

§ 9.6

The Separate Brief*Example***DISTRICT COURT OF CLARK COUNTY****STATE OF CONFUSION**

JOHN JOHNSON

Plaintiff,

vs.

JOY SMITH

Defendant.

CASE NO:

DCKT NO:

**TRIAL BRIEF IN SUPPORT OF
MOTION FOR
SUMMARY JUDGMENT****STATEMENT OF FACTS**

On or about July 5, 2010, at approximately 2 p.m., Plaintiff, at her own instigation, entered onto Defendant's property for the stated purpose of handing out a brochure about area real estate. The Plaintiff had not been invited, and the brochures had not been requested by Defendant.

Upon getting no response after knocking on the front door, the Plaintiff, noticing that the garage door was open, proceeded to enter the garage with the stated intent of knocking on the house door inside the garage. To get to this door, Plaintiff was required to enter garage and walk between Defendant's car and several boxes stacked along the wall of the garage. As Plaintiff was walking through the garage, Plaintiff bumped into some of the stored boxes, causing some of them to fall upon Plaintiff, causing his alleged injuries.

Plaintiff filed suit asking the court to compensate for injuries received. Defendant claims that once Plaintiff entered Defendant's property uninvited, a trespass occurred, and no liability can be placed upon Defendant.

ISSUE

1. Are there any material issues in dispute relevant to the matter before the court?

ARGUMENT

1. Are there any material issues in dispute relevant to the matter before the court?

In order for a summary judgment to be granted, the moving party must establish to the court's satisfaction that no material fact is at issue. SCCivR 56(c) states, "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 any party is entitled to a judgment as a matter of law." In the case at bar, all material facts are agreed upon by the parties. Only issues of law are argued in this brief.

Authority establishes that without a valid cause of action, the court must not simply dismiss, but enter judgment on behalf of the Defendant. Plaintiff's complaint fails to state a claim for which relief can be granted. In *Evers v. Wagner*, 101 Neb. 226, 699 N.W.2d 110 (1985), the Plaintiff was found to have failed to set forth elements in the complaint that would allow compensation to be awarded. In that matter, the Plaintiff only established the damages sustained in a car accident but failed to properly establish to the court's satisfaction that the cause of the accident was the defendant's. The court held:

Upon considering a motion to dismiss or summary judgment, a court is to determine whether allegations contained in the challenged pleading are sufficient to make out the elements of a right to relief.

Evers, supra. at 115.

Defendant did not invite Plaintiff onto her property, and never requested the brochure that Plaintiff was attempting to deliver. Plaintiff's delivery was solely and completely for the benefit and advancement of the Plaintiff, who hoped to enter into a sales agreement based upon the marketing strategy of delivering brochures. Due to the lack of allegations amounting to a valid right to relief, the court is obligated to enter a summary judgment on behalf of the Defendant. In deciding a motion to dismiss or a motion for summary judgment, the court must liberally construe a plaintiff's allegations and draw every fair inference in favor of the plaintiff.

Having drawn every inference in favor of the plaintiff, if the court still finds no right to relief it must enter judgment on the Defendant's behalf. In *Repoint v. Tayaki*, 110 Tenn. 481, 474 S.W.2d 744 (1969), the court in its ruling found that even when Plaintiff was given every benefit of the doubt on contested facts, no cause of action could be sustained.

In the case at bar, there is no dispute regarding the invitee status of the Plaintiff. No presumption or imagined fact is even attempted by the complaining party. Given the similarity between the cited case above and Plaintiff's weak argument that the possibility of wrongdoing existed, a motion for summary judgment should be granted if it appears beyond doubt that the Plaintiff could prove no facts which, if accepted by the trier of fact, could entitle him to relief.

CONCLUSION

1. The Plaintiff has failed to establish a valid claim upon which relief can be granted, and the court should therefore enter judgment in defendant's favor.

Dated this ____ day of _____, 20__.

By _____

Bryson Justice, Esq.

Attorney for Defendant

Address

Phone Number

Bar Number 93-257

CERTIFICATE OF MAILING

I hereby certify that on this ____ day of _____, 20__, I placed a true and correct copy of the foregoing TRIAL BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT in the United States mail, postage prepaid, addressed to counsel on the attached list:

Jeanne Hammond, Attorney for Plaintiff
234 Novia Drive
Somewhere, USA 37849

Joshua Daniels
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Nowhere, USA 48392

John Carroll, Paralegal

Date

(Note: In some jurisdictions, the Certificate must be signed by the attorney.)