C.R.C.P. 56

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Rule 56. Summary Judgment and Rulings on Questions of Law.

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, after the expiration of 21 days from the commencement of the action or after filing of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the claiming party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, move with or without supporting affidavits for a summary judgment in the defending party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. Unless otherwise ordered by the court, any motion for summary judgment shall be filed no later than 91 days (13 weeks) prior to trial. A cross-motion for summary judgment shall be filed no later than 70 days (10 weeks) prior to trial. The motion may be determined without oral argument. The opposing party may file and serve opposing affidavits within the time allowed for the responsive brief, unless the court orders some lesser or greater time. The judgment 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 and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this Rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts

are actually in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. 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 or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or by further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the opposing party's pleadings, but the opposing party's response by affidavits or otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If there is no response, summary judgment, if appropriate, shall be entered.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the opposing party cannot for reasons stated present by affidavit facts essential to justify its opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Determination of a Question of Law. No later than 91 days (13 weeks) before the trial, with or without supporting affidavits, a party may move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question.

History

(a), (b), (c), (f), and (g) amended July 9, 1992, effective October 1, 1992; (a) and (c) amended and effective June 28, 2007; (a) and (c) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b); (h) amended and adopted June 12, 2025, effective January 1, 2026.

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I. GENERAL CONSIDERATION.

Law reviews. For article, "Comments on the Rules of Civil Procedure", see 22 Dicta 154 (1945).

For article, “Use of Summary Judgments and the Discovery Procedure”, see 24 Dicta 193 (1947). For article, “Pre-Trial in Colorado in Words and at Work”, see 27 Dicta 157 (1950). For article, “Notes on Proposed Amendments to Colorado Rules of Civil Procedure”, see 27 Dicta 165 (1950). For article, “Amendments to the Colorado Rules of Civil Procedure”, see 28 Dicta 242 (1951). For article, “Judgment: Rules 54-63”, see 23 Rocky Mt. L. Rev. 581 (1951). For note, “Comments on Last Clear Chance -- Procedure and Substance”, see 32 Dicta 275 (1955). For article, “One Year Review of Civil Procedure and Appeals”, see 37 Dicta 21 (1960). For article, “One Year Review of Civil Procedure and Appeals”, see 38 Dicta 133 (1961). For article, “One Year Review of Civil Procedure and Appeals”, see 39 Dicta 133 (1962). For article, “One Year Review of Contracts”, see 39 Dicta 161 (1962). For article, “One Year Review of Civil Procedure and Appeals”, see 40 Den. L. Ctr. J. 66 (1963). For article, “One Year Review of Torts”, see 40 Den. L. Ctr. J. 160 (1963). For note, “One Year Review of Civil Procedure”, see 41 Den. L. Ctr. J. 67 (1964). For article, “The One Percent Solution”, see 11 Colo. Law. 86 (1982). For article, “A Litigator’s Guide to Summary Judgments”, see 14 Colo. Law. 216 (1985). For article, “Federal Practice and Procedure”, which discusses a Tenth Circuit decision dealing with conversion of a motion to dismiss into a motion for summary judgment, see 62 Den. U. L. Rev. 220 (1985). For comment, “Anderson v. Liberty Lobby, Inc.: Federal Rules Decision or First Amendment Case?”, see 59 U. Colo. L. Rev. 933 (1988). For article, “There is Still a Chance: Raising Unpreserved Arguments on Appeal”, see 42 Colo. Law. 29 (June 2013). For article, “Dispositive Motions Practice in Colorado -- Best Practices and Challenges Amid the Pandemic”, 49 Colo. Law. 24 (Nov. 2020).

The obvious purpose to be served by this rule is to further the prompt administration of justice, expedite litigation by avoiding needless trials, and enable one speedily to obtain a judgment by preventing the interposition of unmeritorious defenses for purpose of delay. Blaine v. Yockey, 117 Colo. 29, 184 P.2d 1015 (1947).

The summary judgment rule is designed to pierce through the allegations of fact in the pleadings. Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972).

This rule is designed to avoid an unnecessary trial. This rule allowing summary judgment is designed to pierce through the allegations of fact in pleadings and to avoid an unnecessary trial where the matter submitted in support of a motion for summary judgment shows 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 under section (c). Terrell v. Walter E. Heller Co., 165 Colo. 463, 439 P.2d 989 (1968); Ruscitti v. Sackheim, 817 P.2d 1046 (Colo. App. 1991).

The function of this rule authorizing summary judgments is to avoid the expense and delay of trials when all facts are admitted or when a party is unable to support by any competent evidence a contention of fact. Norton v. Dartmouth Skis, Inc., 147 Colo. 436, 364 P.2d 866 (1961).

This rule provides a method whereby it is possible to determine whether a genuine cause of action or defense thereto exists and whether there is a genuine issue of fact warranting the submission of the case to a jury. Blaine v. Yockey, 117 Colo. 29, 184 P.2d 1015 (1947).

Violation of section (c) of this rule, providing the opportunity for a response from the opposing party, found to be harmless error under the circumstances. Union Ins. Co. v. Hottenstein, 83 P.3d 1196 (Colo. App. 2003).

Issue of sovereign immunity properly decided under C.R.C.P. 12(b)(1) rather than this rule since sovereign immunity issue is one of subject matter jurisdiction. DiPaolo v. Boulder Valley Sch. Dist., 902 P.2d 439 (Colo. App. 1995).

Judgments by confession on notes are not affected. Cross v. Moffat, 11 Colo. 210, 17 P. 771 (1888).

Judgment of dismissal for failure to state claim upon which relief can be granted may be entered upon motion for summary judgment. Van Schaack v. Phipps, 38 Colo. App. 140, 558 P.2d 581 (1976).

This rule is applicable in a termination of parental rights proceeding under the Colorado Children's Code. Because termination of the parent-child relationship is a drastic remedy that affects a parent's liberty interest, a court deciding a summary judgment motion seeking to terminate parental rights must apply the standard of clear and convincing evidence to the applicable statutory criteria. People in Interest of A.E., 914 P.2d 534 (Colo. App. 1996).

Court's ruling that the issue of paternity could not be raised in the child support proceeding because it had been previously litigated was based on undisputed facts, and was tantamount to a partial judgment on the pleadings, or a partial summary judgment. As such, no findings of fact and conclusions of law were required. McNeece v. McNeece, 39 Colo. App. 160, 562 P.2d 767 (1977).

This rule applies to dependency and neglect. No genuine issue of material fact existed on date of adjudication of dependency and neglect case and, therefore, trial court properly adjudicated child dependent and neglected pursuant to summary judgment rule. In Interest of S.B., 742 P.2d 935 (Colo. App. 1987).

This rule applies to eminent domain proceedings. Allowing summary judgment in appropriate eminent domain cases does not abridge a landowner's constitutional right to demand a jury. City of

Steamboat Springs v. Johnson, 252 P.3d 1142 (Colo. App. 2010).

Party wishing to file a motion for summary judgment in dependency and neglect proceeding cannot comply with both § 19-3-505 (3) and section (c) of this rule. Pursuant to C.R.C.P. 81, the timing of § 19-3-505 (3) controls. People ex rel. A.C., 170 P.3d 844 (Colo. App. 2007).

Under the doctrine of res judicata, a final judgment on the merits is considered conclusive in any subsequent litigation involving either the same parties or those in privity with them, the same subject matter, and same claims for relief. Foley Custom Homes, Inc. v. Flater, 888 P.2d 363 (Colo. App. 1994).

The preclusive effect of the doctrine of res judicata applies not only to the claims and issues that were actually decided, but also to any claims or issues that could have been raised in the first proceeding. Foley Custom Homes, Inc. v. Flater, 888 P.2d 363 (Colo. App. 1994).

The function of the doctrines of res judicata and collateral estoppel is to avoid relitigation of the same claims or issues because of the cost imposed upon the parties by multiple lawsuits, the burden upon the judicial system, and need for finality in the judicial process; however, the requirement that the same parties or their privies must have appeared in the first proceeding is intended to avoid penalizing one who did not appear. Foley Custom Homes, Inc. v. Flater, 888 P.2d 363 (Colo. App. 1994).

Res judicata does not apply to bar state action where state and federal claims were based on different claims for relief, and state claims were not truly "available to the parties" in the prior federal action because state claims could only have been asserted in federal court as pendent to federal claims for relief, and federal claim was dismissed on motion for summary judgment, requiring dismissal of pendent state claims. City & County of Denver v. Block 173, 814 P.2d 824 (Colo. 1991).

Claim to quiet title in certain usufructuary rights was absolutely barred by the doctrine of res judicata where there was a prior judgment involving the same subject matter and cause of action and the plaintiffs were in privity with the parties to the previous action. Rael v. Taylor, 832 P.2d 1011 (Colo. App. 1991).

Res judicata did not apply where corporate plaintiff seeking to enforce agreement in second case was not identical to the individual shareholder who relied upon the agreement in the first case and was not in privity with shareholder since the corporation was asserting its own claim and there was nothing in the record to suggest that the corporation's claim was adjudicated in the first case. Foley

Custom Homes, Inc. v. Flater, 888 P.2d 363 (Colo. App. 1994).

Collateral estoppel. Findings of federal district court insufficient to support summary judgment on state claims where identity of issues necessary to invoke collateral estoppel was absent between issues actually and necessarily decided by the federal district court and those necessary to preclude summary judgment on landowner's "bad faith" claims in state court. City & County of Denver v. Block 173, 814 P.2d 824 (Colo. 1991).

Water court's ruling granting summary judgment to defendants on grounds of collateral estoppel was error because the issue raised in the current litigation was neither actually determined in prior litigation between the parties nor necessarily implied in the final judgment issued in prior litigation between the parties. Reynolds v. Cotten, 2012 CO 27, 274 P.3d 540.

Collateral estoppel and res judicata may apply to give preclusive effect to an arbitration award. Union Ins. Co. v. Hottenstein, 83 P.3d 1196 (Colo. App. 2003).

Collateral estoppel or "issue preclusion" should be argued as part of a motion for summary judgment under this rule, not a motion to dismiss for failure to state a claim under C.R.C.P. 12(b). Bristol Bay Prod., LLC v. Lampack, 2013 CO 60, 312 P.3d 1155.

A motion for summary judgment based upon an assertion of the lack of existence of a duty of due care is to be subjected to the same standard as is any other motion for summary judgment. Sewell v. Pub. Serv. Co. of Colo., 832 P.2d 994 (Colo. App. 1991).

Court cannot resolve unripe claims by entering summary judgment because the court lacks subject matter jurisdiction to entertain unripe claims. Zook v. El Paso County, 2021 COA 72, 494 P.3d 659.

Applied in Eklund v. Safeco Ins. Co. of Am., 41 Colo. App. 96, 579 P.2d 1185 (1978); Posey v. Intermountain Rural Elec. Ass'n, 41 Colo. App. 7, 583 P.2d 303 (1978); Martin v. County of Weld, 43 Colo. App. 49, 598 P.2d 532 (1979); SaBell's, Inc. v. Flens, 42 Colo. App. 221, 599 P.2d 950 (1979); Nelson v. Strode Motors, Inc., 198 Colo. 366, 600 P.2d 74 (1979); Town of De Beque v. Enewold, 199 Colo. 110, 606 P.2d 48 (1980); Ruff v. Kezer, 199 Colo. 182, 606 P.2d 441 (1980); First Hyland Greens Ass'n v. Griffith, 618 P.2d 745 (Colo. App. 1980); Campbell v. Home Ins. Co., 628 P.2d 96 (Colo. 1981); DiChellis v. Peterson Chiropractic Clinic, 630 P.2d 103 (Colo. App. 1981); People in Interest of K.A.J., 635 P.2d 921 (Colo. App. 1981); In re George, 650 P.2d 1353 (Colo. App. 1982); Wheeler v. County of Eagle ex rel. County Comm'rs, 666 P.2d 559 (Colo. 1983);

Knoche v. Morgan, 664 P.2d 258 (Colo. App. 1983); DuBois v. Myers, 684 P.2d 940 (Colo. App. 1984); Am. W. Motel Brokers, Inc. v. Wu, 697 P.2d 34 (Colo. 1985); Frontier Expl. v. Blocker Expl., 709 P.2d 39 (Colo. App. 1985), aff'd in part, rev'd in part on other grounds, 740 P.2d 983 (Colo. 1987); Churchey v. Adolph Coors Co., 725 P.2d 38 (Colo. App. 1986), aff'd in part, rev'd in part on other grounds, 759 P.2d 1336 (Colo. 1988); Cooper v. Peoples Bank & Trust Co., 725 P.2d 78 (Colo. App. 1986); Shaw v. Gen. Motors Corp., 727 P.2d 387 (Colo. App. 1986); Giralt v. Vail Vill. Inn Assocs., 759 P.2d 801 (Colo. App. 1988); Jardel Enters., Inc. v. Triconsultants, Inc., 770 P.2d 1301 (Colo. App. 1988); DeRubis v. Broadmoor Hotel, Inc., 772 P.2d 681 (Colo. App. 1989); Kane v. Town of Estes Park, 786 P.2d 411 (Colo. 1990); AF Prop. v. Dept. of Rev., 852 P.2d 1267 (Colo. App. 1992); Dickman v. Jackalope, Inc., 870 P.2d 1261 (Colo. App. 1994); Anderson v. Somatogen, Inc., 940 P.2d 1079 (Colo. App. 1996); Bankr. Estate of Morris v. COPIC Ins. Co., 192 P.3d 519 (Colo. App. 2008); People v. Wunder, 2016 COA 46, 371 P.3d 785.

II. FOR CLAIMANT.

Law reviews. For article, "Plaintiff's Advantageous Use of Discovery, Pre-Trial and Summary Judgment", see 40 Den. L. Ctr. J. 192 (1963).

Summary judgment is proper where adverse party fail to respond by affidavit or otherwise to moving party's affidavit. GTM Invs. v. Depot, Inc., 694 P.2d 379 (Colo. App. 1984).

Applied in People ex rel. Flanders v. Neary, 113 Colo. 12, 154 P.2d 48 (1944).

III. FOR DEFENDING PARTY.

Section (b) of this rule, does not require that a defendant plead before he files a motion for summary judgment. Welp v. Crews, 149 Colo. 109, 368 P.2d 426 (1962).

Since this rule authorizes a motion for summary judgment by the defendant "at any time" and since the theory of the motion is that the defending party is entitled to judgment as a matter of law, there is normally no necessity to serve an answer, whose function is to develop issues, until the motion for summary judgment is disposed of. Welp v. Crews, 149 Colo. 109, 368 P.2d 426 (1962).

This rule authorizes a defending party to file a motion for summary judgment prior to

answering the complaint. Guerrero v. City of Colo. Springs, 507 P.2d 881 (Colo. App. 1972).

Where a defendant files only a motion for summary judgment, he neither files an answer nor does he ask the trial court for leave to plead a defense, and, if no request is made for an evidentiary hearing, he cannot complain that the trial court denied him the opportunity of presenting a defense when he in fact made no effort to present one. Mercantile Bank & Trust Co. v. Hunter, 31 Colo. App. 200, 501 P.2d 486 (1972).

A motion to dismiss based on an affirmative defense should be converted to a motion for summary judgment if the court considers matters outside the complaint when ruling on the motion. If the bare allegations of the complaint reveal that the affirmative defense applies, the court need not convert the motion. Prospect Dev. v. Holland & Knight, 2018 COA 107, 433 P.3d 146.

Where a defendant raises several defenses in the trial court which are not ruled upon there, when the trial court grants a motion for summary judgment, they cannot be considered as sources of error on appeal of the granted motion. McKinley Constr. Co. v. Dozier, 175 Colo. 397, 487 P.2d 1335 (1971).

By arguing the merits of defendant's motions for summary judgment without raising an objection in the trial court as to the manner in which an affirmative defense thereby is asserted, plaintiffs effectively waive any objection they may have to this procedure. Cox v. Pearl Inv. Co., 168 Colo. 67, 450 P.2d 60 (1969).

A motion for summary judgment goes to merits of action and is inconsistent with special appearance for motion to quash service of process for lack of in personam jurisdiction. Texair Flyers, Inc. v. District Court, 180 Colo. 432, 506 P.2d 367 (1973).

A case is properly determined on a motion for summary judgment where the pleadings, the affidavits, and the deposition filed in the matter show that no genuine issue of material fact exists, the court properly determines as a matter of law that a statute bars plaintiff's action, and defendant is entitled to judgment. Nicks v. Electron Corp., 29 Colo. App. 114, 478 P.2d 683 (1970); Phelps v. Gates, 40 Colo. App. 504, 580 P.2d 1268 (1978).

When a defendant's motion for summary judgment becomes untenable in view of his conduct in the matter at issue, a trial court commits error in granting the motion. W. R. Hall Transp. & Storage Co. v. Gunnison Mining Co., 154 Colo. 72, 388 P.2d 768 (1964).

Summary judgment may be based on expiration of statute of limitations. Maes v. Tuttolimondo, 31 Colo. App. 248, 502 P.2d 427 (1972).

Plaintiff's failure to allege facts will support summary judgment. The absence of specific factual allegations will support a summary judgment for the defendant on the issue that plaintiff's claim was barred by the statute of limitations, even though plaintiff contends that there are issues of material fact because there might possibly be facts which would toll the statute of limitations and avoid the plea, if he alleges no such facts and raises no such issues. Norton v. Dartmouth Skis, Inc., 147 Colo. 436, 364 P.2d 866 (1961).

Section (b) of this rule does not require affidavits in support of the motion for summary judgment, and judgment can be rendered on the pleadings where there is no dispute as to the facts. Torbit v. Griffith, 37 Colo. App. 460, 550 P.2d 350 (1976).

The defense of res judicata may, in a proper case, be raised and disposed of by a summary judgment proceeding. Kaminsky v. Kaminsky, 145 Colo. 492, 359 P.2d 675 (1961); Brennan v. City & County of Denver, 156 Colo. 215, 397 P.2d 876 (1964).

To sustain the defense of res judicata, facts in support of it must be affirmatively shown either by the evidence adduced at the trial or by way of uncontroverted facts properly presented either in a motion for summary judgment or by a motion to dismiss under C.R.C.P. 12(b) where the court, on the basis of facts properly presented outside of the pleadings, is enabled to treat the same as a motion for summary judgment under this rule 56. Ruth v. Dept. of Hwys., 153 Colo. 226, 385 P.2d 410 (1963).

The fact that plaintiffs' Jefferson county action for rescission of their partnership agreement with defendants was pending resolution on appeal did not mean that it was not a final judgment for purposes of res judicata in their Adams county action for breach of contract. Miller v. Lunnon, 703 P.2d 640 (Colo. App. 1985), overruled in Rantz v. Kaufman, 109 P.3d 132 (Colo. 2005).

For the purposes of issue preclusion, a judgment that is still pending on appeal is not final. Rantz v. Kaufman, 109 P.3d 132 (Colo. 2005) (overruling Miller v. Lunnon, 703 P.2d 640 (Colo. App. 1985)).

C.R.C.P. 12(b), provides that, if, on a motion asserting the defense to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in this rule. Alexander v. Morrison-Knudsen Co., 166 Colo. 118, 444 P.2d 397 (1968).

A judgment of dismissal for failure to state a claim upon which relief can be granted may be entered upon a motion for summary judgment. Smith v. Mills, 123 Colo. 11, 225 P.2d 483 (1950); Enger v. Walker Field, Colo. Pub. Airport Auth., 181 Colo. 253, 508 P.2d 1245 (1973).

It is wholly immaterial whether the trial court considers the judgment of dismissal proper under the provisions of C.R.C.P. 12 or this rule, if the defendant was entitled to judgment under either rule. Haigler v. Ingle, 119 Colo. 145, 200 P.2d 913 (1948).

The judgment must specifically disclose the inadequacy of the complaint. Smith v. Mills, 123 Colo. 11, 225 P.2d 483 (1950).

Permission to amend should be given where there is a possibility by amendment of an adequate statement of claim. Smith v. Mills, 123 Colo. 11, 225 P.2d 483 (1950).

A trial court does not err in granting a motion for summary judgment on the ground that the claim made is a compulsory counterclaim which should have been raised in an earlier case and is therefore barred. Visual Factor, Inc. v. Sinclair, 166 Colo. 22, 441 P.2d 643 (1968).

Where no material issue of fact was before the trial court in regard to a specific determination, summary judgment in favor of the defendant was proper. Valenzuela v. Mercy Hosp., 34 Colo. App. 5, 521 P.2d 1287 (1974).

Because the department of health care policy and financing's claim was not time barred and a corrected notice was sent to the estate in time to allow the affected parties a full opportunity to be heard, the estate was not entitled to dismissal of the department's claim on summary judgment. In re Estate of Kochevar, 94 P.3d 1253 (Colo. App. 2004).

Applied in People ex rel. Knott v. City of Montrose, 109 Colo. 487, 126 P.2d 1040 (1942); Klancher v. Anderson, 113 Colo. 478, 158 P.2d 923 (1945); Mitchell v. Town of Eaton, 176 Colo. 473, 491 P.2d 587 (1971); Dominguez v. Babcock, 696 P.2d 338 (Colo. App. 1984), aff'd, 727 P.2d 362 (Colo. 1986); Cain v. Guzman, 761 P.2d 295 (Colo. App. 1988).

IV. MOTION AND PROCEEDINGS.

A. In General.

Law reviews. For note, "The Use of Summary Judgment in Colorado", see 34 Rocky Mt. L. Rev.

490 (1962).

Provisions inapplicable to summary judgment motions. Because of the drastic nature of summary judgment, provisions under C.R.C.P. 121 § 1-15, concerning confession of motions are inapplicable to motions, for summary judgment under this rule. Seal v. Hart, 755 P.2d 462 (Colo. App. 1988).

When the record is not adequate to permit a conclusion that no material fact dispute exists, the entry of summary judgment is inappropriate. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989).

For conflict between this rule and second judicial district rule 24, which provides that in filing a motion for summary judgment the moving party shall file a memorandum brief in support of the motion and that the adverse party may serve an answer brief within 10 days after service of the movant's brief, but failure to so do is not to be considered as a confession of the motion and which allows for oral argument if a request therefor is endorsed upon the briefs, see Loup-Miller Constr. Co. v. City & County of Denver, 38 Colo. App. 405, 560 P.2d 480 (1976).

Failure to give an opportunity to respond to authority cited in support of or in opposition to a motion is harmless unless prejudice is shown. Benson v. Colo. Comp. Ins. Auth., 870 P.2d 624 (Colo. App. 1994).

Ten-day period is essential. It is essential that in order to avoid surprise and to allow for a full and considered response, the party against whom the motion for summary judgment is directed be allowed the full period in which to serve his affidavits. Jardon v. Meadowbrook-Fairview Metro. Dist., 190 Colo. 528, 549 P.2d 762 (1976) (decided prior to the 1983 amendment).

The 10-day provision in section (c) was inserted in the rule to avoid surprise and to allow for a full and considered response. Cherry v. A-P-A Sports, Inc., 662 P.2d 200 (Colo. App. 1983).

On a motion for summary judgment where no factual issue is present, no motion for new trial is necessary. Brooks v. Zabka, 168 Colo. 265, 450 P.2d 653 (1969).

A motion to reconsider a summary judgment order is properly characterized as a motion for new trial under C.R.C.P. 59(d)(4). Zolman v. Pinnacol Assurance, 261 P.3d 490 (Colo. App. 2011).

A motion under C.R.C.P. 59 is not a prerequisite to appeal from a summary judgment. Valenzuela v. Mercy Hosp., 34 Colo. App. 5, 521 P.2d 1287 (1974).

Nonmovant is entitled to notice of issue regarding which evidence must be introduced to

avoid granting of summary judgment; lacking such notice, summary judgment cannot be granted. Wallman v. Kelley, 976 P.2d 330 (Colo. App. 1998); Antelope Co. v. Mobil Rocky Mountain, Inc., 51 P.3d 995 (Colo. App. 2001).

B. Purpose and Effect.

The purpose of a motion for summary judgment is to save litigants the expense and time connected with a trial when, as a matter of law based upon admitted facts, one of the parties cannot prevail. O. C. Kinney, Inc. v. Paul Hardeman, Inc., 151 Colo. 571, 379 P.2d 628 (1963); Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972); People in Interest of F.L.G., 39 Colo. App. 194, 563 P.2d 379 (1977); Ginter v. Palmer & Co., 196 Colo. 203, 585 P.2d 583 (1978); Wright v. Bayly Corp., 41 Colo. App. 313, 587 P.2d 799 (1978).

This rule was designed to enable parties and courts to expedite litigation by avoiding needless trials. In re Bunger v. Uncompahgre Valley Water Users Ass'n, 192 Colo. 159, 557 P.2d 389 (1976); DuBois v. Myers, 684 P.2d 940 (Colo. App. 1984).

The intent and purpose of this rule is that, where the facts are undisputed or so certain as not to be subject to dispute, a court is in position to determine the issue strictly as a matter of law. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952); Cent. Bank & Trust Co. v. Robinson, 137 Colo. 409, 326 P.2d 82 (1958); Rogerson v. Rudd, 140 Colo. 548, 345 P.2d 1083 (1959).

Where there is no genuine issue as to any material fact, the issues are properly resolved as matters of law. Enger v. Walker Field, Colo. Pub. Airport Auth., 181 Colo. 253, 508 P.2d 1245 (1973).

The purpose of summary judgment is to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with trial when, as a matter of law, based on undisputed facts, one party could not prevail. Peterson v. Halsted, 829 P.2d 373 (Colo. 1992); Graven v. Vail Assocs., Inc., 888 P.2d 310 (Colo. App. 1994).

No matter how enticing in an area of congested dockets is a device to dispose of cases without the delay and expense of traditional trials with their sometime cumbersome and time consuming characteristics, summary judgment was not devised for, and must not be used as, a substitute for trial. Sullivan v. Davis, 172 Colo. 490, 474 P.2d 218 (1970).

Its wholesome utility is, in advance of trial, to test, not as formerly on bare contentions found in the legal jargon of pleadings, but on the intrinsic merits, whether there is in actuality a real basis for relief or defense. Sullivan v. Davis, 172 Colo. 490, 474 P.2d 218 (1970); Shaw v. Gen. Motors

Corp., 727 P.2d 387 (Colo. App. 1986).

A summary judgment denies a litigant the right to trial of his case and should therefore not be granted where there appears any controversy concerning material facts. McCormick v. Diamond Shamrock Corp., 175 Colo. 406, 487 P.2d 1333 (1971); McKinley Constr. Co. v. Dozier, 175 Colo. 397, 487 P.2d 1335 (1971); Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231 (Colo. 1984); Smith v. Cutty's Inc., 742 P.2d 347 (Colo. App. 1987).

The summary judgment procedure is not intended to deprive a litigant of the right to trial on the merits of the case. Tamblyn v. City & County of Denver, 118 Colo. 191, 194 P.2d 299 (1948).

When defendants file their motion for summary judgment they admit thereby all facts properly pleaded by plaintiff, as they appeared in the record at that time, but such admissions imputed by law are confined to consideration of such motion only and within the limits of movants' theory of the law of the case. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952).

C. Evidence and Burden of Proof.

Law reviews. For comment on Norton v. Dartmouth Skis appearing below, see 34 Rocky Mt. L. Rev. 259 (1962).

In considering motion for summary judgment, trial court must accept plaintiffs' pleadings as true unless the depositions and admissions on file, together with the affidavits, clearly disclose there is no genuine issue as to any material fact, with any doubts being resolved in plaintiffs' favor. Norton v. Leadville Corp., 43 Colo. App. 527, 610 P.2d 1348 (1979).

On the hearing of a motion for summary judgment the material allegations of the nonmoving party's pleadings must be accepted as true, even in the face of denial by the moving party's pleadings. Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972).

The material allegations of a complaint must be accepted as true even in the face of denials in the answer. Parrish v. De Remer, 117 Colo. 256, 187 P.2d 597 (1947); Tamblyn v. City & County of Denver, 118 Colo. 191, 194 P.2d 299 (1948); Carter v. Thompkins, 133 Colo. 279, 294 P.2d 265 (1956).

There shall be no assessment of credibility of proposed evidence. Neither the trial court nor an appellate court may attempt any assessment of the credibility of proposed evidence in conjunction with a motion for summary judgment. Discovery Land & Dev. Co. v. Colo.-Aspen Dev. Corp., 40 Colo. App. 292, 577 P.2d 1101 (1977).

This rule is properly to be exercised only where the facts are clear and undisputed, leaving as the sole duty of the court the determination of the correct legal principles applicable thereto. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952); Cent. Bank & Trust Co. v. Robinson, 137 Colo. 409, 326 P.2d 82 (1958); Rogerson v. Rudd, 140 Colo. 548, 345 P.2d 1083 (1959).

Summary judgment is appropriate only in the clearest of cases, where no doubt exists concerning the facts. Roderick v. City of Colo. Springs, 193 Colo. 104, 563 P.2d 3 (1977).

Summary judgment is appropriate where the admitted facts demonstrate that a party cannot prevail. Kuehn v. Kuehn, 642 P.2d 524 (Colo. App. 1981).

Summary judgment is proper only when there is no genuine issue as to any material fact and when the moving party is entitled to judgment as a matter of law. Backus v. Apishapa Land & Cattle Co., 44 Colo. App. 59, 615 P.2d 42 (1980); Camacho v. Honda Motor Co., Ltd., 741 P.2d 1240 (Colo. 1987); W. Am. Ins. Co. v. Baumgartner, 812 P.2d 696 (Colo. App. 1990), cert. granted, judgment vacated, and case remanded to the Colorado court of appeals for reconsideration in light of Hecla Min. Co. v. New Hampshire Ins. Co., 811 P.2d 1083 (Colo. 1991), 812 P.2d 654 (Colo. 1991); Kenna v. Huber, 179 P.3d 189 (Colo. App. 2007), rev'd on other grounds, 205 P.3d 1158 (Colo. 2009); Suss Pontiac-GMC, Inc. v. Boddicker, 208 P.3d 269 (Colo. App. 2008).

Summary judgment is appropriate in cases where a public official or public figure seeks to recover damages resulting from a defamatory statement. DiLeo v. Koltnow, 200 Colo. 119, 613 P.2d 318 (1980).

Summary judgment is appropriate only when there is no genuine issue as to any material fact. Norton v. Leadville Corp., 43 Colo. App. 527, 610 P.2d 1348 (1979).

Summary judgment is a drastic remedy and is never warranted except on a clear showing that there exists no genuine issue as to any material fact. All doubts as to the existence of such an issue must be resolved against the moving party. Ridgeway v. Kiowa Sch. Dist. C-2, 794 P.2d 1020 (Colo. App. 1989); Aspen Wilderness Workshop, Inc. v. Colo. Water Conservation Bd., 901 P.2d 1251 (Colo. 1995); Christoph v. Colo. Comm. Corp., 946 P.2d 519 (Colo. App. 1997); Brawner-Ahlstrom v. Husson, 969 P.2d 738 (Colo. App. 1998).

Absence of genuine issue of fact must be apparent. To authorize the granting of summary judgment the complete absence of any genuine issue of fact must be apparent. Hatfield v. Barnes, 115 Colo. 30, 168 P.2d 552 (1946); Koon v. Steffes, 124 Colo. 531, 239 P.2d 310 (1951); Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952); Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972); Halsted v. Peterson, 797 P.2d 801 (Colo. App. 1990), rev'd on other grounds, 829 P.2d 373 (Colo. 1992).

Summary judgment is proper only when the pleadings, affidavits, depositions, or admissions 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. Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991); Travers v.

Rainey, 888 P.2d 372 (Colo. App. 1994); Merkley v. Pittsburgh Corning Corp., 910 P.2d 58 (Colo. App. 1995); Schultz v. Wells, 13 P.3d 846 (Colo. App. 2000); Vigil v. Franklin, 81 P.3d 1084 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004); A.C. Excavating v. Yacht Club II Homeowners Ass'n, 114 P.3d 862 (Colo. 2005).

Summary judgment is proper when the nonmoving party points to unsworn expert reports, C.R.C.P. 26 disclosures, allegations in the pleadings, and arguments of counsel made in its prior motion for summary judgment because these items lack verification and are not competent to dispel the argument that there were no facts to support the allegations. In contrast, the moving party supported their motion with sworn testimony of experts and sworn testimony of the nonmoving party's C.R.C.P. 30(b)(6) designee that had no evidence to support the nonmoving party's claims. D.R. Horton, Inc. v. D&S Landscaping, LLC, 215 P.3d 1163 (Colo. App. 2008).

"Clear and convincing" standard of proof applies in determining a motion for summary judgment in a libel action brought by a public official or public figure. Pietrafeso v. D.P.I., Inc., 757 P.2d 1113 (Colo. App. 1988).

A court may consider only sworn or certified evidence. Where moving party and opposing party submitted documents containing unsworn statements and uncertified exhibits, court refused to consider them in ruling on the motion. Bjornsen v. Bd. of County Comm'rs of Boulder, 2019 COA 59, 487 P.3d 1015.

Where the undisputed evidence permits off-setting inferences, the party against whom a motion for summary judgment is made is entitled to all favorable inferences which may be reasonably drawn from the evidence. O'Herron v. State Farm Mut. Auto. Ins. Co., 156 Colo. 164, 397 P.2d 227 (1964).

A motion for summary judgment should be denied if under the evidence reasonable men might reach different conclusions. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952); O'Herron v. State Farm Mut. Auto. Ins. Co., 156 Colo. 164, 397 P.2d 227 (1964); Hasegawa v. Day, 684 P.2d 936 (Colo. App. 1983), overruled on other grounds in Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992); Graven v. Vail Assocs., Inc., 888 P.2d 310 (Colo. App. 1994).

A summary judgment should never be entered, save in those cases where the movant is entitled to such beyond all doubt, and the facts conceded should show with such clarity the right to a judgment as to leave no room for controversy or debate; they must show affirmatively that plaintiff would not be entitled to recover under any and all circumstances. Smith v. Mills, 123 Colo. 11, 225 P.2d 483 (1946); Discovery Land & Dev. Co. v. Colo.-Aspen Dev. Corp., 40 Colo. App. 292, 577 P.2d 1101 (1977).

In assessing a summary judgment motion a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party. Vigil v. Franklin, 81 P.3d 1084 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004).

Summary judgment is proper when movant's direct, positive, and uncontradicted evidence is opposed only by an unsupported contention that a contrary inference from the evidence might be possible. Iowa Nat'l Mut. Ins. Co. v. Boatright, 33 Colo. App. 124, 516 P.2d 439 (1973).

It is error for trial court to treat moving party's factual allegations as true when granting summary judgment. Han Ye Lee v. Colo. Times, Inc., 222 P.3d 957 (Colo. App. 2009).

Determination of propriety of summary judgment. Summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. In determining whether summary judgment is proper, the nonmoving party is entitled to the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts, and all doubts must be resolved against the moving party. Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992); Clementi v. Nationwide Mut. Fire Ins. Co., 16 P.3d 223 (Colo. 2000); A.C. Excavating v. Yacht Club II Homeowners Ass'n, 114 P.3d 862 (Colo. 2005); Suss Pontiac-GMC, Inc. v. Boddicker, 208 P.3d 269 (Colo. App. 2008).

Summary judgment was proper when deeds in question conveyed easements of specified width and set forth legal descriptions of their exact locations. Trial court properly refused to consider extraneous circumstances to vary the explicit terms. Pickens v. Kemper, 847 P.2d 648 (Colo. App. 1993).

Ultimate burden of persuasion in connection with motion for summary judgment always rests on moving party. Cont'l Air Lines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987); Kelly v. Cent. Bank & Trust Co., 794 P.2d 1037 (Colo. App. 1989); Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991); Boyett v. Smith, 888 P.2d 294 (Colo. App. 1994), aff'd, 908 P.2d 493 (Colo. 1995); Aspen Wilderness Workshop, Inc. v. Colo. Water Conservation Bd., 901 P.2d 1251 (Colo. 1995).

The party moving for a summary judgment has the burden of demonstrating clearly the absence of a genuine issue of fact in order to prevail. O'Herron v. State Farm Mut. Auto. Ins. Co., 156 Colo. 164, 397 P.2d 227 (1964); Primock v. Hamilton, 168 Colo. 524, 452 P.2d 375 (1969); Ginter v. Palmer & Co., 196 Colo. 203, 585 P.2d 583 (1978); Chambliss/Jenkins Assocs. v. Forster, 650 P.2d 1315 (Colo. App. 1982); Camacho v. Honda Motor Co., Ltd., 741 P.2d 1240 (Colo. 1987); Murphy v. Dairyland Ins. Co., 747 P.2d 691 (Colo. App. 1987); Brawner-Ahlstrom v. Husson, 969

P.2d 738 (Colo. App. 1998); Schultz v. Wells, 13 P.3d 846 (Colo. App. 2000).

Moving party has initial burden of producing and identifying those portions of record and affidavits that demonstrate the absence of any genuine issue of material fact. Cont'l Air Lines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987); Boyett v. Smith, 888 P.2d 294 (Colo. App. 1994), aff'd, 908 P.2d 493 (Colo. 1995); Johnston v. Cigna Corp., 916 P.2d 643 (Colo. App. 1996); Brannan Sand & Gravel v. F.D.I.C., 928 P.2d 1337 (Colo. App. 1996), rev'd on other ground, 940 P.2d 393 (Colo. 1997).

Party moving for summary judgment may satisfy initial burden of production by demonstrating that there is absence of evidence in record to support nonmoving party's case, where party moves for summary judgment on issue on which he would not bear ultimate burden of persuasion at trial. Cont'l Air Lines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987).

Absent any significant probative evidence to defeat a properly supported motion for summary judgment, discrediting testimony is normally not sufficient to defeat the motion. Kelly v. Cent. Bank & Trust Co., 794 P.2d 1037 (Colo. App. 1989).

All doubts thereon must be resolved against the moving party. Hatfield v. Barnes, 115 Colo. 30, 168 P.2d 552 (1946); Koon v. Steffes, 124 Colo. 531, 239 P.2d 310 (1951); Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952); Credit Inv. & Loan Co. v. Guaranty Bank & Trust Co., 143 Colo. 393, 353 P.2d 1098 (1960); Primock v. Hamilton, 168 Colo. 524, 452 P.2d 375 (1969); Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972); Roderick v. City of Colo. Springs, 193 Colo. 104, 563 P.2d 3 (1977); Chambliss/Jenkins Assocs. v. Forster, 650 P.2d 1315 (Colo. App. 1982); Tapley v. Golden Big O Tires, 676 P.2d 676 (Colo. 1983); Dominguez v. Babcock, 727 P.2d 362 (Colo. 1986); Banyai v. Arruda, 799 P.2d 441 (Colo. App. 1990); Hauser v. Rose Health Care Sys., 857 P.2d 524 (Colo. App. 1993).

In determining whether summary judgment is proper, the trial court must resolve all doubts as to whether an issue of fact exists against the moving party. Jones v. Dressel, 623 P.2d 370 (Colo. 1981); Ruscitti v. Sackheim, 817 P.2d 1046 (Colo. App. 1991); Johnston v. Cigna Corp., 916 P.2d 643 (Colo. App. 1996); AviComm, Inc. v. Colo. Pub. Utils. Comm'n, 955 P.2d 1023 (Colo. 1998); Van Alstyne v. Housing Auth. of City of Pueblo, 985 P.2d 97 (Colo. App. 1999).

Party against whom a motion is made is entitled to all favorable inferences which may reasonably be drawn from the evidence. Halsted v. Peterson, 797 P.2d 801 (Colo. App. 1990), rev'd on other grounds, 829 P.2d 373 (Colo. 1992); Aspen Wilderness Workshop, Inc. v. Colo. Water Conservation Bd., 901 P.2d 1251 (Colo. 1995); Merkley v. Pittsburgh Corning Corp., 910 P.2d 58 (Colo. App. 1995); Brannan Sand & Gravel v. F.D.I.C., 928 P.2d 1337 (Colo. App. 1996), rev'd on other ground, 940 P.2d 393 (Colo. 1997); AviComm, Inc. v. Colo. Pub. Utils. Comm'n, 955 P.2d 1023 (Colo. 1998); Brawner-Ahlstrom v. Husson, 969 P.2d 738 (Colo. App. 1998); Van Alstyne v. Housing Auth. of City of Pueblo, 985 P.2d 97 (Colo. App. 1999).

It is the burden of the moving party to demonstrate the absence of a triable factual issue, and any doubts as to the existence of such an issue must be resolved against that party. Although the party resisting summary judgment is entitled to the benefit of all favorable inferences that may be drawn from the facts presented, the moving party's request must be granted where the facts are undisputed and the opposing party cannot prevail as a matter of law. Am. Water Dev., Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994).

Once the moving party affirmatively shows specific facts probative of its right to judgment, it becomes necessary for the nonmoving party to set forth facts showing that there is a genuine issue for trial. Durnford v. City of Thornton, 29 Colo. App. 349, 483 P.2d 977 (1971); Ft. Collins Motor Homes, Inc. v. City of Ft. Collins, 30 Colo. App. 445, 496 P.2d 1074 (1972); Meyer v. Schwartz, 638 P.2d 821 (Colo. App. 1981); Buttermore v. Firestone Tire & Rubber Co., 721 P.2d 701 (Colo. App. 1986); Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991); Ruscitti v. Sackheim, 817 P.2d 1046 (Colo. App. 1991); Snook v. Joyce Homes, Inc., 215 P.3d 1210 (Colo. App. 2009).

Once the movant shows that genuine issues are absent, the burden shifts, and unless the opposing party demonstrates true factual controversy, summary judgment is proper. Heller v. First Nat'l Bank, 657 P.2d 992 (Colo. App. 1982); Pearson v. Sublette, 730 P.2d 909 (Colo. App. 1986); Snook v. Joyce Homes, Inc., 215 P.3d 1210 (Colo. App. 2009).

Once party moving for summary judgment has met initial burden of production, burden shifts to nonmoving party to establish that there is triable issue of fact. Cont'l Air Lines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987); Churchey v. Adolph Coors Co., 759 P.2d 1336 (Colo. 1988); Hauser v. Rose Health Care Sys., 857 P.2d 524 (Colo. App. 1993); Merkley v. Pittsburgh Corning Corp., 910 P.2d 58 (Colo. App. 1995); Schultz v. Wells, 13 P.3d 846 (Colo. App. 2000).

Burden is on opposing party. Once a movant makes a convincing showing that genuine issues are lacking, this rule requires that the opposing party adequately demonstrate by relevant and specific facts that a real controversy exists. Ginter v. Palmer & Co., 196 Colo. 203, 585 P.2d 583 (1978); Webster v. Mauz, 702 P.2d 297 (Colo. App. 1985); Knittle v. Miller, 709 P.2d 32 (Colo. App. 1985); Closed Basin Landowners' Ass'n v. Rio Grande, 734 P.2d 627 (Colo. 1987).

Only if the moving party meets his burden of establishing that no genuine issue of any material fact exists is a case appropriate for summary judgment, and if the moving party meets his burden, the opposing party may, but is not required to, submit an opposing affidavit; obviously, it is perilous for the opposing party to neither proffer an evidentiary explanation nor file a responsive affidavit. Ginter v. Palmer & Co., 196 Colo. 203, 585 P.2d 583 (1978).

Burden showing that material issue of fact existed was met in an action for principal and interest due on promissory notes where record contained an affidavit of the borrower stating that the bank made representations that the proceeds from second loan made to the borrower would be used to repay the initial loan made to such borrower. Fed. Deposit Ins. Corp. v. Cassidy, 779 P.2d 1382 (Colo. App. 1989).

In response to a motion for summary judgment, an adverse party must by affidavit or otherwise set forth specific facts showing there is a genuine issue for trial. Brown v. Teitelbaum, 831 P.2d 1081 (Colo. App. 1991); Snook v. Joyce Homes, Inc., 215 P.3d 1210 (Colo. App. 2009); S. Cross Ranches v. JBC Agric. Mgmt., 2019 COA 58, 442 P.3d 1012.

Sham affidavit doctrine permits a court under certain circumstances to disregard an affidavit submitted by a party in response to a summary judgment motion where that affidavit contradicts the party's previous sworn deposition testimony. Luttgen v. Fischer, 107 P.3d 1152 (Colo. App. 2005).

The sham affidavit doctrine is based on the premise that, had prior deposition testimony been incorrect, the affiant should have corrected the deposition under C.R.C.P. 30(e) and, having not utilized that opportunity, should ordinarily not be allowed to later contradict that testimony simply to survive summary judgment. Luttgen v. Fischer, 107 P.3d 1152 (Colo. App. 2005).

Contradictory affidavits should be considered in light of totality of the circumstances test. Affidavit that directly contradicts affiant's own earlier deposition testimony can be rejected as sham affidavit only if it fails to include an explanation for the contradiction that could be found credible by a reasonable jury. This determination cannot be limited to any set of factors, but must be considered in light of the totality of the circumstances, and such determination is a matter of law to be reviewed de novo. Andersen v. Lindenbaum, 160 P.3d 237 (Colo. 2007).

In determining whether an affidavit presents a sham issue of fact, the court should consider (1) whether the affiant was cross-examined during his or her earlier testimony, (2) whether the affiant had access to the pertinent evidence at the time of his or her earlier testimony or whether the affidavit was based on newly discovered evidence, and (3) whether the earlier testimony reflected confusion which the affidavit attempted to explain. Luttgen v. Fischer, 107 P.3d 1152 (Colo. App. 2005).

Affidavit containing specific factual allegations of widespread practice of systematic denial without justification of worker's compensation claims raises a genuine issue of material fact as to whether the worker's due process rights have been violated. Walter v. City & County of Denver, 983 P.2d 88 (Colo. App. 1998).

Plaintiff's speculation that further discovery may uncover specific facts showing that there is a genuine issue for trial is insufficient. An affirmative showing of specific facts, uncontradicted by any counter affidavits, requires a trial court to conclude that no genuine issue of material fact exists. WRWC, LLC v. City of Arvada, 107 P.3d 1002 (Colo. App. 2004).

Summary judgment inappropriate when burden not met. While a party against whom a summary judgment is sought may take some risk by not submitting controverting affidavits or other evidence, nevertheless, if the moving party's proof does not itself demonstrate the lack of a genuine

factual issue, summary judgment is inappropriate. Wolther v. Schaarschmidt, 738 P.2d 25 (Colo. App. 1986).

An affirmative showing of specific facts probative of right to judgment uncontradicted by any counter affidavits submitted leaves a trial court with no alternative but to conclude that no genuine issue of material fact exists. Terrell v. Walter E. Heller & Co., 165 Colo. 463, 439 P.2d 989 (1968); Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991).

Where no counter affidavit is filed to indicate any genuine issue as to a material fact when the affidavit and depositions clearly disclose that plaintiff's complaint cannot be sustained, then as a matter of law a summary judgment is proper. O. C. Kinney, Inc. v. Paul Hardeman, Inc., 151 Colo. 571, 379 P.2d 628 (1963); Reisig v. Resolution Trust Corp., 806 P.2d 397 (Colo. App. 1990).

Where plaintiff's counter affidavit filed does not touch the facts determinative of the issue of presence for the purpose of service and on this issue as framed by the pleading his reply to defendant's answer and affirmative defenses state the mere legal conclusion that the defendant is outside of the state and not subject to service, no facts are alleged, and summary judgment is proper. Norton v. Dartmouth Skis, Inc., 147 Colo. 436, 364 P.2d 866 (1961).

There is not any material issue of fact to be resolved, where the answer states that the motion to vacate the judgment or for a new trial has not been ruled upon, when subsequent to this statement, there is filed in support of the motion for summary judgment an attorney's affidavit to the effect that the motion had been ruled upon, to which is attached a copy of the order denying said motion, certified by the clerk of the court under the seal of the court to be a true copy of the order as it appears in the records of that court, although had defendant filed a counter affidavit there might remain a real issue. Carter v. Carter, 148 Colo. 495, 366 P.2d 586 (1961).

Failure of party opposing summary judgment to file responsive affidavit does not relieve moving party of burden to establish that summary judgment is appropriate. People v. Hernandez & Assocs., Inc., 736 P.2d 1238 (Colo. App. 1986); S. Cross Ranches v. JBC Agric. Mgmt., 2019 COA 58, 442 P.3d 1012.

Oral argument not necessary. Trial court did not err in resolving the question on the basis of submitted written arguments. United Bank of Denver v. Ferris, 847 P.2d 146 (Colo. App. 1992).

To prevail on a summary judgment motion on the basis that the statute of limitations had run, the defendant must establish a lack of disputed facts as to when the plaintiff knew or should have known of the alleged fraud. First Interstate Bank v. Berenbaum, 872 P.2d 1297 (Colo. App. 1993).

D. When Motion may be Granted.

A summary judgment may be granted only where there is no genuine issue as to any material fact. Credit Inv. & Loan Co. v. Guaranty Bank & Trust Co., 143 Colo. 393, 353 P.2d 1098 (1960); Lutz v. Miller, 144 Colo. 351, 356 P.2d 242 (1960); City of Westminster v. Church, 167 Colo. 1, 445 P.2d 52 (1968); Pritchard v. Temple, 168 Colo. 555, 452 P.2d 381 (1969); First Nat. Bank v. Lohman, 827 P.2d 583 (Colo. App. 1992); Harless v. Geyer, 849 P.2d 904 (Colo. App. 1992).

To warrant the granting of summary judgment, the situation must be such that no material factual issue remains in the case. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952); Cent. Bank & Trust Co. v. Robinson, 137 Colo. 409, 326 P.2d 82 (1958); Rogerson v. Rudd, 140 Colo. 548, 345 P.2d 1083 (1959); Huydts v. Dixon, 199 Colo. 260, 606 P.2d 1303 (1980); Dominguez v. Babcock, 727 P.2d 362 (Colo. 1986); Crouse v. City of Colo. Springs, 766 P.2d 655 (Colo. 1988).

Generally, when presented with a summary judgment issue, a court must decline to enter such a judgment if there exists a genuine dispute over any material fact. Sewell v. Pub. Serv. Co. of Colo., 832 P.2d 994 (Colo. App. 1991).

A trial court is not required to review the entire record on file for factual disputes before ruling on a summary judgment motion. S. Cross Ranches v. JBC Agric. Mgmt., 2019 COA 58, 442 P.3d 1012.

A summary judgment is a drastic remedy and is never warranted except on a clear showing that there is no genuine issue as to any material fact. Hatfield v. Barnes, 115 Colo. 30, 168 P.2d 552 (1946); Morland v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952); Credit Inv. & Loan Co. v. Guaranty Bank & Trust Co., 143 Colo. 393, 353 P.2d 1098 (1960); Primock v. Hamilton, 168 Colo. 524, 452 P.2d 375 (1969); Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972); Ginter v. Palmer & Co., 196 Colo. 203, 585 P.2d 583 (1978); Wright v. Bayly Corp., 41 Colo. App. 313, 587 P.2d 799 (1978); Ams. United for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982); Hasegawa v. Day, 684 P.2d 936 (Colo. App. 1983), overruled on other grounds in Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992); Closed Basin Landowners' Ass'n v. Rio Grande, 734 P.2d 627 (Colo. 1987); Wayda v. Comet Intern. Corp., 738 P.2d 391 (Colo. App.

1987); Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (1989); Moore & Assocs. Realty, Inc. v. Arrowhead at Vail, 892 P.2d 367 (Colo. App. 1994); Crystal Homes, Inc. v. Radetsky, 895 P.2d 1179 (Colo. App. 1995); Brannan Sand & Gravel v. F.D.I.C., 928 P.2d 1337 (Colo. App. 1996), rev'd on other ground, 940 P.2d 393 (Colo. 1997); Lazy Dog Ranch v. Telluray Ranch Corp., 948 P.2d 74 (Colo. App. 1997); Terrones v. Tapia, 967 P.2d 216 (Colo. App. 1998); Clementi v. Nationwide Mut. Fire Ins. Co., 16 P.3d 223 (Colo. 2000); Lewis v. Emil Clayton Plumbing Co., 25 P.3d 1254 (Colo. App. 2000).

Summary judgment is a drastic remedy and is only warranted upon a clear showing that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Bailey v. Clausen, 557 P.2d 1207 (Colo. 1976); Pueblo W. Metro. Dist. v. Se. Colo. Water Conservancy Dist., 689 P.2d 594 (Colo. 1984); Churchey v. Adolph Coors Co., 759 P.2d 1336 (Colo. 1988); Greenwood Trust Co. v. Conley, 938 P.2d 1141 (Colo. 1997); Van Alstyne v. Housing Auth. of City of Pueblo, 985 P.2d 97 (Colo. App. 1999); Waskel v. Guar. Nat'l Corp., 23 P.3d 1214 (Colo. App. 2000); Goodwin v. Thieman, 74 P.3d 526 (Colo. App. 2003).

Summary judgment is a drastic remedy and should be granted only where the evidential and legal prerequisites are clearly established. Gleason v. Guzman, 623 P.2d 378 (Colo. 1981).

Where a factual issue has been raised as to a material fact, the matter should not have been disposed of by summary judgment. Brodie v. Mastro, 638 P.2d 800 (Colo. App. 1981).

A "genuine issue" cannot be raised by counsel simply by means of argument, be it before the trial court or on appeal; certainly the spirit of this rule suggests that if a party really contends that the area in question has in fact been roped off by proper authorities he has the duty to inform the trial court in the manner provided by this rule concerning summary judgments, and not to merely attempt to present the issue by hypothetical argument. Sullivan v. Davis, 172 Colo. 490, 474 P.2d 218 (1970); Schultz v. Wells, 13 P.3d 846 (Colo. App. 2000).

Initiative drafter testimony as to the intent of an initiative has no bearing on judicial construction of the initiative and creates no triable issue of fact regarding the intent of the voters in approving the initiative. Therefore, when the only questions to be resolved were questions of law involving constitutional and statutory interpretation, a grant of summary judgment was appropriate. Ams. for Prosperity v. Colo., 2025 COA 46, 571 P.3d 930.

Trial court has discretion to enter summary judgment simultaneously with denying nonmovant's request for discovery. Section (f) neither requires nor prohibits collapsing the rulings; therefore, the trial court has discretion. The ruling may be reviewed under the abuse of discretion standard. Bailey v. Airgas-Intermtn., Inc., 250 P.3d 746 (Colo. App. 2010).

Where there is no disputed material issue of fact regarding insurance company's duty to defend individual in a civil action because the claims are cast entirely within the insurance policy exclusions, summary judgment is appropriate. Nikolai v. Farmers Alliance Mut. Ins., 830 P.2d 1070

(Colo. App. 1991).

Where the proceedings have indicated that a genuine issue exists, the supreme court has consistently rejected appealing shortcuts, even though it is likely that on a trial the trier will resolve the disputed issues as one of fact in the same manner as when thought to have been one of law alone, and the supreme court just as consistently rejected any notions that pretense or apparent formal controversy can thwart applications of this rule or hamstring the court in determining whether it is a proper case for it. Sullivan v. Davis, 172 Colo. 490, 474 P.2d 218 (1970).

Moving party must be entitled to summary judgment as matter of law. A party is entitled to a summary judgment when there are pleadings, affidavits, depositions, or admissions on file showing 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. O. C. Kinney, Inc. v. Paul Hardeman, Inc., 151 Colo. 571, 379 P.2d 628 (1963); Durnford v. City of Thornton, 29 Colo. App. 349, 483 P.2d 977 (1971); In re Estate of Mall v. Father Flanagan's Boys' Home, 30 Colo. App. 296, 491 P.2d 614 (1971); Ft. Collins Motor Homes, Inc. v. City of Ft. Collins, 30 Colo. App. 445, 496 P.2d 1074 (1972); Van Schaack v. Phipps, 38 Colo. App. 140, 558 P.2d 581 (1976)); Chambliss/Jenkins Assocs. v. Forster, 650 P.2d 1315 (Colo. App. 1982).

Entry of summary judgment under this rule is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In re Bunger v. Uncompahgre Valley Ass'n, 192 Colo. 159, 557 P.2d 389 (1976); Koch v. Sadler, 759 P.2d 792 (Colo. App. 1988); Cung La v. State Farm Auto Ins. Co., 830 P.2d 1007 (Colo. 1992); Suss Pontiac-GMC, Inc. v. Boddicker, 208 P.3d 269 (Colo. App. 2008).

When a party is entitled to prevail as a matter of law, summary judgment is proper. Happy Canyon Inv. Co. v. Title Ins. Co., 38 Colo. App. 385, 560 P.2d 839 (1976).

A summary judgment is proper only where there is no genuine issue as to any material fact, which may be indicated by the pleadings, affidavits, depositions, and/or admissions, and where the moving party is entitled to judgment as a matter of law. Bailey v. Clausen, 192 Colo. 297, 557 P.2d 1207 (1976); Pearson v. Sublette, 730 P.2d 909 (Colo. App. 1986); Krane v. Saint Anthony Hosp. Sys., 738 P.2d 75 (Colo. App. 1987).

The phrase "as a matter of law", as used in section (c), contains no distinction between legal and equitable principles, so, if there is no question concerning material facts, and the only contention arises over the application of a rule of law, whether "legal" or "equitable" in nature, a summary judgment may be entered. Linch v. Game & Fish Comm'n, 124 Colo. 79, 234 P.2d 611 (1951).

Material fact defined. In the context of a summary judgment proceeding, an issue of material fact is one, the resolution of which will affect the outcome of the case. Krane v. Saint Anthony Hosp. Sys., 738 P.2d 75 (Colo. App. 1987).

Where there is no genuine issue of material fact in dispute, summary judgment is proper. Varela v. Colo. Milling & Elevator Co., 31 Colo. App. 49, 499 P.2d 1206 (1972); Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972).

A summary judgment is proper, even when factual matters are involved, if the record indicates that the factual matters are not in dispute. Edwards v. Price, 191 Colo. 46, 550 P.2d 856 (1976), appeal dismissed, 429 U.S. 1056 (1977).

Where there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law, summary judgment is warranted. Am. Water Dev., Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994).

Where the pleadings and the deposition clearly show that as a matter of law one is not entitled to the relief he seeks, then, under such circumstances, it was proper for the court to grant summary judgment. Goeddel v. Aircraft Fin., Inc., 152 Colo. 419, 382 P.2d 812 (1963).

Unless the depositions and admissions on file, together with the affidavits, clearly disclose that there is no genuine issue as to any material fact, as a matter of law, the summary judgment should be entered. Parrish v. De Remer, 117 Colo. 256, 187 P.2d 597 (1947); Carter v. Thompkins, 133 Colo. 279, 294 P.2d 265 (1956); Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972).

Summary judgment was properly issued where briefs contained sufficient information upon which the judge could base his decision, even though the hearing did not address all of the issues before the court. Lane v. Ark. Valley Publ'g Co., 675 P.2d 747 (Colo. App. 1983).

Issuance of summary judgment after a hearing that was held within eight days of filing of motion and after parent's offer of proof as to what he would state in opposing affidavits comported with the rule that permits a party to file opposing affidavits within fifteen days. People in Interest of B.M., 738 P.2d 45 (Colo. App. 1987).

It is also proper where plaintiff failed to file a responsive brief or obtain additional time to file and never acted to postpone ruling or to indicate that he intended to challenge the facts submitted by the defendant prior to the court's ruling on the motion. Ceconi v. Geosurveys, Inc., 682 P.2d 68 (Colo. App. 1984); Buttermore v. Firestone Tire & Rubber Co., 721 P.2d 701 (Colo. App. 1986).

Proximate cause deemed "matter of law" only in clearest cases. Proximate cause is a "matter of law" for the court only in the clearest cases when the facts are undisputed and it is plain that all intelligent persons can draw but one inference from them. Moon v. Platte Valley Bank, 634 P.2d 1036 (Colo. App. 1981).

If scope and interpretation of insurance policy language, which is question of law, is dispositive of claim, summary judgment of dismissal is justified. W. Am. Ins. Co. v. Baumgartner, 812 P.2d 696 (Colo. App. 1990), cert. granted, judgment vacated, and case remanded to the Colorado court of appeals for reconsideration in light of Hecla Min. Co. v. New Hampshire Ins. Co., 811 P.2d 1083 (Colo. 1991), 812 P.2d 654 (Colo. 1991).

Summary judgment on claim of negligent infliction of emotional distress proper where no proof of physical injury and plaintiff not in zone of danger. Card v. Blakeslee, 937 P.2d 846 (Colo. App. 1996).

E. When Motion Should be Denied.

Trial courts should not grant motions or deny a trial where there is the slightest doubt. Trial courts should exercise great care in granting motions for summary judgment, and should not deny a litigant a trial where there is the slightest doubt as to the facts. Smith v. Mills, 123 Colo. 11, 225 P.2d 483 (1950).

Factual question raised by expert precludes summary judgment. Where a plaintiff in an automobile product liability action presents an expert who raises a factual question about the reasonableness of the defendant manufacturer's design strategies, the drastic remedy of summary judgment is improper, and the issue of whether the design of the car involved in the accident unreasonably increased the risks of injury by collision should be presented to the jury. Roberts v. May, 41 Colo. App. 82, 583 P.2d 305 (1978); Camacho v. Honda Motor Co., Ltd., 741 P.2d 1240 (Colo. 1987).

Where a plaintiff in a medical malpractice action presents an expert who raises a factual question about the probability of a heart attack, the issue should be presented to the jury. Sharp v. Kaiser Found. Health Plan, 710 P.2d 1153 (Colo. App. 1985), aff'd, 741 P.2d 714 (Colo. 1987).

A litigant is entitled to have disputed facts determined by trial, and it is only in the clearest of cases, where no doubt exists concerning the facts, that a summary judgment is warranted. Moses v. Moses, 180 Colo. 397, 505 P.2d 1302 (1973).

It was error for trial court to grant summary judgment when a material question of fact existed with respect to whether petitioner was denied the opportunity to call a witness with information relevant to his defense. People v. Diaz, 862 P.2d 1031 (Colo. App. 1993).

Potential existence of conspiracy to defraud bankrupt company's judgment creditor should have precluded issuance of summary judgment. Magin v. DVCO Fuel Sys. Inc., 981 P.2d 673 (Colo. App. 1999).

If any doubt resides in the mind of the court after a consideration of the motion, its resolution must be against the motion. O'Herron v. State Farm Mut. Auto. Ins. Co., 156 Colo. 164, 397 P.2d 227 (1964).

If reasonable persons might reach different conclusions or might draw different inferences from uncontroverted facts, summary judgment should be denied. Halsted v. Peterson, 797 P.2d 801 (Colo. App. 1990), rev'd on other grounds, 829 P.2d 373 (Colo. 1992).

Because reasonable persons could disagree as to whether any reasonable use exists for property rezoned from light industrial to agricultural use, summary judgment is not appropriate. Jafay v. Bd. of County Comm'rs of Boulder County, 848 P.2d 892 (Colo. 1993).

Summary judgment should not be granted in case of doubt. Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972).

Even where it is extremely doubtful that a genuine issue of fact exists, summary judgment is not appropriate. Abrahamsen v. Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287 (1972).

The question of foreseeability in the context of the legal issue of duty remains a disputed factual issue, if differing factual inferences may be drawn from the evidence, making the entry of summary judgment improper. Sewell v. Pub. Serv. Co. of Colo., 832 P.2d 994 (Colo. App. 1991).

Where there exists a genuine issue as to a very material fact which must be determined, a motion for summary judgment should be denied. Tamblyn v. City & County of Denver, 118 Colo. 191, 194 P.2d 299 (1948).

Where there is an issue as to whether a doctor, who admittedly knew of the high risk of scarring to a particular patient, knowingly concealed that information from the patient, a material issue of fact remains such that summary judgment is inappropriate. Brodie v. Mastro, 638 P.2d 800 (Colo. App. 1981).

Summary judgment may not be entered if genuine issues of material fact remain for resolution. Smith v. Hoffman, 656 P.2d 1327 (Colo. App. 1982).

It is elementary that summary judgment may not be granted where unresolved genuine issues of material facts remain for determination. Rogerson v. Rudd, 140 Colo. 548, 345 P.2d 1083

(1959).

A trial court acts precipitously in granting a motion for summary judgment where there are genuine issues as to several material facts. Pritchard v. Temple, 168 Colo. 555, 452 P.2d 381 (1969).

Where issues remain to be adjudicated, it is error to enter a summary judgment. Harvey v. Morris, 148 Colo. 489, 367 P.2d 352 (1961).

Where it is perfectly clear from the pleadings and interrogatories and the answers thereto that there is a genuine issue, it is error to enter summary judgment. McCormick v. Diamond Shamrock Corp., 175 Colo. 406, 487 P.2d 1333 (1971).

Where evidence showed that management fired whistle blower in retaliation for whistle blowing, grant of summary judgment dismissing wrongful discharge claim reversed and remanded despite employer's conflicting evidence. Webster v. Konczak Corp., 976 P.2d 317 (Colo. App. 1998).

Where an issue of fact is raised which is not determinable on affidavits and answers to interrogatories propounded, a motion for summary judgment should be denied. Hatfield v. Barnes, 115 Colo. 30, 168 P.2d 552 (1946).

Summary judgment is usually inappropriate in cases dealing with potentially unconstitutional motivations. Because evidence concerning motive is almost always subject to a variety of conflicting interpretations, a full trial on the merits is normally the only way to separate permissible motivations from those that merely mask unconstitutional actions. Ridgeway v. Kiowa Sch. Dist. C-2, 794 P.2d 1020 (Colo. App. 1989).

In light of the various defenses in defendants' answer which raise genuine issues of material fact, a trial court is correct in denying the plaintiff's motion for summary judgment against the defendants. Credit Inv. & Loan Co. v. Guaranty Bank & Trust Co., 166 Colo. 471, 444 P.2d 633 (1968).

Defenses based on business judgment rule and denial of harm to corporation precluded summary judgment in case involving unlawful distribution of corporate assets. Such assertions only emphasize that there are disputed issues of material fact. Polk v. Hergert Land & Cattle Co., 5 P.3d 402 (Colo. App. 2000).

When defendants' motion for summary judgment is overruled, their admission of facts under their legal theory terminates, and it is error for a trial court to give any consideration thereto

in connection with its determination of plaintiff's motion. This leaves plaintiff's motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952).

It does not follow that, merely because each side moves for a summary judgment, there is no issue of material fact, for, although a defendant may, on his own motion, assert that, accepting his legal theory, the facts are undisputed, he may be able and should always be allowed to show that, if plaintiff's legal theory be adopted, a genuine dispute as to a material fact exists. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952).

The fact that each side in moving for summary judgment in his or its favor, respectively, asserts that there is no genuine issue as to any material fact does not necessarily make it so, and does not bar the court from determining otherwise. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952).

An arbitration clause providing arbitration of certain issues only does not mean that the parties cannot agree to submit to arbitration other matters in dispute between them, even though the contract does not require it, and so, where it is impossible to tell whether the defenses were actually submitted for arbitration, a trial court is in error in summarily striking these defenses from the answer filed in the arbitration proceeding and on such basis improvidently granting summary judgment. Int'l Serv. Ins. Co. v. Ross, 169 Colo. 451, 457 P.2d 917 (1969).

Summary judgment improper if record inadequate. Where the record has not been adequately developed on a material factual issue, summary judgment is not proper. Moore v. 1600 Downing St., Ltd., 668 P.2d 16 (Colo. App. 1983); Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231 (Colo. 1984).

Where it could not be said as a matter of law that plaintiffs' remedy at law would be adequate to compensate them for the loss suffered, the granting of summary judgment was improper. Benson v. Nelson, 725 P.2d 71 (Colo. App. 1986).

Where the moving party filed only a general denial to plaintiff's complaint, summary judgment was improper. Shaw v. Gen. Motors Corp., 727 P.2d 387 (Colo. App. 1986).

Summary judgment in an action for principal and interest due on promissory notes was improper where the determination as to the appropriate primary interest rate could not be made on the face of promissory notes, the motion lacked supporting documentation regarding such rate, and the moving party's supporting brief stating the amount claimed as interest was not verified. Fed. Deposit Ins. Corp. v. Cassidy, 779 P.2d 1382 (Colo. App. 1989).

Summary judgment was improperly granted when ambiguity in preemptive clause in contract could be resolved by extrinsic evidence showing the intent of the parties and that parties

understood their rights and obligations under said clause. Polemi v. Wells, 759 P.2d 796 (Colo. App. 1988).

Reinsurers were not entitled to summary judgment based only on interinsurance exchange's inability to produce actual reinsurance certificates, where affidavit and computer printout indicating serial number of each reinsurance certificate, name of subscriber, period of insurance, and premium charged were based on admissible facts. Benham v. Pryke, 703 P.2d 644 (Colo. App. 1985), rev'd on other grounds, 744 P.2d 67 (Colo. 1987).

A question of fact remained on claim to quiet title where § 38-41-116 allowed purchaser to bring an action to enforce any right or title he may have under a contract within ten years from the date of delivery of general warranty deed and parties intent concerning when delivery of the deed was to take place required determination. Bent v. Ferguson, 791 P.2d 1241 (Colo. App. 1990).

A question of fact remained on claim concerning entitlement to royalty payments from the production and sale of natural gas. Westerman v. Rogers, 1 P.3d 228 (Colo. App. 1999).

F. Responsibility of Court.

In passing upon a motion for summary judgment, it is no part of the court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952).

Any issue of fact must be determined by the court or jury at a trial and should not be determined by the court on a motion for summary judgment. Primock v. Hamilton, 168 Colo. 524, 452 P.2d 375 (1969); Meyer v. Schwartz, 638 P.2d 821 (Colo. App. 1981).

The fact that both parties make motions for summary judgment, and each contends in support of his respective motion that no genuine issue of fact exists, does not require the court to rule that no fact issue exists. Each, in support of his own motion, may be willing to concede certain contentions of his opponent, which concession, however, is only for the purpose of the pending motion. If the motion is overruled, the concession is no longer effective. Appellants' concession that no genuine issue of fact existed was made in support of their own motion for summary judgment. The concession does not continue over into the supreme court's separate consideration of appellee's motion for summary judgment in his behalf after appellants' motion was overruled. Morlan v. Durland Trust Co., 127 Colo. 5, 252 P.2d 98 (1952).

It was an abuse of discretion for trial court to fail to rule on the defendants' motion for extension of time until the date summary judgment motion in favor of plaintiff was granted, at which time, the court denied defendants' motion for extension of time. Pursell v. Hull, 708 P.2d 490 (Colo. App. 1985).

Trial court did not abuse discretion by ruling on summary judgment motion when motion to compel was pending. Card v. Blakeslee, 937 P.2d 846 (Colo. App. 1996).

G. Review.

On appeal of a grant of summary judgment, where there was no testimony taken in the case, the reviewing court must determine the posture of the case as it went before the trial judge on the basis of the pleadings, the affidavits, interrogatories, and answers thereto, and the depositions which are in the record. McKinley Constr. Co. v. Dozier, 175 Colo. 397, 487 P.2d 1335 (1971).

Following denial of motion for summary judgment, failure to renew motion at the close of the evidence operates as a waiver of the summary judgment motion and precludes appellate review. Feiger, Collison & Killmer v. Jones, 926 P.2d 1244 (Colo. 1996).

A stipulation that, if review is sought by any party, the procedure of considering and determining the legal issue upon a motion for summary judgment will not be assigned as a ground of error does not preclude plaintiffs in error from urging that the contents of a deposition could not be used on review as a basis for determining legality of a trust agreement. Denver Nat'l Bank v. Brecht, 137 Colo. 88, 322 P.2d 667 (1958).

Review of judgment granting a motion for summary judgment is de novo. Aspen Wilderness Workshop, Inc. v. Colo. Water Conservation Bd., 901 P.2d 1251 (Colo. 1995); Brawner-Ahlstrom v. Husson, 969 P.2d 738 (Colo. App. 1998); Van Alstyne v. Housing Auth. of City of Pueblo, 985 P.2d 97 (Colo. App. 1999); A.C. Excavating v. Yacht Club II Homeowners Ass'n, 114 P.3d 862 (Colo. 2005); Meyerstein v. City of Aspen, 282 P.3d 456 (Colo. App. 2011).

An order denying motion for summary judgment is interlocutory and not subject to review. Trans Cent. Airlines v. McBreen & Assocs., 31 Colo. App. 71, 497 P.2d 1033 (1972); Manuel v. Ft. Collins Newspapers, Inc., 631 P.2d 1114 (Colo. 1981); Banyai v. Arruda, 799 P.2d 441, (Colo. App. 1990); Feiger, Collison & Killmer v. Jones, 926 P.2d 1244 (Colo. 1996).

No review of summary judgment denial after trial on merits. A trial court's denial of a motion for summary judgment may not be considered on appeal from a final judgment entered after a trial on the merits. Manuel v. Ft. Collins Newspapers, Inc., 631 P.2d 1114 (Colo. 1981).

In order to preserve an issue raised by summary judgment for appeal, the party asserting the argument must make a motion for directed verdict or for judgment notwithstanding the verdict. Failure to do so operates as an abandonment, and therefore a waiver, and the issue cannot then be reviewed on appeal. Feiger, Collison & Killmer v. Jones, 926 P.2d 1244 (Colo. 1996); Karg v. Mitchek, 983 P.2d 21 (Colo. App. 1998); Davis v. GuideOne Mut. Ins. Co., 2012 COA 70M, 297 P.3d 950.

In reviewing the propriety of a summary judgment, an appellate court must apply the principle that the moving party has the burden of establishing the lack of a triable factual issue, and all doubts as to the existence of such an issue must be resolved against the moving party. Churchey v. Adolph Coors Co., 759 P.2d 1336 (Colo. 1988); Peterson v. Halsted, 829 P.2d 373 (Colo. 1992); Graven v. Vail Assocs., Inc., 888 P.2d 310 (Colo. App. 1994).

Section (c) is the applicable standard of review to be applied by an administrative law judge when ruling upon a motion for summary judgment in a workers' compensation claim. Fera v. Indus. Claim Appeals Office, 169 P.3d 231 (Colo. App. 2007).

Standard of review is de novo for motion for a determination of law. A determination is proper if there is no genuine issue of material fact necessary to determine the question. Patterson v. BP Am. Prod. Co., 2015 COA 28, 360 P.3d 211.

H. Illustrations.

If differing factual inferences may be drawn from the evidence, the question of foreseeability remains a disputed factual issue, and the entry of summary judgment in such circumstances is improper. Sewell v. Pub. Serv. Co. of Colo., 832 P.2d 994 (Colo. App. 1991).

Section (c) authorizes a trial court to enter a decree for specific performance of a contract upon motion for a summary judgment over the objection that a summary judgment can only be granted in an action at law, as technically distinguished from an equitable proceeding. Linch v. Game & Fish Comm'n, 124 Colo. 79, 234 P.2d 611 (1951).

Court erred in granting summary judgment in negligence case where evidence presented material issue of fact as to whether a defendant water district assumed a duty to have water

available for the plaintiff's lumberyard located outside of said district's boundaries; the water district placed a fire hydrant at the said lumberyard upon the fire district's request specifically for the protection of the lumber company. Wheatridge Lumber Co. v. Valley Water Dist., 790 P.2d 874 (Colo. App. 1989).

Generally, the issue of a party's intent is a question of fact, and is not an appropriate issue for summary disposition. Wolther v. Schaarschmidt, 738 P.2d 25 (Colo. App. 1986).

Whether an actor owes a duty of due care to another is a question of law for resolution by the court. Sewell v. Pub. Serv. Co. of Colo., 832 P.2d 994 (Colo. App. 1991).

A motion for summary judgment based upon an assertion of the lack of existence of a duty of due care is to be subjected to the same standard as is any other motion for summary judgment; hence, if the record evidence is insufficient to allow the court to determine the question of foreseeability as a matter of law, such motion must be denied. Sewell v. Pub. Serv. Co. of Colo., 832 P.2d 994 (Colo. App. 1991).

Material question of fact whether employee hired for indefinite term could be terminated at will precluded entry of summary judgment for employee in wrongful discharge action, where employee manual outlined termination procedures that employer proposed to follow, and employee allegedly received copy of manual either at start or during course of employment. Cont'l Air Lines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987).

Summary judgment was properly denied where plaintiff's evidence failed to show the existence of a right of employment or protected contractual rights that were violated by the defendant's action and the evidence was insufficient to overcome the defendants' claim of qualified immunity. Wilkerson v. State, 830 P.2d 1121 (Colo. App. 1992).

Defendant entitled to summary judgment on claim of negligent hiring since evidence was insufficient to satisfy the test set forth in Connes v. Molalla Transport Sys., Inc. Spencer v. United Mortg. Co., 857 P.2d 1342 (Colo. App. 1993).

A living trust is valid and binding as against a motion for summary judgment where such does not disclose within its four corners that it is sham or an abortive attempt on the part of a settlor to evade the statute of wills. Denver Nat'l Bank v. Brecht, 137 Colo. 88, 322 P.2d 667 (1958).

Where trial court found that failure to pay entire bonus as specified in top lease of mineral estate defeated the entire agreement, there was no genuine issue of material fact and the trial

court properly quieted title to mineral interest in plaintiffs. Sohio Petroleum Co. v. Grynberg, 757 P.2d 1125 (Colo. App. 1988).

Issue of whether contract is adhesion contract does not preclude entry of summary judgment in the absence of any genuine issue of material fact. Jones v. Dressel, 623 P.2d 370 (Colo. App. 1981).

Summary judgment was appropriate in case involving dismissal, for academic reasons, of student from university clinical program where the evidence submitted detailed the grounds for discharge and no evidence was submitted that the procedure applied departed from accepted academic norms. Dillingham v. Univ. of Colo., Bd. of Regents, 790 P.2d 851 (Colo. App. 1989).

Summary judgment was appropriate in case involving failing grade of student in pediatrics course necessary to complete junior year where student failed to demonstrate that failing grade was given for any reason other than his unsatisfactory academic performance. Davis v. Regis Coll., Inc., 830 P.2d 1098 (Colo. App. 1991).

Civil service commission was entitled to judgment as a matter of law restricting access to examination results where person requesting access presented no evidence disputing the factual issue of whether substantial injury to the public interest would result if the information were not restricted under § 24-72-204 (6). Civil Serv. Comm’n v. Pinder, 812 P.2d 645 (Colo. 1991).

Where there is no disputed material issue of fact regarding insurance company’s duty to defend individual in a civil action because the claims are cast entirely within the insurance policy exclusions, summary judgment is appropriate. Nikolai v. Farmers Alliance Mut. Ins., 830 P.2d 1070 (Colo. App. 1991).

Summary judgment is appropriate where insurance company met its burden by submitting affidavits establishing that it did not engage in intentional conduct probative of waiver and insured failed to raise a genuine issue of disputed fact by refuting the showing. Nikolai v. Farmers Alliance Mut. Ins. Co., 830 P.2d 1070 (Colo. App. 1991).

Summary judgment improperly granted when there existed a material question of fact as to whether petitioner’s use of or presence in vehicle was causally related to injuries incurred and therefore covered under automobile insurance policy. Cung La v. State Farm Auto. Ins. Co., 830 P.2d 1007 (Colo. 1992).

Summary judgment improperly granted when the doctrine of collateral estoppel improperly applied. Bebo Constr. Co. v. Mattox & O’Brien, 990 P.2d 78 (Colo. 1999).

Record established defendant's entitlement to summary judgment on claims of trespass and breach of deed of trust and plaintiff not entitled to compensation for items allegedly stolen by defendant's agent since agent was not acting within the scope of his employment at the time of the theft. Spencer v. United Mortg. Co., 857 P.2d 1342 (Colo. App. 1993).

Defendant entitled to summary judgment on claim for outrageous conduct where plaintiff failed to establish a sufficient basis for such claim. Spencer v. United Mortg. Co., 857 P.2d 1342 (Colo. App. 1993).

Summary judgment based on qualified immunity was properly denied where plaintiff children pled facts necessary to establish a violation of a clearly established constitutional right in support of a 42 U.S.C. § 1983 claim against county department of social services employees regarding the employees' placement and adoption decisions. Shirk v. Forsmark, 2012 COA 3, 272 P.3d 1118.

I. Continuance for Discovery.

Under section (f), an abuse of discretion may result when the court refuses to grant a party a reasonable continuance to permit use of discovery procedures as provided by the rules of civil procedure and when it is premature to grant a motion for summary judgment. Miller v. First Nat. Bank, 156 Colo. 358, 399 P.2d 99 (1965); Holland v. Bd. of County Comm'rs, 883 P.2d 500 (Colo. App. 1994).

Where plaintiff had a reasonable period within which to conduct discovery and was given reasonable notice that no further extensions of time would be granted, summary judgment was proper. Holland v. Bd. of County Comm'rs, 883 P.2d 500 (Colo. App. 1994).

It is not an abuse of discretion to deny a section (f) request where movant has failed to demonstrate that the proposed discovery is necessary and could produce facts that would preclude summary judgment. Henisse v. First Transit, Inc., 220 P.3d 980 (Colo. App. 2009), rev'd on other grounds, 247 P.3d 577 (Colo. 2011).

V. CASE NOT FULLY ADJUDICATED.

Under section (d) of this rule, a court may grant a partial summary judgment as to material facts existing without substantial controversy and reserve disputed facts for subsequent

proceedings. City of Westminster v. Church, 167 Colo. 1, 445 P.2d 52 (1968); Hauser v. Rose Health Care Sys., 857 P.2d 524 (Colo. App. 1993).

By its terms, section (d) involves an adjudication of less than the entire action, and consequently, a disposition pursuant to this rule does not purport to be a final judgment. Instead, a trial court remains free to reconsider an earlier partial summary judgment ruling absent the entry of judgment under C.R.C.P. 54(b). Forbes v. Goldenhersh, 899 P.2d 246 (Colo. App. 1994).

Where summary judgment order reserved until trial on all issues other than the amount of admitted liability, and one of these issues would be the amount of interest to be awarded, plaintiff properly raised the question of interest in its motion to amend the judgment. Kwal Paints, Inc. v. Travelers Indem. Co., 34 Colo. App. 74, 525 P.2d 471 (1974), aff'd, 189 Colo. 66, 536 P.2d 1136 (1975).

Partial summary judgment affirmed. Certified Indem. Co. v. Thompson, 180 Colo. 341, 505 P.2d 962 (1973); Werkmeister v. Robinson Dairy, Inc., 669 P.2d 1042 (Colo. App. 1983).

Court abused its discretion in refusing to reconsider and vacate partial summary judgment in favor of one of several defendants where, following defendant's belated production of a key document, an issue as to a material fact was seen to arise. Halter v. Waco Scaffolding & Equip. Co., 797 P.2d 790 (Colo. App. 1990).

VI. FORM OF AFFIDAVITS.

This rule permits a motion for a summary judgment with or without supporting affidavits. O. C. Kinney, Inc. v. Paul Hardeman, Inc., 151 Colo. 571, 379 P.2d 628 (1963); Johnson v. Mountain Sav. & Loan Ass'n, 162 Colo. 474, 426 P.2d 962 (1967).

Although the party moving for a summary judgment has the burden of showing that he is entitled to judgment, still, it has always been perilous for an opposing party neither to proffer any evidentiary explanatory material nor file a section (f) affidavit. Sullivan v. Davis, 172 Colo. 490, 474 P.2d 218 (1970).

Although it may be risky for a party not to respond to a motion for summary judgment, the absence of a response does not relieve the moving party of its burden to establish that summary judgment is appropriate. USA Leasing, Inc. v. Montelongo, 25 P.3d 1277 (Colo. App. 2001).

Where an affidavit is filed by plaintiff's attorney rather than a witness and does not affirmatively show that the attorney has personal knowledge of the relevant facts, the requirements of section (e) are not met. USA Leasing, Inc. v. Montelongo, 25 P.3d 1277 (Colo. App. 2001).

An affidavit that sets forth only a conclusory assertion without factual allegations to support it does not meet the requirements of section (e). USA Leasing, Inc. v. Montelongo, 25 P.3d 1277 (Colo. App. 2001); Burton v. Colo. Access, 2015 COA 111, 456 P.3d 46, aff'd on other grounds, 2018 CO 11, 428 P.3d 208.

A litigant by merely asserting a fact, without any evidence to support it, cannot avoid a summary disposition of his case. Norton v. Dartmouth Skis, Inc., 147 Colo. 436, 364 P.2d 866 (1961).

Particularly on such issues as good faith, intent, and purpose, the bald declaration of a party by affidavit is not sufficient to resolve the issue in the face of a pleaded denial, and a motion for summary judgment should be denied. Hatfield v. Barnes, 115 Colo. 30, 168 P.2d 552 (1946).

A "genuine issue" cannot be raised by counsel simply by means of argument, be it before the trial court or on appeal; certainly the spirit of this rule suggests that if a party really contends that the area in question has in fact been roped off by proper authorities he has the duty to inform the trial court in the manner provided by this rule concerning summary judgments, and not to merely attempt to present the issue by hypothetical argument. Sullivan v. Davis, 172 Colo. 490, 474 P.2d 218 (1970).

A "genuine issue" cannot be raised by counsel simply by means of argument. People in Interest of F.L.G., 39 Colo. App. 194, 563 P.2d 379 (1977).

Argument of counsel alone cannot create a factual issue. Ginter v. Palmer & Co., 39 Colo. App. 221, 566 P.2d 1358 (1977), rev'd on other grounds, 196 Colo. 203, 585 P.2d 583 (1978).

The purpose of a motion for summary judgment would be defeated if at a hearing on such motion oral argument and the taking of testimony were allowed as a matter of right. People in Interest of F.L.G., 39 Colo. App. 194, 563 P.2d 379 (1977).

In a breach of contract proceeding, a party seeking damages for future lost profits must establish with reasonable, but not necessarily mathematical, certainty both the fact of the injury and the amount of the loss. Terrones v. Tapia, 967 P.2d 216 (Colo. App. 1998).

In summary judgment proceeding in a breach of contract action, a party seeking damages for future lost profits must present sufficient evidence to compute a fair approximation of future loss. Terrones v. Tapia, 967 P.2d 216 (Colo. App. 1998).

A court may enter summary judgment precluding recovery for lost profits if a plaintiff offers only speculation or conjecture to establish damages. Terrones v. Tapia, 967 P.2d 216 (Colo. App. 1998).

When a movant makes out a convincing showing that genuine issues of fact are lacking, it is required that the adversary adequately demonstrate by receivable facts that a real, not formal, controversy exists, and, of course, he does not do that by mere denial or holding back evidence. Sullivan v. Davis, 172 Colo. 490, 474 P.2d 218 (1970); Guerrero v. City of Colo. Springs, 507 P.2d 881 (Colo. App. 1972).

Once a movant makes a convincing showing that genuine issues are lacking, section (e) requires that the opposing party adequately demonstrate by relevant and specific facts that a real controversy exists. Hadley v. Moffat County Sch. Dist. Re-1, 641 P.2d 284 (Colo. App. 1981); McLaughlin v. Allen, 689 P.2d 1169 (Colo. App. 1984).

Where plaintiffs' affidavits failed to reveal that any discovery relating to plaintiffs' allegations would have resulted in any facts that would preclude summary judgment, trial court did not abuse its discretion in suspending discovery under section (f). Sundheim v. Bd. of County Comm'rs of Douglas County, 904 P.2d 1337 (Colo. App. 1995), aff'd, 926 P.2d 545 (Colo. 1996).

Where a plaintiff offers no evidence to contradict an affirmative showing of nonliability made by defendants in support of their motion for summary judgment, nor did the plaintiff show that any other evidence he might have produced at trial would contradict the evidence, a trial court has no alternative but to conclude that there is no genuine issue of fact upon which the defendants could be found liable, and it properly grants their motions for summary judgment. Guerrero v. City of Colo. Springs, 507 P.2d 881 (Colo. App. 1972).

Where a defendant asserts a counterclaim and plaintiff denies the allegation in a reply, but does not file an affidavit denying such, the plaintiff is not entitled to summary judgment. McKinley Constr. Co. v. Dozier, 175 Colo. 395, 487 P.2d 1335 (1971).

A party is not compelled to try his case on affidavits with no opportunity to cross-examine affiants. Hatfield v. Barnes, 115 Colo. 30, 168 P.2d 552 (1946); Parrish v. De Remer, 117 Colo. 256, 187 P.2d 597 (1946); Primock v. Hamilton, 168 Colo. 524, 452 P.2d 375 (1969).

Where affidavits show conflict, there is a genuine issue of material fact which should be determined by a fact-finding body after both parties have presented evidence in support of their

respective positions. McKinley Constr. Co. v. Dozier, 175 Colo. 397, 487 P.2d 1335 (1971).

This rule provides for sworn or certified copies of all pertinent papers which are referred to in the affidavits to accompany the motion. Johnson v. Mountain Sav. & Loan Ass'n, 162 Colo. 474, 426 P.2d 962 (1967).

While technically it is an error not to have certified the papers attached to such motion, one waives any objection to the lack of certification by their reliance upon some of these exhibits as bases for their position and for their appeal. Johnson v. Mountain Sav. & Loan Ass'n, 162 Colo. 474, 426 P.2d 962 (1967).

An affidavit of counsel which only recites that the attached documents are certified copies of a court judgment does comply with the provisions of C.R.C.P. 59(e) (now 59(a)(4)). Kaminsky v. Kaminsky, 145 Colo. 492, 359 P.2d 675 (1961).

Single purpose affidavit does not violate rule of "personal knowledge". An affidavit of counsel which serves the single purpose of placing before the court certified copies of relevant documents does not violate the requirements of the rule that affidavits be made on "personal knowledge". Kaminsky v. Kaminsky, 145 Colo. 492, 359 P.2d 675 (1961).

Certified court records in and of themselves constitute a sufficient affidavit in support of a motion for summary judgment. Kaminsky v. Kaminsky, 145 Colo. 492, 359 P.2d 675 (1961).

Court cannot consider files, records, and other documents in prior case involving another party in the same manner. Parrish v. De Remer, 117 Colo. 256, 187 P.2d 597 (1947).

Mere allegations of fraudulent concealment insufficient to establish genuine issue of fact. Where the plaintiff had neither pleaded nor proved that the defendant was connected with or responsible for the non-availability to her of her hospital records, in the context of the defendant's motion for summary judgment, therefore, the plaintiff's "mere allegations" of fraudulent concealment by the defendant were insufficient to set up a genuine issue of fact as to the defendant's asserted fraudulent acts and, accordingly, as to the equitable estoppel urged by the plaintiff. Mishek v. Stanton, 200 Colo. 514, 616 P.2d 135 (1980).

Affidavit containing hearsay meets requirements of this rule since hearsay would be admissible in court under exception to hearsay rule. K.H.R. by and through D.S.J. v. R.L.S., 807 P.2d 1201 (Colo. App. 1990).

Amendment of complaint by argument and affidavit. When there are allegations in a

complaint and facts appearing in an affidavit which may be construed as supporting the theories of estoppel and waiver, and these theories are argued to the trial court, although the theories were not specifically alleged in the complaint, the trial court must treat the complaint as amended for purposes of considering a motion for summary judgment. Discovery Land & Dev. Co. v. Colo.-Aspen Dev. Corp., 40 Colo. App. 292, 577 P.2d 1101 (1977).

Failure to state admissible facts in affidavit may justify summary judgment. A failure to state admissible facts in the affidavit, based on the affiant's personal knowledge, may justify the court in entering summary judgment for the opposing party. In re Estate of Abbott, 39 Colo. App. 536, 571 P.2d 311 (1977).

Thus, summary judgment was proper where discrepancies were inadmissible to create a disputed issue of fact. Affidavits based on inadmissible hearsay are insufficient for purposes of summary judgment determination. Henderson v. Master Klean Janitorial, Inc., 70 P.3d 612 (Colo. App. 2003).

Depositions held insufficient basis for summary judgment. Where none of the depositions offered in support of a motion for summary judgment show that any of the persons deposed had personal knowledge of actions being sued on or of the amount or details of the claimed losses, the testimony in the depositions is not admissible and the depositions cannot stand as the basis for the summary judgment. Nat'l Sur. Corp. v. Citizens State Bank, 651 P.2d 460 (Colo. App. 1982).

Court's ruling without oral argument not denial of due process. Defendant was not denied due process of law by the fact that the court ruled on the motion for summary judgment without oral argument. People in Interest of F.L.G., 39 Colo. App. 194, 563 P.2d 379 (1977).

Due process does not include the right to oral argument on a motion for summary judgment, especially where the party against whom the motion is directed had ample opportunity to file any affidavits or legal arguments he might have had during the time between the filing of the motion and the date for hearing. People in Interest of F.L.G., 39 Colo. App. 194, 563 P.2d 379 (1977).

Neither the law of the case doctrine nor collateral estoppel precluded plaintiffs from contesting an issue addressed in first motion for summary judgment from submitting affidavits in opposition to same issue in a subsequent motion for summary judgment. Stotler v. Geibank Indus. Bank, 827 P.2d 608 (Colo. App. 1992).

Applied in Commercial Indus. Const., Inc. v. Anderson, 683 P.2d 378 (Colo. App. 1984); Wasalco, Inc. v. El Paso County, 689 P.2d 730 (Colo. App. 1984); Conrad v. Imatani, 724 P.2d 89 (Colo. App. 1986); People v. Hernandez & Assocs., Inc., 736 P.2d 1238 (Colo. App. 1986); McDaniels v. Laub,

186 P.3d 86 (Colo. App. 2008); McDonald v. Zions First Nat'l Bank, N.A., 2015 COA 29, 348 P.3d 957.

VII. WHEN AFFIDAVITS UNAVAILABLE.

A trial court abuses its discretion in refusing to grant one a reasonable continuance to permit utilization of the discovery procedures provided by the rules of civil procedure, and it is precipitous and premature in granting a motion for summary judgment. Miller v. First Nat'l Bank, 156 Colo. 358, 399 P.2d 99 (1965).

Where responses to discovery, although not timely filed, demonstrate a disputed issue concerning material fact, a motion for summary judgment is improper. Moses v. Moses, 180 Colo. 398, 505 P.2d 1302 (1973).

By not answering requests for admissions in a summary judgment motion, the relevant subject matters of the requests for admissions are deemed admitted under C.R.C.P. 36. Cox v. Pearl Inv. Co., 168 Colo. 67, 450 P.2d 60 (1969).

Trial court does not err when it rules on motion ex parte unless a party requests oral argument or a continuance. People ex rel. Garrison v. Lamm, 622 P.2d 87 (Colo. App. 1980).

Whether to grant a request for discovery pursuant to section (f) lies within the discretion of the trial court. It is not an abuse of discretion to deny a section (f) discovery request if the movant has failed to demonstrate that the proposed discovery is necessary and could produce facts that would preclude summary judgment. A-1 Auto Repair & Detail v. Bilunas-Hardy, 93 P.3d 598 (Colo. App. 2004).

VIII. FORM OF JUDGMENT.

Findings of fact and conclusions of law are not required when ruling on a motion under this rule or under C.R.C.P. 12. United Bank of Denver v. Ferris, 847 P.2d 146 (Colo. App. 1992).

Absent circumstances not present in the case, the denial of a motion for summary judgment may not be considered on appeal from a final judgment after trial on the merits. Manuel v. Ft. Collins Newspapers, Inc., 631 P.2d 1114 (Colo. 1981); Grogan v. Taylor, 877 P.2d 1374 (Colo. App. 1993); Fire Ins. Exch. v. Rael by Rael, 895 P.2d 1139 (Colo. App. 1995).

Research References & Practice Aids

Cross references:

For disclosure and discovery, see C.R.C.P. 26 to 37; for civil contempt, see C.R.C.P. 107.

Colorado Court Rules

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