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Commercial Banking, Collections and Bankruptcy

The newsletter of the Illinois State Bar Association's Section on Commercial Banking, Collections and Bankruptcy

Goodbye Masks and Pandemic, Hello Change

BY JUDGE MICHAEL CHMIEL

As the final days of the winter pass, and we look hopefully into the spring, Illinois has generally been relieved of its governor's mask mandate. We hope masks and the pandemic are on their way out of our lives for good. Any which way, much has changed and is changing.

At a March 8, 2022, presentation on professionalism, Chief Justice Anne Burke of the Supreme Court of Illinois explained how she and the Court took the

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When Does a Denial Create a Question of Fact? Eviction vs. Non-Eviction Standards

BY ADAM B. WHITEMAN

A rose might always be a rose. However, a denial is not always a denial. This is particularly true when dealing with a denial filed in general litigation matters versus a denial filed in eviction cases. In a general litigation matter, a mere denial, standing alone, will not be sufficient to prevent judgment on the pleadings if the answer admits to all the material facts of the cause of action. However, a defendant in an eviction case has two opportunities to create a question of fact—the first in the pleadings, the second at the eviction hearing. Two Illinois cases have been found which fail to recognize this distinction and cite the eviction standard in a non-eviction setting.

Putting it in Context

Whether it is from the view of a defendant or a plaintiff, it is always a best practice to look for ways to end the fight early in the process. One often overlooked method is to request judgment on the

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opportunity occasioned by the pandemic, to work on and develop many initiatives for the Illinois courts. As such, we all need to keep tuned and be on our toes for looming changes.

In this edition, we again welcome back two long-time contributors – Adam Whiteman and Michael Weissman with two commercial law offerings. Adam cautions litigants on the use of denials in litigation, and how a denial is not always a denial in an eviction proceeding. Michael tackles a strong use of the Statute of Frauds by a bank in lending to a commercial bower in a case arising under the Uniform Commercial Code in Michigan.

We also welcome back a long-standing pillar in our legal community and association, Bob Fioretti, and Nicki Pecori Fioretti, who again place mental health front and center even as we hopefully start to come back to elements and situations of normalcy, whatever that is these days.

We again welcome questions or comments on these items, along with other items for publication. Please send any such things to mjchmiel@22ndcircuit.illinoiscourts.gov. Spring reigns eternal!■

When Does a Denial Create a Question of Fact? Eviction vs. Non-Eviction Standards

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pleadings. The rule provides as follows:

> "Any party may seasonably move for judgment on the pleadings." 735 ILCS 5/2-615(e) (West 2016). Judgment on the pleadings is proper when (1) the pleadings disclose no genuine issue of material fact and (2) the moving party is entitled to judgment as a matter of law. (citations) For purposes of resolving the motion, a court should consider as admitted all well-pleaded facts as set forth in the pleadings of the nonmoving party and any fair inferences drawn therefrom." *Core Construction Services of Illinois, Inc. v. Zurich American Insurance Co*., 2019 IL App (4th), 180411, 24.

In other words, if the complaint and answer reveal that there is no genuine issue of material fact, you can seek an end to the lawsuit based on the pleadings alone, without any need for further discovery or motion practice. A key question, though, is how do you determine if there is a "genuine issue of material fact"? A defendant might admit to every factual allegation in a complaint and then simply deny liability of the amount claimed. Is that denial, standing alone in the answer, sufficient to prevent judgment on the pleadings?

The General Rule

The general rule is that "once a statement of fact has been admitted in the pleadings, it constitutes a judicial admission, it is binding on the party making it, and it makes it unnecessary for the opposing party to introduce evidence in support thereof because it has the effect of withdrawing the fact from issue." *State Security Insurance Co. v. Linton*, 384 N.E.2d 718, 721 (1st Dist. 1978). The core of the issue is whether an admission withdraws an issue from dispute. Thus, "a denial of an allegation in an answer or an affirmative defense will preclude judgment on the pleadings when denial raises issues of material fact." *Continental Casualty Co. v. Cuda*, 715 N.E.2d 663, 667 (1st Dist. 1999).

The Exception to the Rule in Eviction Cases

This general rule does not apply in eviction cases. The defendant in an eviction case is not strictly bound by admission made in a written answer to a complaint.

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Defendants have a second chance to present more defenses at the eviction hearing itself. In fact, a defendant does not even need to file an answer in an eviction case. Specifically:

> In actions for eviction …the defendant must appear at the time and place specified in the summons. If the defendant appears, he or she need not file an answer unless ordered by the court; and when no answer is ordered, the allegations of the complaint will be deemed denied, and any defense may be proved as if it were specifically pleaded.

S. Ct. R. 181(b)(2).

By way of example, *Samek v. Newman*, 518 N.E.2d 422 (1st Dist. 1987), is an eviction case involving a motion for judgment on the pleadings. In denying the motion, the court explained that "The assertion of [a] defense, albeit at the hearing rather than in their pleadings, raises the possibility of the existence of an issue of fact precluding judgment on the pleadings." *Samek v. Newman*, 518 N.E.2d 422 (1st Dist. 1987).

In sum, in an eviction case, a denial standing alone in an answer prevents judgment on the pleadings because the defendant gets another chance to present additional defenses at the subsequent eviction hearing. No such right exists in non-eviction cases. A denial does not stand alone in a non-eviction case. It stands next to other admissions contained in the answer and must be weighed accordingly.

Two Cases Which Incorrectly Cite the Eviction Pleading Standard

I recently represented a creditor in a collection matter. The defendant admitted all the material allegations in the complaint such as the terms of the contract, the conduct which breached the contract, and the damages arising out of that breach. However, the defendant then denied liability in his answer. He did not file any counterclaims or affirmative defenses. Seeing this response, I filed a motion for judgment on the pleadings. In response to my motion, the defendant then cited an eviction case, *Godellas v. Godellas*, 296 N.E.2d 876 (2nd Dist. 1973), for the proposition that a 'denial standing alone' will preclude judgment on the pleadings. The defendant also cited two other cases which cited Godellas but in a non-eviction setting. Those two cases were *Zipf v. Allstate Ins. Co*., 369 N.E.2d 252, 256 (1st Dist. 1977), and *Allis-Chalmers Credit Corp. v. McCormick*, 331 N.E.2d 832 (4th Dist. 1975). I argued in reply (successfully) that Zipf and Allis-Chalmers did not state the correct test to apply when addressing a motion for judgment on the pleadings in a non-eviction setting.

The problem started with Allis-Chalmers. The plaintiff in Allis-Chalmers sought to recover the balance due on a lease of machinery. The defendant's answer asserted a defense that the equipment did not perform or operate properly. As a result of this asserted defense, judgment on the pleadings was properly denied. What was improper, was the standard used by the court in reaching this result. Specifically, the court made the following citation of authority:

> "Such denial standing alone is sufficient to preclude the entry of judgment on the pleadings (*Godellas v. Godellas*, 11 Ill. App.3d 871, 296 N.E.2d 876)…."

The court's reliance on this language in Godellas was incorrect. First, no such language appears in the Godellas decision. Second, Godellas was an eviction case brought against a husband and wife and the court determined that the wife should not be bound by the husband's admissions in his pleadings and that her denial of liability and special defenses she raised in her own separate answer and at the eviction hearing was sufficient to preclude judgment on the pleadings.

In sum, Allis-Chalmers got the right result because it identified a material issue of fact which precluded judgment on the pleadings, but it should not have cited Godellas—an eviction case—as a means to reach this result.

As an example of how a poor citation to authority can become magnified by later courts, we can look to the case of *Zipf v. Allstate Ins. Co*., 369 N.E.2d 252, 256 (1st Dist. 1977). The plaintiff in Zipf brought suit against her insurance company ("Allstate") to recover benefits under her personal injury protection contract. As the basis of its ruling, the court stated, "The pleadings and the record…do not set forth any medical expenses nor the income lost for a determination of the weekly benefits to which plaintiff may be entitled." *Zipf v. Allstate Insurance Co.*, 369 N.E.2d 252, 256 (1st Dist. 1977). Accordingly, judgment on the pleadings was denied because of the fact that "[t]he amount of liability is not determinable from the pleadings." *Id.* This holding is correct. It applies the correct standard which is to deny judgment on the pleadings when there are disputed issues of material issues of fact.

Again, though, the problem is not with the ultimate holding, but with the fact that the court cites the wrong test. Zipf cites Allis-Chalmers for the proposition that:

> A denial of the amount claimed, standing alone, is sufficient to preclude the entry of judgment on the pleadings. *Allis Chalmers Credit Corp. v. McCormick* (1975), 30 Ill.App.3d 423, 331 N.E.2d 832." *Zipf v. Allstate Ins. Co*., 369 N.E.2d 252, 256 (1st Dist. 1977).

As explained above, Allis-Chalmers mis-stated, and mis-applied, the ruling in Godellas. Godellas did not stand for the proposition that a "denial standing alone" will preclude judgment on the pleadings in a commercial case. Allis-Chalmers was wrong to characterize the Godellas decision in this way, and Zipf was wrong to rely on Allis-Chalmers for this proposition. Godellas was an eviction case where one of the defendants raised five special defenses to the action in her written answer and an additional sixth special defense at the hearing on plaintiff's motion for judgment on the pleadings. She raised more than a "mere denial."

Correct Citation of *Godellas*

A more refined analysis and application of Godellas is provided by the 1st District case of *Samek v. Newman*, 518 N.E.2d 422 (1st Dist. 1987). Like Godellas, Samek is an eviction case involving a motion for judgment on the pleadings. In denying the motion, the court cited Godellas for the proposition that "[t]he assertion of [a] defense, albeit at the hearing rather than

in their pleadings, raises the possibility of the existence of an issue of fact precluding judgment on the pleadings." *Samek v. Newman*, 518 N.E.2d 422 (1st Dist. 1987).

The *Samek* case correctly recognized that (1) the defendant in *Godellas* did raise defenses precluding judgment on the pleadings, and (2) the defendant in *Godellas* had the right to present those defenses at a hearing in addition to the pleadings.

In Practice

For this reason, it is important to carefully check that the citations you are relying on accurately state the law. Reviewing a common set of decisions regarding a legal concept is a better practice than simply finding one case that supports your contention.

As shown above, an attorney reviewing the Allis-Chalmers and Zipf decisions might conclude that a mere denial of liability in a written answer standing alone is sufficient to withstand a motion for judgment on the pleadings in a commercial litigation matter. But that is not a correct statement of the law. Both *Allis-Chalmers* and *Zipf* asserted a pleading standard in eviction cases which is different than other types of litigation because in an eviction case, the defendant has two opportunities to present their defenses, first in the written pleadings, and second at the eviction hearing. That is why a denial standing alone in a written pleading will be sufficient to overcome a motion for judgment on the pleadings in an eviction case.

No such right exists in non-eviction cases. A denial does not stand alone in a non-eviction case. It stands next to other admissions contained in the answer and must be weighed accordingly. As shown in the Continental case, a denial of liability does not negate judicial admissions and will not prevent judgment on the pleadings if that denial fails to raise an issue of material fact.■

Adam Whiteman is a member of the Commercial Banking, Collections, and Bankruptcy Section Council of the ISBA, and maintains a practice in Chicago, concentrating on commercial collection litigation and real estate law. He can be reached at Adam@WhitemanBorden.com