BURR ALERT

Florida Supreme Court Amends Summary Judgment Procedural Rule to Mirror Federal Doctrine

By Jonathan C. Brown

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Through *In Re: Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490 (Fla. Dec. 31, 2020), the Florida Supreme Court, on its own motion, amended Florida Rule of Civil Procedure 1.510 to adopt the summary judgment standard articulated by the United States Supreme Court. Rule 1.510(c) shall remain the same except that the following clause will be added as the last sentence of this subparagraph: "The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The change will be effective on May 1, 2021. The Florida Supreme Court will accept comments to this proposed change through March 2, 2021.

Florida courts have required the moving party to "conclusively disprove" the nonmovant's theory of the case in order to eliminate any issue of fact, whereas the federal doctrine permits the entry of summary judgment when there is an absence of evidence to support the nonmoving party's case.

In making this decision, the Florida Supreme Court noted how the Florida and Federal Rules were similarly written, yet the Florida Rule was strictly interpreted, which made it too difficult for the moving party to obtain summary judgment even when the evidence clearly favored this ruling. Florida courts have required the moving party to "conclusively disprove" the nonmovant's theory of the case in order to eliminate any issue of fact, whereas the federal doctrine permits the entry of summary judgment when there is an absence of evidence to support the nonmoving party's case. Obtaining summary judgment in Florida courts often proved impossible when even the most trivial objection was raised by the non-moving party. The Florida Supreme Court cited Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* §1.510:5 (2020 ed.) to highlight this issue, and that: "[T]he existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised." Replacing Florida's unbelievably high burden of proof with the federal standard will save Florida litigants significant

attorney's fees and allow Florida Courts to dispose of cases without concern of overly technical reversals on appeal.

This major change to Fla.R.Civ.P 1.510(c) will likely preclude or frustrate claims brought by plaintiffs with weaker cases. I expect significant pushback and comments to this proposed amendment before its effective date. This amendment, however, was long overdue. Most states have adopted the federal summary judgment doctrine and the U.S. Supreme Court enacted the less stringent federal standard for a reason. Cases with no chance of prevailing need not reach a trier of fact, and eliminating a backlog of meritless cases and the drag they cause on the courts should improve Florida's legal system for decades to come.

TAKE ACTION

The Florida Supreme Court will accept comments to this proposed change through March 2, 2021.

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Jonathan C. Brown at jbrown@burr.com or (954) 414-6218
or the Burr & Forman attorney with whom you regularly work.

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