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### Florida Supreme Court Adopts Federal Standards for Summary Judgment on December 31, 2020

**Supreme Court of Florida Order No. SC20-1490 issued December 31, 2020**

On December 31, the Florida Supreme Court amended Fla. R. of Civ. Pro. 1.510 regarding the Summary Judgment Process and adopted the federal summary judgment standard provided in Fed. R. Civ. Pro. 56(a). This change will be effective May 1, 2021 at 12:01 a.m.

The purpose of the change is to promote the just and speedy resolution of civil matters pursuant to Fla. R. Civ. Pro. 1.010.

#### **Implications:**

Because the Supreme Court adopted this standard for summary judgment, the number of contested foreclosure files that proceed to trial based on unsupported defenses should decrease. In addition, when servicers file motions for summary judgment, the number of affidavits needed to rebut unsupported affirmative defenses should also decrease. Finally, this change should allow servicers to win more summary judgment motions when arguing that there are no facts supporting the defendant's case.

Prior Language of 1.510(c): "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

New Language of 1.510(c): "that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law...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)."

**Important Issues the Rule change is addressing:**

1. Adopting the Federal Rule will address Florida Courts' failure to recognize that a motion for directed verdict and a motion for summary judgment are mirror motions that only have a procedural difference of timing in the civil action and must consider whether the matter requires the deliberation of a jury.
2. More importantly, the new rule rejects the prior standard of review by Florida Courts requiring the moving party to address the nonmovant's theory of the case to eliminate any issue of fact through evidence and/or affidavit. Instead, the new rule allows the Moving Party the ability to show a lack of evidence in the record support the nonmoving party's defense(s) and/or theory of the case. The rule recognizes the burden of each party to present certain evidence to prove/disprove the case. The entire burden is no longer on the Moving Party to present its evidence as well as disprove the nonmoving party's case.
3. Finally, the new rule adopts the proposition that a nonmoving party must present a triable issue of material fact to overcome summary judgment instead of the current Florida standard of defeating summary judgment with a "metaphysical doubt" of material fact.

A copy of the Supreme Court Order is available here: [http://go.pardot.com/e/312251/d-698378-opinion-sc20-1490-pdf/f12sh/1191635544?h=6jiiCN84L\\_B9HNalqUTisCTqxV\\_koczIMTaDOAI6Hi0](http://go.pardot.com/e/312251/d-698378-opinion-sc20-1490-pdf/f12sh/1191635544?h=6jiiCN84L_B9HNalqUTisCTqxV_koczIMTaDOAI6Hi0)

If you have questions, please feel free to contact Heather Griffiths, Managing Florida Attorney, at [hgriffiths@orlans.com](mailto:hgriffiths@orlans.com).

If you have specific legal questions about your files, please feel free to contact an attorney referenced below.

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