

Strike Out and Summary Judgment

If, as either a Claimant or Defendant in a Court claim, you believe that your opponent's case has no merit or is simply hopeless, then there are a couple of options available to a party to request that the Court make an early determination of the claim, which also means that matters are dealt with quicker and cheaper than proceeding to a full trial.

STRIKE OUT

Under Part 3 of the Civil Procedure Rules (CPR), the Court has various management powers in relation to how claims are run. Part 3.4 of the CPR provides the Court with the power to Strike Out a statement of case (Particulars of Claim, Defence or Reply), in whole or in part, if it appears to the Court:

- a) That the statement of case discloses no reasonable grounds for bringing or defending the claim.
- b) That the statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings.
- c) Or, that there has been a failure to comply with a rule, practice direction or Court order.

The purpose of a Strike Out application is to ensure that material from a party's statement of case is deleted and cannot be relied upon in the proceedings. If the whole of a statement of case is struck out, then it normally leads to the other party being awarded judgment.

Parties should however be aware that despite the Court having the power to Strike Out a statement of case, the Courts tend to use its power rarely. This is because Courts are conscious of the overriding objective that parties should have access to justice, and that cases should be dealt with justly and at a proportionate cost. Striking out a party's case is a quite draconian order.

It is for the applicant to show that the grounds for striking out exist. If they are able to establish this, then their opponent (the respondent) will be given the opportunity to persuade the Court that it would be unfair or inappropriate for a Strike Out order to be made. In particular, respondents may argue that the claim can only be decided at trial and that striking out their claim at an early stage would deprive them of the right to that trial. Depending on the timing of the application, the respondent may argue that their case is likely to be strengthened once the parties have provided disclosure and exchanged witness evidence.

SUMMARY JUDGMENT

As a result of the Courts being reluctant to make a Strike Out order, parties often combine their application for Strike Out with an application for Summary Judgment.

The main difference between the two types of application is that Strike Out only deals with statements of case, whereas Summary Judgment applications will consider the evidence as well.

Summary Judgment provides the applicant with a chance to have their case considered at an early stage via a short hearing and if successful, will save on the time and expenses of full litigation and a longer trial.

However, applications for Summary Judgment can cause delay. If an application is made, it effectively suspends proceedings until the application is heard, which could be a few months after the application is made. If an application is made before a Defendant files their defence, they can then wait until after the Summary Judgment hearing before having to file the defence. As such, the timing of any application is crucial, so that the applicant is best placed to know what their opponent's position is.

Under Part 24 of the CPR, the Court has the power to determine an entire claim or particular issue within the claim without the need for a trial. Part 24.2 states:

'The Court may give Summary Judgment against a Claimant or Defendant on the whole of a claim or on a particular issue if –

- a) It considers that –
 - (i) that Claimant has no real prospect of succeeding on the claim or issue
 - (ii) that Defendant has no real prospect of successfully defending the claim or issue
- b) there is no other compelling reason why the case or issue should be disposed of at a trial.

Summary Judgment should not be confused with Default Judgment. Default Judgment can be ordered usually where the Defendant has failed to file and serve an Acknowledgment of Service or a Defence within the required time limits. A Defendant can also obtain default judgment in respect of a counterclaim if the Claimant fails to serve a Defence to the Counterclaim in time.

Summary Judgment can be given against a Claimant in any proceedings and against a Defendant in all proceedings, save for possession proceedings involving residential premises.

Summary Judgment is a later procedure and a Claimant cannot make an application for Summary Judgment until the Defendant has filed an Acknowledgment of Service or Defence, unless the Court otherwise gives permission.

Proving that a party has no real prospect of success in either succeeding or defending the claim is a subjective test and will vary from case to case. Your opponent needs to show that they have more than simply an arguable case to defeat an application for Summary Judgment. However, this only needs to be a realistic chance of success, not a fanciful claim or defence.

Applications for Summary Judgment are most commonly issued when a party files their Direction Questionnaire. By this time, the parties will have filed their Particulars of Claim and Defence, so each will have a good idea about their opponent's respective cases and positions they are adopting in relation to the claim. If either party feels that their opponent's case is hopeless and bound to fail, then they may wish to consider a Summary Judgment application.

Even though some people sometimes describe Summary Judgment applications as a 'mini-trial', they are in fact different from a trial. At a final hearing, the Court will make a decision, based on the balance of probabilities. In a Summary Judgment application, the Court is not looking at who is likely

to succeed, but whether a party's case has a real prospect of success. If the party can successfully show this to the Court, then the Court should not grant the Summary Judgment application.

Summary Judgment applications, whether as an applicant or respondent, require both parties to file evidence in support of their position. It is therefore worthwhile for parties to seek legal advice if they are considering or are faced with a Summary Judgment application.

Once an application has been issued by the Court, the application and supporting evidence needs to be served on your opponent at least 14 days before the hearing listed by the Court.

The respondent will be given an opportunity to provide evidence in response to the application and they must serve their evidence at least seven days before the hearing.

The applicant is then able to file further evidence responding to the above. If they wish to file further evidence, it must be served at least three days before the hearing.

At the hearing, both parties are given an opportunity to make their representations and in some cases, oral evidence may be given by witnesses. The judge will then determine the application and either grant or dismiss the application.

GET IN TOUCH



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The lawyers have incomparable client service skills. They are very clear and always make sure they understand the picture, even if it is a complicated one.

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