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SLIPSHOD DISCOVERY RESPONSES A POTENTIAL TRAP FOR THE UNCOOPERATIVE PLAINTIFF

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On June 9, 2022, the Court of Appeal of the State of California, Second Appellate District decided Field v. U.S. National Bank Association (B309111, 2022 Cal.App.LEXIS 504) which clarified the role of pre-trial discovery in summary judgment motion practice.

Field was a wrongful home foreclosure case against a bank and loan management service company. In discovery, defendants served a special interrogatory which stated "Do YOU contend that the [Notice of Trustee Sale] that YOU reference in paragraph 15 of the [Second Amended Complaint] was not mailed to YOU in compliance with California Civil Code section 2924b? If so, then please provide all facts RELATED TO this contention." (Id. at 2). Plaintiff's response was "unsure." (Id.) In later summary judgment proceedings, defendants claimed the foreclosure was legally sound and plaintiff rebutted that the notice of proposed trustee sale was not properly served. The trial court entered summary judgment and the plaintiff appealed.

On appeal, the Court of Appeal noted "California's civil discovery process aims to unearth the truth of the case, thus facilitating settlement on the basis of the mutually expected value of the suit. Evasive discovery responses frustrate this goal by concealing the truth. A party cannot evade discovery duties and then try to defeat summary judgment by adding factual claims to create last-minute disputed issues." (Id. at 1). Emphasizing the response to the interrogatory above, the Court admonished plaintiff she should have done the following: "answer this simple contention interrogatory unambiguously, forthrightly, and truthfully." (Id. at 5). Balancing the equities, the Court found it was "unjust and improper" for the plaintiff to state she was "unsure," then pivot and provide a more extensive response to oppose the motion for summary judgment. Drawing an analogy, the Court further admonished "a party may not move the target after the proponent has launched its arrow." (Id.)

Before Field, there was favorable case law in Union Bank v. Superior Court (1985) 31 Cal.App.4th 573, 590, which allowed the summary judgment moving party to shift the burden of proof on summary judgment based on evasive discovery responses. Field takes this one step further by allowing a moving party to exclude evidence submitted in opposition, after evasive and inchoate discovery responses, as "Trial courts encountering such an abuse are free to disregard a later declaration that hopes to supplant tactical or slothful ambiguity with tardy specificity." (Id. at 7). In short, this new precedent provides renewed emphasis on detailed, well-timed, precisely drafted pre-trial discovery and especially in lawsuits with the ever common, "cut-and-paste" shotgun complaint regurgitated from prior actions. In order to take advantage of Field, not only must the discovery be propounded strategically, but an appropriate foundation outlining the recalcitrant responses must be timely inserted in the summary judgment moving papers.

Overall, this precedent provides a valuable new tool for winnowing cases via summary judgment or summary judication proceedings, where appropriate planning is implemented early in the litigation.

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