonmovant to produce such evidence does not shift the burden of proof. Rather, it ensures that the nonmovant has not raised a specious issue for the sole purpose of forcing the case to trial.' [Great Country Bank v. Pastore](#), supra, 241 Conn. at 436."

- [RAB Performance Recoveries, LLC v. James](#), 151 Conn. App. 360, 366, 94 A.3d 1223 (2014). "Although the defendant filed an objection to the motion for summary judgment in which he argued that there was a genuine issue of material fact as to the plaintiff's ownership of the debt, our rules of procedure make clear that an unsworn and conclusory assertion is insufficient to defeat a motion for summary judgment. See Practice Book § 17-45; [2830 Whitney Avenue Corp. v. Heritage Canal Development Associates, Inc.](#), 33 Conn. App. 563, 567, 636 A.2d 1377 (1994) ('existence of [a] genuine issue of material fact must be demonstrated by counteraffidavits and concrete evidence')."
- [Rockwell v. Quintner](#), 96 Conn. App. 221, 229, 899 A.2d 738 (2006). "An important exception exists, however, to the general rule that a party opposing summary judgment must provide evidentiary support for its opposition, and that exception has been articulated in our jurisprudence with less frequency than has the general rule. 'On a motion by [the] defendant for summary judgment the burden is on [the] defendant to negate each claim as framed by the complaint....' 49 C.J.S. 365, Judgments § 261(b) (1997). It necessarily follows that it is only '[o]nce [the] defendant's burden in establishing his entitlement to summary judgment is met [that] the burden shifts to [the] plaintiff to show that a genuine issue of fact exists justifying a trial.' 49 C.J.S. 366, supra, § 261(b). Accordingly, '[w]hen documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue.' [Allstate Ins. Co. v. Barron](#), supra, 269 Conn. at 405, 848 A.2d 1165."
- [Inwood Condo. Ass'n v. Winer](#), 49 Conn. App. 694, 697, 716 A. 2d 139 (1998). "To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts in accordance with Practice Book (1998 Rev.) § § 17-45 and 17-46, formerly §§ 380 and 381, which contradict those stated in the movant's affidavits and documents and

show that there is a genuine issue for trial. If he does not so respond, summary judgment shall be entered against him. *Farrell v. Farrell*, 182 Conn. 34, 38, 438 A.2d 415 (1980); *Rusco Industries, Inc. v. Hartford Housing Authority*, 168 Conn. 1, 5, 357 A.2d 484 (1975)."

WEST KEY NUMBERS:

- 368H Summary Judgment
 - I. In General, k1-k10
 - II. Questions Considered on Summary Judgment, k11-k40
 - III. Grounds for Summary Judgment; Factors Considered, k41-k70
 - IV. Ascertaining Whether Fact Issue Exists, k71-k100
 - V. Particular Cases and Contexts, k101-k270
 - VI. Proceedings, k271-k365

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 73 *Am. Jur. 2d* Summary Judgment, Thomson West, 2023 (Also available on Westlaw).
 - I. In general
 - II. Actions, Matters, and Proceedings in Which Authorized or Available
 - III. Application or Motion; Opposition; Effect of Failure to Properly Support or Address Fact
 - A. Application or Motion
 - B. Opposition
 - 2. Evidence in Support of Opposition
 - C. Establishing that Particular Fact is or Cannot be Genuinely Disputed
 - IV. Determination; Governing Rules, Principles, and Considerations
 - V. Scope of Relief; Order and Judgment
- 49 *C.J.S.* Judgments, Thomson West, 2021 (Also available on Westlaw).
 - X. Judgment on Motion or Summary Proceedings
 - A. In general
 - B. Cases in Which Allowed
 - C. Proceedings on Motion for Summary Judgment

TEXTS & TREATISES:

You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice* Margaret P. Mason, editor, 2022 ed., LexisNexis.
 - Chapter 16. Summary Judgment
 - Part I: Statute and Rule Locator
 - Part II: Practical Guidance
 - § 16.07. Filing and Serving Opposition to Motion for Summary Judgment
 - § 16.08. Filing and Serving Reply in Support of Motion for Summary Judgment
 - § 16.10. Submitting Affidavit in Support of Motion, Opposition, or Reply
- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, 2023 ed., Thomson West (Also available on Westlaw).

Chapter 3. Summary Judgment or Summary
Adjudication

V. Key Opposition Citations

- *2 Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2022-2023 ed., LexisNexis.
Chapter 17. Judgments in General
G. Summary Judgments
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice-Hall, 1998.
Chapter 27. Motion for Summary Judgment
- *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigator*, by Jeanine M. Dumont, Connecticut Law Tribune, 1998 ed.
Chapter XI. Motion for Summary Judgment
5. Opposition to the Motion
- *Stephenson's Connecticut Civil Procedure*, by Renee Bevacqua Bollier, Atlantic Law Book Company, 1997, with 2014 supplement.
Chapter 9. Disposition Short of Trial.
100. Summary Judgment.
- Corey M. Dennis, [Roadmap to Connecticut Procedure](#), *Connecticut Bar Journal*, Volume 83, Issue 4, 271 (2009).

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

Section 3: Affidavits and Documentary Proof

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to affidavits and documentary proof in support of motions for summary judgment.

DEFINITIONS:

- Standard for affidavits: **"Supporting and opposing** affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or part thereof referred to in an affidavit shall be attached thereto." **Conn. Practice Book § 17-46** (2023).
- Affidavit: **"...defined as any voluntary ex parte statement** reduced to writing, and sworn to or affirmed before some person legally authorized to administer an oath or **affirmation.**" *Wiretek, Inc. v. J.M. Taraerin Enterprises, LLC*, Superior Court, Judicial District of Hartford, No. HHDX04-CV06-6002110-S (May 25, 2010) (2010 WL 2593271) (2010 Conn. Super. LEXIS 1243).
- **"It is frequently stated in Connecticut's case law that,** pursuant to Practice Book §§ 17-45 and 17-46, a party opposing a summary judgment motion 'must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact.' *Harvey v. Boehringer Ingelheim Corp.*, 52 Conn. App. 1, 4, 724 A.2d 1143 (1999)." *Rockwell v. Quintner*, 96 Conn. App. 221, 228-229, 899 A.2d 738 (2006).
- Personal knowledge: **"is variously described as** knowledge acquired firsthand or from observation..." *Amos Fin., LLC v. Ctr. for Advanced Pediatrics, P.C.*, Superior Court, Judicial District of Stamford-Norwalk, No. CV11-6011064-S (March 11, 2013) (2013 WL 1364714) (2013 Conn. Super. LEXIS 560).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2023)
Chapter 901 - Damages, Costs and Fees
§ [52-245](#). False statement concerning defense. Costs.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Connecticut Practice Book (2023)
§ [17-44](#). Summary Judgments; Scope of Remedy.
§ [17-45](#). --Proceedings upon Motion for Summary Judgment; Request for Extension of Time to Respond.
§ [17-46](#). --Form of Affidavits.

- § [17-47](#). --When Appropriate Documents Are Unavailable
- § [17-48](#). --Affidavits Made in Bad Faith
- § [17-49](#). --Judgment

CODE OF EVIDENCE:

- Official 2000 Connecticut Code of Evidence (2023 ed.)
§ [9-1](#). Requirement of Authentication

FORMS:

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*
Margaret P. Mason, editor, 2022 ed., LexisNexis.
Chapter 16. Summary Judgment
§ 16.23. Form: Affidavit in Support of Motion for Summary Judgment
§ 16.25. Form: Affidavit in Support of Opposition to Motion for summary Judgment
- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, 2023 ed., Thomson West (Also available on Westlaw).
Chapter 3. Summary Judgment or Summary Adjudication
VI. Sample Forms
3:139. Sample supporting and opposition briefs — Motion for summary judgment by defendant—Request for judicial notice in support of motion for summary judgment

3:140. Sample supporting and opposition briefs — Motion for summary judgment by defendant—Affidavit in support of motion for summary judgment

CASE LAW:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Alvarez v. City of Middletown](#), 192 Conn. App. 606, 620, 218 A.3d 124 (2019). **“As this court has observed, ‘to defeat summary judgment . . . the plaintiff’s admissible evidence must show circumstances that would be sufficient to permit a rational finder of fact to infer that the defendant’s employment decision was more likely than not based in whole or in part on discrimination’** (Internal quotation marks omitted.) [Taing v. CAMRAC, LLC](#), supra, 189 Conn. App. 28. Because the plaintiff has not presented such evidence, we conclude that the court properly **rendered summary judgment in favor of the defendant.**”
- [Magee Ave., LLC v. Lima Ceramic Tile, LLC](#), 183 Conn. App. 575, 584, 193 A.3d 700 (2018). **“If mere assertions of fact are insufficient to establish the existence of a material fact, then they are insufficient to establish the lack of an existence of material fact in the face of opposing evidence. In essence, the plaintiff here was required to respond to mere factual assertions with its own supporting affidavits**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

and documentation before the defendant presented his evidence in support of those assertions in the first place. Considering that, under the rules of practice at the time of the hearing, an adverse party was required to file its evidence in opposition to a motion for summary judgment at least five days before the hearing on the motion, we fail to see how the defendant here should have been permitted to file his initial affidavit in support of the motion one day before the hearing. The defendant's affidavit therefore was untimely and should not have been considered by the trial court. Therefore, because the trial court should not have considered the defendant's affidavit, the court improperly **rendered summary judgment in favor of the defendant.**"

- [Stuart v. Freiberg](#), 316 Conn. 809, 822, 116 A.3d 1195, 1204 (2015). **"Specifically, the plaintiffs contend that,** following a determination that there were genuine disputes over material facts bearing on other essential elements of the counts of fraud and negligent misrepresentation—for example, whether the defendant's financial statements were false—the trial court should have simply ceased its analysis and denied summary judgment’ Thus, the plaintiffs argue that it was improper for the trial court to consider, in succession, whether any genuine issue of material fact existed as to the essential element of reliance. **We disagree.**"

"If a defendant's well supported motion for summary judgment shows that there is no genuine factual dispute as to multiple essential elements of a plaintiff's cause of action, such that none of them reasonably could be resolved in the plaintiff's favor at trial, the viability of that plaintiff's case is not improved if he only responds with sufficient counterevidence to call some of those essential elements back into question. Put differently, by raising a genuine issue of fact as to only some of the essential elements under attack, the plaintiff has not altered the potential outcome of his case. See [Santopietro v. New Haven](#), supra, 239 Conn. 225. It logically follows that, in evaluating a defendant's motion for summary judgment, a trial court's task does not necessarily end upon its finding that a genuine factual dispute exists as to one or some essential elements of a plaintiff's cause of action. If a defendant has substantively addressed additional essential elements in support of his motion, so too should the trial court in determining whether summary judgment is **appropriate."** (p. 823)

- [Mott v. Wal-Mart Stores East, LP](#), 139 Conn. App. 618, 632, 57 A.3d 391, 397 (2012). "A motion for summary judgment is properly granted if it raises at least one legally sufficient defense that would bar the plaintiff's claim and involves no triable issue of fact.' (Internal quotation marks

omitted.) [Lunn v. Cummings & Lockwood](#), 56 Conn. App. 363, 370, 743 A.2d 653 (2000). The submissions provided by the defendant in support of its motion for summary judgment cannot be viewed properly as removing the issue of notice as a triable issue of fact in the present case. The court's statement to the contrary is clearly erroneous. Accordingly, because the defendant failed to meet its evidentiary burden, the plaintiff was entitled to a denial of the defendant's motion for summary judgment, and it was not legally or logically correct for the court to have granted the motion for summary judgment on the basis that the plaintiff had failed to file an opposing affidavit or other supporting documents with its opposition to summary judgment."

- [Taylor v. Barberino](#), 136 Conn. App. 283, 289, 44 A.3d 875, 878 (2012). "As this court has observed, '[o]nly evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment' [United Services Automobile Assn. v. Marburg](#), 46 Conn.App. 99, 110, 698 A.2d 914 (1997). The affidavits of Draskinis and Sgambati, in particular, plainly do not contain statements based on personal knowledge, as required under Practice Book § 17-46. Indeed, with respect to Draskinis, the court found, and **we agree, that 'much of what is sworn to ... does [not] constitute facts that would be admissible at trial. Rather, much of the document consists of [statements] about matters which he has only learned of through reviews of deposition testimony, and offering statements that sound more like legal arguments than statements of fact.'**"
- [Baldwin v. Curtis](#), 105 Conn. App. 844, 852, 939 A.2d 1249, 1254 (2008). "As the defendant's evidence failed to negate a genuine issue of material fact, the plaintiff was not obligated to submit documents establishing the existence of such an issue. See [Rockwell v. Quintner](#), supra, 96 Conn.App. at 228, 899 A.2d 738 (defendant's evidence **failed to '[exclude] any real doubt as to the existence of any genuine issue of material fact'**). **Having failed to negate a genuine issue of material fact, the defendant did not meet her burden of establishing that, as a matter of law, summary judgment should have been rendered in her favor.**"
- [City of New Haven v. Pantani](#), 89 Conn. App. 675, 679, 874 A. 2d 849 (2005). "Therefore, before a document may be considered by the court in support of a motion for summary judgment, **'there must be a preliminary showing of [the document's] genuineness, i.e., that the proffered item of evidence is what its proponent claims it to be. The requirement of authentication applies to all types of evidence, including writings'** Conn.Code Evid. § 9-1(a), commentary. Documents in support of or in opposition to a

motion for summary judgment may be authenticated in a variety of ways, including, but not limited to, a certified copy of a document or the addition of an affidavit by a person with personal knowledge that the offered evidence is a true and accurate representation of what its proponent claims it to be. In this case, the plaintiff submitted numerous exhibits in support of its motion for summary judgment. The plaintiff failed, however, either to attach an affidavit attesting to the truth and accuracy of the various submissions or to provide certified copies of any of the documents.”

- [Barasso v. Rear Still Hill Road, LLC, et al.](#), 81 Conn. App. 798, 803, 842 A.2d 1134 (2004). “The defendants claim that the McMahon affidavit, submitted in opposition to the plaintiff’s motion for summary judgment, raised genuine issues of material fact. ‘[A]ffidavits filed in connection with a motion for summary judgment must be made on personal knowledge, must set forth facts which would be admissible in evidence, and must show that the affiant is competent to testify to all matters stated in the affidavit. . . . Mere statements of legal conclusions or that an issue of fact does exist are not sufficient to raise the issue.’ (Citations omitted; internal quotation marks omitted.) [United Oil Co. v. Urban Redevelopment Commission](#), 158 Conn. 364, 377, 260 A.2d 596 (1969). Our review of the record persuades us that the McMahon affidavit satisfies that standard.”
- [Paine Webber Jackson & Curtis, Inc. v. Winters](#), 13 Conn. App. 712, 721, 539 A.2d 595 (1988). “Pleadings per se do not constitute documentary proof under § 380. Allegations of pleadings not admitted by a party are not proof of their contents. They merely set forth the cause of action and the issues of fact and law raised in the pleadings. The framework of the case is built by the pleadings. Unadmitted allegations of pleadings do not constitute documentary proof of the existence of a genuine issue as to any material fact on a motion for summary judgment. The quantum of evidentiary proof admissible at trial relevant to these allegations, or any later amendment of them, is not documentary proof under § 380 probative of, or relevant to, the grant or denial of summary judgment. The court’s consideration of a motion for summary judgment is limited to the evaluation as a matter of law of the documentary proof submitted under § 380. Additionally, in passing upon a motion for summary judgment, the trial court must view the documentary proof in the light most favorable to the nonmovant. [Rawling v. New Haven](#), supra; [Strada v. Connecticut Newspapers, Inc.](#), 193 Conn. 313, 317, 477 A.2d 1005 (1984); [Town Bank & Trust Co. v. Benson](#), supra, 176 Conn. at 309, 407 A.2d 971; [United Oil Co. v. Urban Redevelopment Commission](#), supra, 158 Conn. at 380, 260 A.2d 596.”

- [Town of Brookfield v. Candlewood Shores Estates, Inc.](#), 201 Conn. 1, 7, 513 A.2d 1218 (1986). "We turn now to the defendant's claim that the Brookfield tax collector's affidavit supporting the summary judgment motion included, in violation of Practice Book § 381..., evidence that would have been inadmissible at trial and, therefore, should not have been considered by the trial court in deciding the motion. This claim is without merit.

The plaintiff attached to its motion for summary judgment, inter alia, the affidavit of Theresa York, the Brookfield tax collector, dated December 11, 1984. York's affidavit, after setting out that she was 'duly sworn [and] depose[d],' recites that she was the tax collector of Brookfield and "as such, [was] familiar with the subject matter of [this] suit...."

York's affidavit comports with the requisites of an affidavit; it is a written statement taken under oath before an authorized officer. 2A C.J.S., Affidavits § 2; 3 Am. Jur. 2d, Affidavits § 1; see generally [State v. Wolfe](#), 156 Conn. 199, 205, 239 A.2d 509 (1968). Generally speaking, affidavits are used for, and should contain, a presentation of facts by a person having knowledge of those facts, and the facts recited must be those requisite to establish the principal facts sought to be maintained. See 2A C.J.S., Affidavits § 43. Specifically, as to summary judgment, '[s]upporting and opposing affidavits 'shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.' Practice Book § 381[.]...

The operative facts stated by York in her affidavit, which encompasses the exhibits attached, are matters within her personal knowledge as the tax collector of Brookfield. Her affidavit specifically recites that, as the tax collector, she is 'familiar with the subject matter of [this] suit.' It is recognized that '[a]n affidavit may be used to introduce documentary or other written proof, and in that event such written materials should be attached to the affidavit or served with it' as they were in this case. 6 Moore, Federal Practice (2d Ed.) ¶ 56.11[1.-2], p. 56-200; see 3 Am. Jur. 2d, Affidavits § 20. If, as one court has said, '[a]n affidavit should set forth the factual picture by a person who knows the facts'; [People v. Mirasola](#), 35 Misc. 2d 886, 887, 231 N.Y.S.2d 645 (1962); the York affidavit does so."

WEST KEY
NUMBERS:

- 368H Summary Judgment
 - I. In General, k1-k10
 - II. Questions Considered on Summary Judgment, k11-k40
 - III. Grounds for Summary Judgment; Factors Considered, k41-k70
 - IV. Ascertaining Whether Fact Issue Exists, k71-k100

- V. Particular Cases and Contexts, k101-k270
- VI. Proceedings, k271-k365

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 73 *Am. Jur. 2d* Summary Judgment, Thomson West, 2023 (Also available on Westlaw).
 - I. In general
 - II. Actions, Matters, and Proceedings in Which Authorized or Available
 - III. Application or Motion; Opposition; Effect of Failure to Properly Support or Address Fact
 - A. Application or Motion
 - 3. Contents of and Support for Motion
 - B. Opposition
 - 2. Evidence in Support of Opposition
 - C. Establishing that Particular Fact is or Cannot be Genuinely Disputed
 - IV. Determination; Governing Rules, Principles, and Considerations
 - V. Scope of Relief; Order and Judgment
- 49 *C.J.S.* Judgments, Thomson West, 2021 (Also available on Westlaw).
 - X. Judgment on Motion or Summary Proceedings
 - A. In general
 - B. Cases in Which Allowed
 - C. Proceedings on Motion for Summary Judgment

TEXTS & TREATISES:

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References to online databases refer to in-library use of these databases. Remote access is not available.

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, Margaret P. Mason, editor, 2022 ed., LexisNexis.
 - Chapter 16. Summary Judgment
 - Part I: Statute and Rule Locator
 - Part II: Practical Guidance
 - § 16.10. Submitting Affidavit in Support of Motion, Opposition, or Reply
- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, 2023 ed., Thomson West (Also available on Westlaw).
 - Chapter 3. Summary Judgment or Summary Adjudication
- 2 *Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2022-2023 ed., LexisNexis.
 - Chapter 17. Judgments
 - G. Summary Judgments
 - § 17-45. Proceedings Upon Motion for Summary Judgment; Request for Extension of Time to Respond
 - § 17-45.3 Supporting Documents; Unsworn Statements and Reports Prohibited.
 - § 17-46. Form of Affidavits [On Motion for Summary Judgment]

§ 17-46.1 Affidavit, Facts Alleged Must be **Admissible and Based on Affiant's Personal** Knowledge.

§ 17-46.2 Affidavit, Failure to File.

§ 17-47. When Appropriate Documents are Unavailable

§ 17-47.1 Summary Judgment Motion, Continuance or Denial Until **Opponent's Discovery** Completed

§ 17-48. Affidavits Made in Bad Faith

§ 17-48.1 Contempt; Discipline, Bad Faith Affidavit

- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
Chapter 27. Motion for Summary Judgment
- *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators*, by Jeanine M. Dumont, Connecticut Law Tribune, 1998 ed.
Chapter XI. Motion for Summary Judgment
3. The Mechanics of a Motion for Summary Judgment
- ***Stephenson's Connecticut Civil Procedure***, by Renee Bevacqua Bollier, Atlantic Law Book Company, 1997, with 2014 supplement.
Chapter 9. Disposition Short of Trial
§ 100. Summary Judgment
- *Connecticut Trial Evidence Notebook*, Second Edition, Dale P. Faulkner, et. al., LexisNexis, 2022.
Affidavits

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- James A. Fulton, Succeeding by Summary Judgment: Is It Time to Recognize the Sham Affidavit Rule in the State Courts in Connecticut?, *Connecticut Lawyer*, Volume 26, Issue 2, 23 (2015)
- Corey M. Dennis, [Roadmap to Connecticut Procedure](#), *Connecticut Bar Journal*, Volume 83, Issue 4, 271 (2009).

Section 4: Partial Summary Judgment

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to partial (interlocutory) summary judgment as to liability only.

DEFINITIONS:

- Partial Summary Judgment: **"A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to damages. In such case the judicial authority shall order an immediate hearing before a judge trial referee, before the court, or before a jury, whichever may be proper, to determine the amount of the damages. If the determination is by a jury, the usual procedure for setting aside the verdict shall be applicable. Upon the conclusion of these proceedings, the judicial authority shall forthwith render the appropriate summary judgment."** Conn. Practice Book § [17-50](#) (2023).
- Judgment for Part of Claim: **"If it appears that the defense applies to only part of the claim, or that any part is admitted, the moving party may have final judgment forthwith for so much of the claim as the defense does not apply to, or as is admitted, on such terms as may be just; and the action may be severed and proceeded with as respects the remainder of the claim."** Conn. Practice Book § [17-51](#) (2023).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Connecticut Practice Book (2023)
 - § [17-44](#). Summary Judgments; Scope of Remedy.
 - § [17-50](#). --Triable Issue as to Damages Only
 - § [17-51](#). --Judgment for Part of Claim
 - § [61-4](#). Appeal of Judgment that Disposes of at Least One Cause of Action while Not Disposing of Either (1) An Entire Complaint, Counterclaim or Cross Complaint, or (2) All the Causes of Action in a Pleading Brought by or against a Party

FORMS:

- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (Also available on Westlaw).
107.14. Interlocutory Summary Judgment
- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, 2023 ed., Thomson West (Also available on Westlaw).
Chapter 3. Summary Judgment or Summary Adjudication
§ 3:137. Motion for summary judgment by defendant — Memorandum of points and authorities in support of motion for partial summary judgment — Negligent and intentional

infliction of emotional distress

§ 3:138. Motion for summary judgment by defendant — Memorandum of points and authorities in support of motion for partial summary judgment — Provision — No basis for tolling statute of limitations as to CUTPA claim.

§ 3:142. Motion for summary judgment — Plaintiff's opposition — Memorandum of points and authorities in opposition to motion for partial summary judgment — Negligent and intentional infliction of emotional distress

- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
Chapter 27. Motion for Summary Judgment
Example 1, Motion for Summary Judgment Interlocutory in Character, with Respect to Liability, p.255.

CASE LAW:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Cicarelli v. Ciccarelli](#), 194 Conn. App. 335, 337-338, 221 A.3d 95 (2019). "On August 10, 2018, the defendant filed another appeal from the partial summary judgment rendered by the trial court on April 23, 2018. . . . In response, the plaintiff maintains that the defendant has not appealed from a final judgment, thereby depriving this court of subject matter jurisdiction. We agree.

. . . It is undisputed that the partial summary judgment that the court entered on April 23, 2018, did not dispose of all causes of action against the defendant, as the second count seeking an accounting pursuant to § 52-404 (b) remained pending. In addition, the defendant has not requested a written determination from the trial court regarding the significance of the issues resolved by the partial summary judgment entered against him.

As a result, the defendant could appeal from the partial summary judgment 'only if the remaining causes of action or claims for relief [were] withdrawn or unconditionally abandoned before the appeal [was] taken.' [Meribear Productions, Inc. v. Frank](#), 328 Conn. 709, 717, 183 A.3d 1164 (2018)."

- [Wahba v. J & J Blasting Corp.](#), Superior Court, Judicial District of Stamford-Norwalk, No. CV14-6020764-S (Nov. 4, 2014) (59 Conn. L. Rptr. 267) (2014 WL 6996849) (2014 Conn. Super. LEXIS 2754). "There is no appellate authority and a split among Superior Court authority as to whether it is proper to excise only certain allegations of a count through summary judgment when such judgment would not dispose of a discrete cause of action." *Trungadi v. Mauer*,

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

Superior Court, judicial district of Fairfield, Docket No. CV-07-5008732-S (November 21, 2011, Bellis, J.) [53 Conn. L. Rptr. 9]. On one hand, some courts have granted partial summary judgment as to certain specifications of a cause of action contained within a single count, if it appears illogical to retain those specifications when they cannot ultimately succeed. *Mazurek v. Great American Insurance Company, Inc.*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X02-CV-01-0177433-S (December 16, 2004, Schuman, J.) (38 Conn. L. Rptr. 402) (denying re-argument of a grant of summary judgment on fifty-one of the fifty-four specifications in a negligence count), aff'd in part and appeal dismissed in part, 284 Conn. 16 (2007). **Other courts have stated, '[s]ummary judgment is unavailable as to particular allegations in a count when such an adjudication does not dispose of an entire cause of action...'** *Shelton Yacht & Cabana Club, Inc. v. Voccola*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-01-0075380-S (February 2, 2007, Stevens, J.).

- [GMAC Mortgage, LLC v. Ford](#), 144 Conn. App. 165, 176, 73 A.3d 742, 751 (2013). "Thus, a court may properly grant summary judgment as to liability in a foreclosure action if the complaint and supporting affidavits establish an undisputed prima facie case and the defendant fails to assert any legally sufficient special defense. See [LaSalle National Bank v. Shook](#), 67 Conn. App. 93, 96-97, 787 A.2d 32 (2001); [Union Trust Co. v. Jackson](#), 42 Conn. App. 413, 417, 679 A.2d 421 (1996)."
- [Pfizer, Inc. v. Mine Safety Appliances Co.](#), Superior Court, Judicial District of Hartford, No. CV04-4034705S, (May 19, 2008) (45 Conn. L. Rptr. 577) (2008 WL 2314196) (2008 Conn. Super. LEXIS 1239). "While there still appears to be no definitive appellate authority and there continues to be a split in the Superior Court, the majority of the cases do not allow a party to eliminate some, but not all, of the allegations of a single count through a motion for summary judgment.' (Footnote omitted.) *Snodgrass v. Mulhearn*, Superior Court, judicial district of New Britain at New Britain, Docket No. HHB CV 03 0523029 (May 18, 2006, Shaban, J.) (noting absence of appellate authority and collecting cases). A recent explanation stated, 'the majority rule ... is that Connecticut procedure does not allow entry of summary judgment on one part or allegation of a cause of action when the ruling will not dispose of an entire claim, and therefore, will not allow entry of judgment on that claim. See generally Practice Book § 17-51.' (Footnote omitted.) *Bridgeport Harbor Place I, LLC v. Ganim*, Superior Court, judicial district of Waterbury, Complex Litigation Docket at Waterbury, Docket No. X06 CV 04 0184523 (October 5, 2007, Stevens, J.)."

- [Psaki v. Karlton](#), 97 Conn. App. 64, 70, 903 A.2d 224 (2006). **"First, the judgment of the court did not dispose of all causes of action brought by the parties. In fact, the judgment did not even dispose of the breach of contract claim. Second, neither the trial court nor this court made any written determination pursuant to Practice Book § 61-4(a) regarding the significance of the issues presented in this case. Moreover, Practice Book § 61-4(a) is not applicable because it 'applies to a trial court judgment that disposes of at least one cause of action....' Here, it is without question that the court's judgment does not dispose of at least one cause of action. Accordingly, we conclude that this appeal does not fall within either rule permitting an appeal from a judgment on less than all counts of the complaint."**

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 - IV. Determination; Governing Rules, Principles, and Considerations
 - V. Scope of Relief; Order and Judgment
 - B. Complete or Partial Summary Judgment; Limitation of Issues
- 49 *C.J.S.* Judgments, Thomson West, 2021 (Also available on Westlaw).
 - X. Judgment on Motion or Summary Proceedings
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 - C. Proceedings on Motion for Summary Judgment
- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, Margaret P. Mason, editor, 2022 ed., LexisNexis.
 - Chapter 16. Summary Judgment
 - Part I: Statute and Rule Locator
 - Part II: Practical Guidance
 - § 16.04. Partial Summary Judgment is Permitted

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- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, 2023 ed., Thomson West, (Also available on Westlaw).
Chapter 3. Summary Judgment or Summary Adjudication
§ 3:19 Partial summary judgment—Authority
- 2 *Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2022-2023 ed., LexisNexis.
Chapter 17. Judgments
G. Summary Judgments
§ 17-50. Triable Issue as to Damages Only [On Motion for Summary Judgment]
§ 17-51. Judgment for Part of Claim [Partial Summary Judgment]
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit* by Kimberly A. Peterson, Prentice Hall, 1998.
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