

Is Summary Judgement Dead? article by Iram Valentin, Esq. published in New Jersey Law Journal, 5-2-2024

"The entry of summary judgment in New Jersey civil cases is very rare. Should that be the case, though?" writes Iram P. Valentin of Kaufman Dolowich.

By Iram P. Valentin

Most attorneys in New Jersey are familiar with Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). In fact, a reference to Brill in the "Standard of Review" section of the typical summary judgment brief is customary, if not trite. Nearing the 30th anniversary of the Supreme Court's decision in Brill, a reflection of its efficacy seems fitting.

In Brill, the New Jersey Supreme Court found that when read together, a series of U.S. Supreme Court cases dealing with summary judgment—Matsushita Elec. Indus. v. Zenith Radio, 475 U.S. 574 (1986), Anderson v. Liberty Lobby, 477 U.S. 242 (1986), and Celotex v. Catrett, 477 U.S. 317 (1986)—adopted a standard that requires a motion judge to engage in an analytical process similar to that necessary to rule on a motion for a directed verdict: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law ... That weighing process requires the court to be guided by the same evidentiary standard of proof—by a preponderance of the evidence or clear and convincing evidence—that would apply at the trial on the merits when deciding whether there exists a 'genuine' issue of material fact."

The Brill court explained that "[t]he only distinction between 1) a directed verdict at the end of plaintiff's case pursuant to Rule 4:37-2(b), 2) a directed verdict pursuant to Rule 4:40-1 after all the evidence has been presented, 3) a judgment notwithstanding the verdict pursuant to Rule 4:40-2, and 4) a summary judgment that allows a Rule 4:37-2(b) weighing of evidence to determine if a genuine issue of material fact exists, is that summary judgment motions are generally decided on documentary evidential materials, while the directed verdicts are based on evidence presented during a trial." The Brill court held that the essence of the inquiry in each is the same: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." The Brill court commented that "[m]easured by that standard, a dismissal under Rule 4:37-2(b), Rule 4:40-1, Rule 4:40-2 or for failure to allege or prove a prima facie case, does not unduly intrude into the province of the jury."

Specifically, "In those instances, there simply is no issue to be decided by a jury based on the evidence. A jury resolves factual, not legal, disputes. If a case involves no material factual disputes, the court disposes of it as a matter of law by rendering judgment in favor of the moving or non-moving party on the issue of liability or damages or both. Thus, the right of trial by jury remains inviolate."

The Brill court stressed that the import of its holding was "that when the evidence 'is so one-sided that one party must prevail as a matter of law,' the trial court should not hesitate to grant summary judgment." The Brill court noted that the following from Judson, supra, was worth repeating:

"If these general rules are applied by the courts with discernment and care, the summary judgment procedure, without unjustly depriving a party of a trial, can effectively eliminate from crowded court calendars cases in which a trial would serve no useful purpose and cases in which the threat of trial is used to coerce a settlement."

Brill declared: "The thrust of today's decision is to encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves." In considering whether judges would be inclined to deny summary judgment out of fear of reversal, the court stated: "Some have suggested that trial courts out of fear of reversal, or out of an overly restrictive reading of Judson, supra, ... or a combination thereof, allow cases to survive summary judgment so long as there is any disputed issue of fact. As to fear of reversal, we believe our judges are made of sterner stuff and have sought conscientiously over the years to follow the law."

Thus, there is a clear mandate in Brill to not only enter summary judgment "when the evidence 'is so one-sided that one party must prevail as a matter of law,'" but also to "encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves." In fact, Rule 4:46-2(c) directs: "The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." That

rule also allows for the entry of judgment on any issue in the action. Therefore, summary judgment provides a mechanism by which courts can efficiently adjudicate matters, as necessary.

So, how have the courts treated summary judgment since Brill? The New Jersey judiciary publishes reports on its website by court year, but the statistics only concern the period of July 1, 2004 through 2022. During that 20-year period, summary judgment has not been a factor, at least statistically. For example, in that timeframe, there were 31,597 motions for summary judgment decided. Out of those, only 2.16% were granted, or roughly 682 out of the 31,597 applications. Conversely, almost 98% of the applications were denied. Also, during that time, there were 19,463 jury trials and 6,950 non-jury trials held in New Jersey, for a total of 26,413 trials. At a disposition rate of 2.16%, it can be safely concluded that the entry of summary judgment in New Jersey civil cases is very rare.

Should that be the case, though? Considering the significant costs and investment of time required to prepare, oppose and argue a summary judgment application, it is a fair question. However, the statistics are only useful to a very general extent. For example, they are not predictive of what a judge will do when presented with specific facts and legal arguments within the context of a unique case. The odds of prevailing on summary judgment in a particular case can increase dramatically based on the facts and law of a particular case, indicating that the percentage chance of prevailing on such an application can conceptually be significant.

Brill suggests that there is more room for the use of summary judgment to dispose of cases. For example, a lesson imparted by Brill, which it took from Judson, is that summary judgment can be effectively employed without unjustly depriving a party of a trial. The objective should be to “eliminate from crowded court calendars cases in which a trial would serve no useful purpose and cases in which the threat of trial is used to coerce a settlement.” Disposing of these cases on summary judgment would alleviate the strain on court dockets.

In addition, Brill reminded courts to be aware of the distinction between finding any question of fact and finding a genuine issue of material fact requiring submission to a factfinder for determination.

The court explained, “By its plain language, Rule 4:46–2 dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a ‘genuine issue as to any material fact challenged.’ That means a non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute.” Thus, the existence of questions of fact is not dispositive. There must exist a genuine issue of material fact requiring submission to a factfinder for determination. The court determines whether such material issues of fact exist by evaluating, analyzing and sifting through the evidential material.

Further, Brill teaches that summary judgment can even be granted where the parties serve competing expert reports. It should be noted that Brill was an insurance broker malpractice case in which the Supreme Court, in the face of an expert report stating that the insurance broker defendants were not liable, nevertheless affirmed the award of summary judgment to the plaintiff. Therefore, Brill supports the proposition that even within the summary judgment context, the existence of an expert report is not sufficient to withstand summary judgment, particularly where the “facts” relied upon an expert are incorrect, or where the expert’s opinion is found to be a net opinion.

In conclusion, the thrust of the Supreme Court’s decision in 1995, was to “encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves.” Based on the statistics, the proper circumstances appear to rarely arise, which still leaves the question, is summary judgment dead? Not quite. However, the Brill decision presents the argument that it may be underutilized.

Iram P. Valentin is a partner in the Hackensack office of Kaufman Dolowich. He is certified by the Supreme Court as a civil trial attorney, and he is a co-chair of Kaufman Dolowich’s national professional liability practice group.

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