

Summary Judgment and Strike Out Applications

What is Summary Judgement and Strike Out?

Summary judgment is a procedure by which the Court may decide a claim without a trial, whereas an application for strike out calls on the Court's power to strike out all or part of a party's statement of case. Summary judgment and strike out applications are often utilised in the early stages of litigation and are useful tools in promoting the quick determination of cases, avoiding long-running litigation and saving costs.

Whilst they are two standalone processes, each with their own set of governing rules within the CPR, there is a substantial overlap between the power to award summary judgment and the power to strike out and it is quite common for them to be used alongside each other in one application. Both may lead to an early conclusion of the case without the need for trial. However, there are differences. An application for strike out focuses solely on statements of case (i.e. the deletion of all or part of a statement of case so that it cannot be relied upon in the proceedings), whereas an application for summary judgment considers the evidence as a whole.

Overview

| | CPR | Grounds | Consequence of successful application |
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| Summary Judgment | 24 | <ol style="list-style-type: none"> 1. A party has no real prospect of succeeding or defending the claim; AND 2. There is no other compelling reason why the case or issue should be disposed of at trial. | Judgment is given in favour of the successful party and proceedings are brought to an end. |

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| <p>Strike Out</p> | <p>3.4</p> | <p>1. The statement of case has no reasonable grounds for bringing or defending the claim; OR</p> <p>2. It is an abuse of the Court's process; OR</p> <p>3. It is otherwise likely to obstruct the just disposal of the proceedings; OR</p> <p>4. There has been a failure to comply with a Court rule or order.</p> | <p>If the whole of a party's statement of case is struck out: Judgment is given in favour of the successful party and proceedings are brought to an end.</p> <p>If part of a party's statement of case is struck out: Prevents a party from using and relying on the parts that have been struck out. Proceedings will continue.</p> |
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When can Summary Judgment and/or Strike Out applications be used?

Summary judgment and/or strike out applications are generally made once a defence has been filed. The reason is that the parties have then seen one another's "pleaded" case. If an assessment is made that a party's claim is without merit or has no real prospect of success, it may be possible to make an application for summary judgment and/or strike out. It is a vital tool to try and bring unmeritorious matters to a swift end.

Procedure

For summary judgment and/or strike out, a party must make a formal application to Court along with payment of the relevant fee. The application should state the grounds for applying (pursuant to CPR 24 for summary judgment and/or CPR 3.4 for strike out) along with any evidence in support. The application will usually take place at a hearing (rather than being dealt with on paper).

It is important to note that the Court can exercise its power to strike out following a party's application or of its own initiative, though this power is rarely used.

Costs

Where the claim is for a specified sum of money and the Court orders summary judgment and/or the striking out of a whole claim, this will ordinarily fall within the fixed costs regime and the successful party will only be able to recover a fixed sum from the other party. However, costs are at the Court's discretion and the Court is entitled to make a different costs order.

Where the claim is for an unspecified sum of money (or where the Court disapplies the fixed costs) the costs are at the Court's discretion and the successful party may be able to recover all or some of its costs from its opponent.

Pros and cons of Summary Judgment / Strike Out?

| PROS | CONS |
|---|---|
| <ul style="list-style-type: none"> • Gives the applicant an opportunity for its case to be determined in its favour at an early stage | <ul style="list-style-type: none"> • Until an application is heard, proceedings are normally suspended which creates a delay |
| <ul style="list-style-type: none"> • A successful application can save time, costs and court time | <ul style="list-style-type: none"> • An unsuccessful applicant may be ordered to pay the other side's costs (as well as bearing its own costs of the application) |
| <ul style="list-style-type: none"> • Even if unsuccessful, an application may have tactical advantages as it will force your opponent to set out its case at an early stage | <ul style="list-style-type: none"> • The power of strike out is used sparingly by the courts. A court may be willing to grant strike out where there are alternative mechanisms to deal with a particular issue. |
| <ul style="list-style-type: none"> • Such an application sends a clear message that the matter will be pursued or defended vigorously | |
| <ul style="list-style-type: none"> • A combined application for strike out and summary judgment can provide the applicant with a second bite of the cherry if the application for strike out is unsuccessful | |

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