

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 86 – ACTIONS FOR SPECIFIC PERFORMANCE, ETC.: SUMMARY JUDGMENT

Remarks:

Adaptation amendments retroactively made – see 25 of 1998 s. 2

Remarks

1. Application by plaintiff for summary judgment (O. 86, r. 1)

- (1) In any action begun by writ indorsed with a claim –
- (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, mortgage or charge of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or
 - (b) for rescission of such an agreement, or
 - (c) for the forfeiture or return of any deposit made under such an agreement,

the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.

- (2) An application may be made against a defendant under this rule whether or not he has acknowledged service of the writ.

2. Manner in which application under rule 1 must be made (O. 86, r. 2)

- (1) An application under rule 1 shall be made by summons supported by an affidavit verifying the facts on which the cause of action is based and stating that in the deponent's belief there is no defence to the action.

Unless the Court otherwise directs, an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.

- (2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.

- (3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than 4 clear days before the return day.

3. Judgment for plaintiff (O. 86, r. 3)

(1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

(2) The Court may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against the defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action. (L.N. 356 of 1988)

4. Leave to defend (O. 86, r. 4)

(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) The Court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(3) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity –

(a) to produce any document;

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

5. Directions (O. 86, r. 5)

Where the Court orders that a defendant have leave to defend the action, the Court shall give directions as to the further conduct of the action, and Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 were a ~~summons for directions~~ **case management summons**.

Rule 168
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6. Costs (O. 86, r. 6)

If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to rule

4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an aided person, require the costs to be paid by him forthwith.

7. Setting aside judgment (O. 86, r. 7)

Any judgement given against a defendant who does not appear at the hearing of an application under rule 1 may be set aside or varied by the Court on such terms as it thinks just.

8. (HK) Application for summary judgment on counterclaim (O. 86, r. 8)

(1) Where a defendant to an action begun by writ has served a counterclaim claiming against the plaintiff such relief as appears in rule 1(1) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim or to a particular part of such a claim, apply to the court for judgment against the plaintiff on that claim or that part.

(2) Rules 2, 3, 4, 5, 6 and 7 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications –

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in rule 3(2) “any counterclaim made or raised by the defendant in” shall be omitted;
- (c) the reference in rule 4(2) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(L.N. 356 of 1988)

9. (HK) Right to proceed with residue of action or counterclaim (O. 86, r. 9)

(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 8 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or against any other defendant to the counterclaim.

(L.N. 356 of 1988)
(Enacted 1988)