

NOTE:

The following is taken from an actual summary judgment motion that succeeded in closing a recent case by demonstrating to the Court that “as a matter of law” there remained no justiciable (“judge-able”) issues of material fact for the jury to decide.

The names are changed, of course.

Whenever a litigant can demonstrate conclusively to the court (as was done with this particular motion) that pleadings and discovery already filed eliminate all issues of material fact so that there remain no “facts” for the jury to decide that could affect the outcome of the case if it were to go to trial, the litigant can move the Court for an Order granting summary judgment by filing papers similar to what you are about to read.

If the litigant moving for summary judgment successfully argues the motion at a subsequent hearing (after proper notice to all parties, of course) the court may enter an Order granting summary judgment, thus dispensing with the costs and delays that would otherwise be required to put the case before a jury at trial.

Please note, however, that summary judgment is seldom granted where there’s even a scintilla of issue of material fact and, if granted, appellate courts routinely scrutinize the case carefully to determine if the lower court overlooked any issue of material fact whatever that *should* have gone to the jury. If the lower court missed anything and the other side appeals, the appellate courts will in all such cases reverse the summary judgment order. In fact, the largest single category of appeals in civil cases results from summary judgment motions, and possibly half (or more) of such appeals result in reversal of summary judgment.

This motion succeeded, however, and there was no appeal. In the pig case, the lower court decided there were no material fact issues for the jury to decide, summary judgment was granted, and the golf course development company folded their tents.

I hope this will demonstrate what’s needed to win by summary judgment motion.