

Motions to Dismiss – Instructions

Everything in the law boils down to the facts and the law, and specifically, how the law applies to the facts in your case. The law will tell you what facts are important, while the facts tell you how the law will affect the parties.

Different stages of the lawsuit are designed to test different things. In general, motions to dismiss are legal. They are supposed to take a given set of facts (as defined by the pleadings that do not disagree with each other), apply the law in question (i.e., the laws regarding breach of contract or other claim the debt collector might be bringing – or one you might be bringing), and decide whether the law would give some sort of remedy for the situation. A motion for summary judgment, on the other hand, is designed to narrow the facts down to facts for which there is actual evidence, but facts supported by evidence which is not in dispute. Finally, trial is designed to allow a judge or jury to decide between disputed facts.

Because motions to dismiss are designed to test the sufficiency of the pleadings, that means the court should review the motion taking everything alleged as true. In addition, all the reasonable “inferences” (deductions about things that are true if the pleadings are true) should be considered in favor of the non-movant (person against whom motion to dismiss is brought) and against the movant. As some courts put it, “if any set of facts consistent with the pleadings will give rise to the cause of action (lawsuit), the motion should be dismissed.”

That all sounds very strong. Still, if you are going to oppose a motion to dismiss you must remember two things: (1) you have to convince the court that the petition does, in fact, state a cause of action; and (2) the facts as alleged really do matter because judges are people and are swayed by emotionally powerful arguments and facts. Therefore, you will want to know the facts in your case and present them in a “background” section just as strongly as possible. If the debt collector called you at 5:00 a.m., cussed you out or threatened you, be sure to say it. You want the judge on your side.

Defendant Motion against Debt Collector

When you’re filing a motion to dismiss against a debt collector, that means you will be attacking the Petition and arguing that it does not state a claim against you. In general, this can happen in one of two ways. Either the debt collector was lazy or careless and forgot to allege that it owned the debt (or how it came to have a right to sue you) or forgot some other, very basic part of its claim. Remember, debt collectors file these cases sometimes by the hundreds, so a little mistake like that could easily happen. I think you should jump on it even though it might seem like a “technicality” because by filing a motion and winning it you impress the other side and the judge and you increase the costs of the suit to the other side. You make the judge wish the case would go away and blame the debt collector for being careless. And it may be that the “technical” thing is missing because the debt collector cannot put it in.

And that's the other kind of motion – the kind that points to something more significant. In Pennsylvania, for example (and possibly many other places), the debt collector is required by the rules of civil procedure to attach a copy of any contract it's suing for to the petition – or else allege the terms of the contract in the petition. They can't do that, and you must attack that failure by motion to dismiss – called “Preliminary Objections” in Pennsylvania.

Plaintiff Motion against Defendant

A plaintiff (debt collector) motion to dismiss can happen for one or both of two reasons. They could be attacking your affirmative defenses – which you will have stated in your Answer and which you must prove – or your counterclaim. It is possible for them to file a motion to strike some of your general defenses and call it a motion to dismiss (it's really a motion to strike), but this rarely comes up because debt law is not complicated and general defenses rarely “push the envelope” on what is allowed by law.

Motions to Dismiss Attack the Pleadings

As I have said, motions to dismiss are designed to attack the pleadings of the case. They are meant to apply only to the allegations made by one or the other party to the suit. If a motion to dismiss does attempt to rely on something outside of the pleadings, it should be treated as a motion for summary judgment, but you cannot depend on the court to apply that rule unless you make an objection to the motion and ask for clarification from the court as to what it intends to do.

Of course your case will be different from the samples in this pack, both because your facts will probably be different and because your jurisdiction will be different. Just use this pack as a kind of “template” or example for you to follow. And if your issues are similar to the ones addressed in these motions, use some of the language in my materials to help you do your legal research.

It's better to have a case to support anything you want to say that isn't completely obvious, but it's better to make the argument without case support than not to make it at all. An unopposed motion to dismiss will often be granted just because it is unopposed – whether it really should be or not. And if you oppose a point of law, the court should make sure whether or not you are right even if you do not cite case law. But... judges don't always do what they should do. Your best defense is to do the best you can to show the judge exactly why he or she should do what you think. Do not cut corners and expect the court to fill in the blank for you.

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