



SEVENTH CIRCUIT EXPLAINS NON-MOVING PARTY'S BURDEN IN OPPOSING "SOMEWHAT TRICKY" SUMMARY JUDGMENT ARGUMENT

LEON MODROWSKI V. JOHN PIGATTO, FRANK PIGATTO, TAQ PROPERTIES, LLC AND CAPPS MANAGEMENT,
--- F.3D ---, 2013 WL 1395696, C.A. 7 (ILL., APRIL 8, 2013)

In a recent opinion, the Seventh Circuit noted parties served with summary judgment motions often misconceive what is required of them to effectively oppose the motion, and "such misunderstandings can have harsh consequences for litigants."

In 2008, the defendants terminated plaintiff Modrowski's employment as property manager. The circumstances surrounding the termination were contentious and, among other things, resulted in defendants locking plaintiff out of his personal Yahoo email account. In November 2009, plaintiff sued in federal court challenging the defendants' refusal to relinquish control of his personal email account. By the time plaintiff regained control to his email account, several years' worth of personal correspondence had been deleted, leading plaintiff to file claims based on various state laws and several federal statutes. Several claims were dismissed on defendants' Federal Rule of Civil Procedure 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted.

The district court also dismissed another count based on the Computer Fraud and Abuse Act (18 U.S.C. § 2511) for failing to allege an injury of at least \$5,000.00 – the minimum jurisdictional amount for such a claim, but allowed plaintiff leave to amend the complaint. By the time plaintiff filed his amended complaint, the window for fact witness discovery had closed and defendants immediately moved for summary judgment, asserting there was a complete lack of proof in the record concerning the essential elements of the counts contained in the amended complaint. Defendants' summary judgment motion did not cite any evidence to support its arguments and did not contain a statement of undisputed material facts. It simply asserted plaintiff would not be able to prove his claims at trial due to a complete lack of evidence supporting the claims.

In response to the summary judgment motion, plaintiff did not come forward with any evidence to support his allegations nor did he ask the court for more time to conduct discovery and/or to respond to the motion. Rather, he responded by attacking alleged deficiencies in the defendants' summary judgment motion, including that defendants did not cite to any admissible evidence supporting the motion. The district court, noting plaintiff's failure to offer any evidence at all in response to the motion, granted summary judgment to defendants on the Computer Fraud and Abuse Act claim and relinquished jurisdiction over the remaining state law claims.

On appeal, plaintiff continued to assert his obligation to point to evidence in the record in his favor was never triggered because defendants had failed to meet their initial burden of production on the summary judgment motion. The Seventh Circuit disagreed and affirmed the district court's judgment.

According to the Seventh Circuit, while it is true that Rule 56 imposes an initial burden of production on the moving party to inform the district court why a trial is not necessary, the burden on that party is not onerous where it is the non-movant who bears the ultimate burden of persuasion on a particular issue. Here, it was plaintiff who bore the ultimate burden of persuasion on his Computer Fraud and Abuse Act claim. Thus, Rule 56 simply required defendants, as the movants, to show, i.e., point out to the court, that there is an absence of evidence to support plaintiff's case. It then became incumbent upon plaintiff to make an evidentiary showing sufficient to establish the existence of an element essential to his case. According to the Court, while plaintiff was correct that defendants' summary judgment motion did have several shortcomings, none of the alleged flaws obviated plaintiff's responsibility to "go beyond the pleadings" (e.g., produce affidavits, depositions, answers to interrogatories, or admissions on file) in opposing the summary judgment motion.



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The Court noted that plaintiff's argument faulting defendants for failing to support their factual positions with appropriate citations was a common misconception among litigants reflecting "a fundamental misunderstanding of the legal basis for the defendants' motion." The defendants here did not move based on there being affirmative evidence negating an essential element of plaintiff's claim. Rather, they moved for summary judgment on what the court called the "somewhat trickier" argument that plaintiff's evidence was insufficient to establish his claim. Both summary judgment approaches are written into Federal Rule of Civil Procedure 56, but only the first argument – i.e., that there is affirmative evidence negating an essential element – requires the moving party to point to specific record materials in support of the motion. This common misconception lead this plaintiff, according to the Court, to mistakenly believe he could rest exclusively on the allegations of his complaint and the harsh consequent of having summary judgment entered against him.

SUBMITTED BY

LISA A. LARKIN, PARTNER
llarkin@wvslaw.com
(314) 345-5014

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