

Cole v. Superior Court of San Diego County
No. D081299, 2022 WL 17999483 (Cal Ct. App. Dec. 30, 2022)

Since summary judgement motion was electronically filed and served 107 days or more before trial, it was timely, and the moving parties were entitled to a hearing on the motion.

FACTS/ PROCEDURE

In 2018 a dispute arose between Plaintiff Matt Zeiner and Defendant Geoff Cole after a trailer Cole rented from Zeiner was destroyed. Zeiner filed a lawsuit in January 2019 to recover the loss of the trailer. Defendant Cole filed a summary judgment motion on October 5, 2022 and received a hearing date of January 27, 2023. Trial was set for January 20, 2023. In November 2022, Defendant filed an ex parte application to set the hearing before the trial date or to move the trial until after the hearing date. Plaintiff argued the case was an old 2019 case and defendants waited too late in an attempt to push the trial out, so the trial court had the discretion to deny the request. The trial court agreed with Plaintiff stating there were no earlier hearing dates and Defendant waited too late. The trial court then denied Defendant's motion for reconsideration. Defendant then filed a writ of mandate with the appellate court.

FOURTH DCA RULING

Code of Civil Procedure section 437c, subdivision (a) provides: "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct ... [n]otice of the motion and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing ... The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise."

Defendant contended under section 437c and the 75-day notice rule, their motion was due on October 7, 2022, which was 105 days before the start of trial (75 days + 30 days before trial = 105 days before the trial date of January 20th). However, the court found Defendant was ignoring the service extensions for notice. As the motion was served electronically, there is a 2 day extension of the noticing period. Nevertheless, applying the 2-day extension meant the summary judgement motion was due on October 5, 2022, which was 107 days before trial (75 days + 30 days before trial + 2 days for e-service = 107 days.) Therefore, by filing the motion on October 5th they filed on the last day and were timely.

The court then cited several appellate court opinions which held that a trial court cannot refuse to consider a motion for summary judgement that is timely filed. A busy court docket is not an adequate reason for denying hearing a summary judgment motion. Because the motion was timely filed, albeit on the last day, the court erred in refusing to set a hearing before the start of trial. The court issued a peremptory writ to vacate its orders and directing it to enter a new order setting the motion for a hearing no later than the trial start date.