



**2019 Edition**

# Motion for Summary Judgment

A Guide to Resources in the Law Library

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This guide links to advance release slip opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar.  
The online versions are for informational purposes only.

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.” Conn. Practice Book § [17-44](#) (2019).
- **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](#) (2019).
- **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](#) (2019).
- **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](#) (2019).
- **Material Fact:** “is a fact which will make a difference in the result of the case.” [Hosp. of Cent. Connecticut v. Neurosurgical Associates, P.C.](#), 139 Conn. App. 778, 783, 57 A.3d 794, 797 (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](#) (2019).

# 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." [Wilson v. New Haven](#), 213 Conn. 277, 279, 567 A.2d 829 (1989).**
- **Standard of Review:** "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).**
- "[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](#) (2019)
  - § [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:**

- 2 Joel M. Kaye, Connecticut Practice Series, *Connecticut Civil Practice Forms* (2004).
  - 106.15 Motion for Summary Judgment, page 276
- Margaret P. Mason, *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice* (2018).
  - § 16.21 Form: Motion for Summary Judgment
- 18 Erin Carlson, Connecticut Practice Series, *Summary Judgment & Related Termination Motions* (2019).
  - Chapter 3. Summary Judgment or Summary Adjudication

- § 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 bus company
- § 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 owner of premises

- Robert M. Singer, *Library of Connecticut Collection Law Forms* (2016).
  - 6-012 Defendants Motion for Summary Judgment Liquidated Damages Provision, page 175
  - 9-020 Motion for Summary Judgment (**plaintiff’s** motion), page 499
  - 9-032 Motion for Summary Judgment (**defendant’s** motion), page 549
  - 19-006 Motion for Summary Judgment on Counterclaim—Based on Statute of Limitations, page 1,133
- Kimberly A. Peterson, *Civil Litigation in Connecticut: Anatomy of a Lawsuit* (1998).
  - Chapter 27. Motion for Summary Judgment
    - Example 3, Motion for Summary Judgment and Memorandum of Law pp. 257-260.

Motion for Summary Judgment on  
Counterclaim—Based on Statute of Limitations

**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.

- Soderburg v. Unitrin Preferred Ins. Co., Superior Court, Judicial District of Tolland at Rockville, No. CV-166010893-S, (July 24, 2018) (2018 Conn. Super. LEXIS 1511). “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.**”
- 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, 758) (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, 400-02, 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 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

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insufficient, but also that affording the plaintiffs the opportunity to replead would not help them.”

- [Brown v. Otake](#), 164 Conn App. 686, 708-709, 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). “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 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

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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), (2015 Conn. Super. LEXIS 2107) (2015 WL 5315410) (60 Conn. L. Rptr. 806). **"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 with 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...?"**
- [Mott v. Wal-Mart Stores E., 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 E., LLC v. Morin](#), 125 Conn. App. 165, 169-70, 7 A.3d 919, 921 (2010). **"Before addressing**



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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, 370-371, 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 [...] 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, 821-22 (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).'"**
- [Krevis v. City of Bridgeport](#), 262 Conn. 813, 823-24, 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.**"

- [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."

**WEST KEY NUMBERS:**

- Judgment  
V. On Motion or Summary Proceeding  
# 178-190. Judgment

**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.

- Kimberly A. Peterson, *Civil Litigation in Connecticut: Anatomy of a Lawsuit* (1998).
  - Chapter 27. Motion for Summary Judgment
- Jeanine M. Dumont, *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators* (1998 ed.).
  - Chapter XI. Motion for Summary Judgment
- 18 Erin Carlson, Connecticut Practice Series, *Summary Judgment & Related Termination Motions* (2019).
  - Chapter 3. Summary Judgment or Summary Adjudication
- Ralph P. Dupont, *Dupont on Connecticut Civil Practice* (2019-2020).
  - Chapter 17. Judgments  
G. Summary Judgments
- Renee Bevacqua Bollier, *Stephenson's Connecticut Civil Procedure* (1997).
  - Chapter 9. Disposition Short of Trial.  
§ 100. Summary Judgment.

### **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.

Figure 1: Motion for Summary Judgment (Form)

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

No. \_\_\_\_\_ Superior Court  
\_\_\_\_\_  
(First Named Plaintiff) Judicial District of \_\_\_\_\_  
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]*

# 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** (2019).
- "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:**

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- [Connecticut Practice Book](#) (2019)
  - § [11-10](#). Requirement That Memorandum of Law Be Filed with Certain Motions.
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  - § [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:**

- 18 Erin Carlson, Connecticut Practice Series, Summary Judgment & Related Termination Motions (2019).
  - Chapter 3. Summary Judgment or Summary Adjudication
    - § 3:139 Sample supporting and opposition briefs — Motion for summary judgment — Plaintiff's opposition — Memorandum of points and authorities in opposition to motion for summary judgment
    - § 3:140 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

§ 3:141 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

- Kimberly A. Peterson, *Civil Litigation in Connecticut: Anatomy of a Lawsuit* (1998).  
Chapter 27. Motion for Summary Judgment
  - Example 2, Objection to Motion for Summary Judgment Interlocutory in Character, p. 256.
- Joseph D. Garrison, *Library of Connecticut Employment Law Forms* (2011), p. 579  
Chapter 11. Summary Judgment.
  - 11-002 Memo of Law in Opposition to Motion for Summary Judgment – Wrongful Termination – C.G.S. 31-51q
- Joshua Koskoff, *Library of Connecticut Personal Injury Forms* 2<sup>nd</sup> ed. (2014).  
Chapter 6 Objection to Motions/Requests
  - 6-012 Objection to Motion for Summary Judgment—Statute of Limitations, p. 478
  - 6-013 Objection to Defendants Motion for Summary Judgment, p. 495

### **CASE LAW:**

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- [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 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, 366-67, 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**

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*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, 229-30, 899 A.2d 738, 743-44 (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:**

**TREATISES:**

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- Judgment  
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- Kimberly A. Peterson, *Civil Litigation in Connecticut: Anatomy of a Lawsuit* (1998).
  - Chapter 27. Motion for Summary Judgment
- Jeanine M. Dumont, *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators* (1998 ed.).
  - Chapter XI. Motion for Summary Judgment
    - 5. Opposition to the Motion
- 18 Erin Carlson, Connecticut Practice Series, *Summary*



*Judgment & Related Termination Motions* (2019).

- Chapter 3. Summary Judgment or Summary Adjudication
  - V. Key Opposition Citations
- Ralph P. Dupont, *Dupont on Connecticut Civil Practice* (2019-2020).
  - Chapter 17. Judgments
    - G. Summary Judgments
- Renee Bevacqua Bollier, *Stephenson's Connecticut Civil Procedure* (1997).
  - 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:**

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## 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:**

- “**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](#) (2019).
- **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 Conn. Super. LEXIS 1243) (2010 WL 2593271).
- “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 Conn. Super. LEXIS 560) (2013 WL 1364714).

### **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. (2019)  
[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](#) (2019)
  - § [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 (2018 ed.)
  - § [9-1](#). Requirement of Authentication

**FORMS:**

- 18 Erin Carlson, Connecticut Practice Series, *Summary Judgment & Related Termination Motions* (2019).
  - Chapter 3. Summary Judgment or Summary Adjudication
    - VI. Sample Forms
      - § 3:138 —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.

- [Ulyses Alvarez v. City of Middletown](#), 192 Conn. App. 606, 620, (2019 Conn. App. LEXIS 331) (2019 WL 4252097). **“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 . . . .’ 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, 584-585, 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 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, 823-824, 116 A.3d 1195, 1204 (2015). **“Specifically, the plaintiffs contend that, following a determination that there were genuine disputes**

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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."****

- [Taylor v. Barberino](#), 136 Conn. App. 283, 289-90, 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). "[B]efore 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."
- [Paine Webber Jackson & Curtis, Inc. v. Winters](#), 13 Conn. App. 712, 721-22, 539 A.2d 595, 599-600 (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."

**WEST KEY  
NUMBERS:**

- Judgment  
V. On Motion or Summary Proceeding  
# 178-190. Judgment

## **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.

- Kimberly A. Peterson, *Civil Litigation in Connecticut: Anatomy of a Lawsuit* (1998).
  - Chapter 27. Motion for Summary Judgment
- Jeanine M. Dumont, *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators* (1998 ed.).
  - Chapter XI. Motion for Summary Judgment
    - 3. The Mechanics of a Motion for Summary Judgment
- 18 Erin Carlson, Connecticut Practice Series, *Summary Judgment & Related Termination Motions* (2019).
  - Chapter 3. Summary Judgment or Summary Adjudication
- Ralph P. Dupont, *Dupont on Connecticut Civil Practice* (2019-2020).
  - Chapter 17. Judgments
    - G. Summary Judgments
      - § 17-45.3 Supporting Documents; Unsworn Statements and Reports Prohibited.
      - § 17-46.1 Affidavit, Facts Alleged Must be **Admissible and Based on Affiant's Personal Knowledge**.
      - § 17-46.2 Affidavit, Failure to File.
      - § 17-48.1 Contempt; Discipline, Bad Faith Affidavit
- Renee Bevacqua Bollier, *Stephenson's Connecticut Civil Procedure* (1997).
  - Chapter 9. Disposition Short of Trial.
    - § 100. Summary Judgment.

## **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](#) (2019).
- **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](#) (2019).

## **COURT RULES:**

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

- [Connecticut Practice Book](#) (2019)
  - § [17-44](#). Summary Judgments; Scope of Remedy.
  - § [17-50](#). --Triable Issue as to Damages Only
  - § [17-51](#). --Judgment for Part of Claim

## **FORMS:**

- 2 Joel M. Kaye, Connecticut Practice Series, *Connecticut Civil Practice Forms* (2004).
  - 107.14 Interlocutory Summary Judgment, page 350
- 18 Erin Carlson, Connecticut Practice Series, *Summary Judgment & Related Termination Motions* (2019).
  - Chapter 3. Summary Judgment or Summary Adjudication
    - § 3:135 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
    - § 3:140 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

- Ralph P. Dupont, *Dupont on Connecticut Civil Practice* (2019-2020).
  - Chapter 17. Judgments
    - G. Summary Judgments
      - § 17-50 Triable Issue as to Damages for Summary Judgment
- Kimberly A. Peterson, *Civil Litigation in Connecticut: Anatomy of a Lawsuit* (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.

- 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)**. **“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. Maurer*, 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. Vocola*, 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). **“[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**



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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). “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.**”
- Judgment  
V. On Motion or Summary Proceeding  
# 178-190. Judgment

**WEST KEY  
NUMBERS:**

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  - Chapter 27. Motion for Summary Judgment
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  - Chapter XI. Motion for Summary Judgment
- 18 Erin Carlson, *Connecticut Practice Series, Summary Judgment & Related Termination Motions* (2019).
  - Chapter 3. Summary Judgment or Summary Adjudication
- Ralph P. Dupont, *Dupont on Connecticut Civil Practice* (2019-2020).
  - Chapter 17. Judgments
    - G. Summary Judgments
- Renee Bevacqua Bollier, *Stephenson's Connecticut Civil Procedure* (1997).
  - 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).

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