

Winning Without Trial: Rule 12(c) Motions for Judgment on the Pleadings

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“Winning Without Trial” is an oxymoron. The figure of speech is contradictory, but the idea makes perfectly good sense.”¹

Experienced practitioners are familiar with Federal Rule of Civil Procedure 12, which provides for various pretrial motions to challenge the opposing party’s pleadings and to assert other defenses and objections. If asking attorneys what type of pretrial challenges they consider to be part of their arsenal of motions challenging the adequacy of the pleadings, their response likely would be limited to motions to dismiss for failure to state a claim, motions to strike, or motions for summary judgment. Rule 12(c) motions—allowing a party to move, after the pleadings are closed, for judgment on the pleadings—are often overlooked. Practitioners, however, should consider and incorporate Rule 12(c) motions into their litigation strategies.

Motions for judgment on the pleadings are essentially trials on the pleadings. Rule 12(c) was designed to prevent the piecemeal process of judicial determination that prevailed under the old common law practice.² It allows for a decision on the merits of the claims based upon the pleadings in special circumstances, such as when the parties do not dispute the facts in the pleadings. Thus, Rule 12(c) motions can help dispose of baseless claims or defenses when the formal pleadings reveal their lack of merit. Because a motion for judgment on the pleadings can highlight for the court its ability to resolve the case, merely by examining the initial papers,³ its use can mean the difference between unnecessarily protracted litigation and a prompt resolution of the dispute. As one author described a winning motion practice, albeit in the context of summary judgment:

[w]ith one successful roll of the . . . dice, an attorney can win the trial-court round, put an opponent on the defensive, save time and money that would be spent in court, and emerge a hero to the client. Used correctly and shrewdly, [a dispositive motion] is a lethal weapon that can resolve lengthy, expensive, and exhausting litigation years before a case reaches the trial stage.⁴

The Rule 12(c) Motion

Facial challenges to the legal sufficiency of a claim or defense ordinarily should be resolved before discovery begins.⁵ Further, the adequacy of the pleadings is an issue determined by the

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Federal Rules of Civil Procedure rather than state law.⁶ After a plaintiff files a complaint, Rule 12(b) counsels a defendant upon the bases that she can properly file a motion to dismiss in lieu of a responsive pleading to the complaint.⁷ Those bases include the following:

- lack of jurisdiction over the subject matter
- lack of jurisdiction over the person
- improper venue
- insufficiency of process
- insufficiency of service of process
- failure to state a claim upon which relief can be granted
- failure to join a party under Rule 19⁸

Additionally, the rule admonishes a defendant that a motion raising any of these defenses “shall be made before pleading if a further pleading is permitted.”⁹

Rule 12(c) provides that “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.”¹⁰ Theoretically, a motion for judgment on the pleadings is the equivalent of a Rule 12(b)(6) motion. A Rule 12(c) motion also challenges the legal sufficiency of the opposing party’s pleadings and can be used to attack subject matter jurisdiction. In other words, both types of motions ask the district court to look at the pleadings to determine whether the adversary has a legally cognizable claim.¹¹ As with a Rule 12(b)(6) motion, if the court considers matters outside the pleadings, it must convert the motion to one for summary judgment and provide all parties a reasonable opportunity to present all material made pertinent to such a motion by Rule 56. However, in considering a Rule 12(c) motion, a district court “may also take judicial notice of matters of public record” without converting the motion into one for summary judgment,¹² and at least one circuit court contemplates the attachment of documents to answers.¹³ The standard to be met in deciding a Rule 12(c) motion is also the same as on a motion under Rule 12(b)(6) in that the party against whom the relief is sought is given the benefit of every inference and doubt.¹⁴

There are, however, key differences between a Rule 12(b)(6) and a Rule 12(c) motion. First, Rule 12(c) permits *any* party to file the motion. While a motion under Rule 12(b)(6) is brought by a party against whom a claim is asserted, a motion under Rule 12(c) may be brought by any party. For example, a plaintiff may bring a Rule 12(c) motion if the defendant’s answer fails to controvert the allegations in the complaint.

Second, while a Rule 12(b)(6) motion is typically brought before filing an answer, a motion for judgment on the pleadings can be made only after the pleadings are closed. The pleadings are “closed” for the purposes of Rule 12(c), once a complaint and answers by all defendants have been filed, assuming that no

counterclaim or cross-claim is made.¹⁵ However, a district court has discretion under Rule 7(a) to order the plaintiff to reply to the defendant's answer.¹⁶ When the district court has so ordered, a motion for judgment on the pleadings would consider the complaint (along with any attached exhibits),¹⁷ the answer (along with any affirmative defenses), and the reply.¹⁸ While a plaintiff may be able to respond to a motion to dismiss under Rule 12(b)(6) by filing an amended complaint as a matter of right under Rule 15(a), Rule 12(c) precludes this option. Likewise, when the basis for adjudication of a claim is an affirmative defense, then the proper method for dismissal is a Rule 12(c) motion for judgment on the pleadings or summary judgment.¹⁹

Special Considerations Based on Party Status

For plaintiffs, a Rule 12(c) motion likely will be most useful in instances such as declaratory judgment²⁰ or breach of contract.²¹ A probable reason for the motion's effectiveness is that the closed pleadings have a substantial likelihood of containing the entire relevant universe of information necessary to consider the motion. Conversely, a Rule 12(c) motion is of limited utility if the defendant denies any of the claimant's essential allegations in his or her answer or raises an affirmative defense because that will be sufficient to defeat the motion.

For defendants, Rule 12(c) requires that every defense to a claim for relief in any pleading be asserted in the responsive pleading.²² Therefore, if an early decision is made to file a Rule 12(b) motion to dismiss, counsel must include all compelling arguments so as to avoid any possibility of waiver or equitable estoppel.²³ Other considerations include the fact that Rule 12(g) prohibits a party, having previously filed a motion to dismiss, with limited exception, from filing a second pre-answer motion to dismiss, raising an omitted defense that could have been presented in the first motion to dismiss.²⁴ Rule 12(a) requires that, with limited exceptions, an answer or other response be served, not filed, 20 days after service of the complaint.²⁵ The district court has the power under Rule 6(b) to grant an extension or enlargement of time to answer "for cause shown."²⁶ Unlike other sections of the federal rules, Rule 6(b) does not require a party to show good cause, and courts routinely grant motions for an extension of time. Nevertheless, where circumstances, such as a delay between service of the complaint on the client and its transmission to counsel or the complexity of the factual/legal analysis, prevent the filing of a motion to dismiss under Rule 12(b), a motion for judgment after the pleadings have closed may be warranted.²⁷

Depending on the nature of the case, judgment on the pleadings is not often available (e.g., antitrust cases where motive and intent are usually at issue).²⁸ However, a motion for judgment on the pleadings may be obtained and should be considered in the following instances: where the statute of limitations precludes recovery by plaintiffs; where there is a statutory or judge-made immunity from the application of a law; and for failure to state a claim, such as inadequate pleading of injury. In these types of cases, a motion for judgment on the pleadings may be used either to press Rule 12(b) defenses to the pleadings' procedural defects or to seek a substantive disposition of the case on the basis of its underlying merits.

In addition, both plaintiffs and defendants should remember that Rule 12 motions do not excuse compliance with jury demand requirements:

Anticipating that a court will grant a motion to dismiss or a motion for judgment on the pleadings is not a sensible or acceptable reason for failing to comply with the Rule 38(b) requirements for demanding a jury. If a defendant is so confident in a Rule 12 motion that the defendant decides not to comply with other Federal Rules in developing a litigation strategy, it does so at its own risk.²⁹

A partial summary disposition under Rule 12(c) is not a final judgment, and the judge is not foreclosed from changing views and rescinding the order at trial.

Appealability

If the Rule 12(c) motion is granted, the prevailing party obtains a final judgment.³⁰ A judgment entered on the pleadings pursuant to Rule 12(c) is reviewed *de novo*.³¹ In other words, a court of appeals exercises plenary review over a district court's order granting a motion for judgment on the pleadings.³² The judgment will be affirmed only if the plaintiff would not be entitled to relief under any set of alleged facts.³³

Practitioners must proceed with care in analyzing whether an immediate appeal is ripe from Rule 12(c) motions for judgment on the pleadings. Generally, a decision granting such a motion is considered a "final order" and is immediately appealable, but a decision denying such a motion is ordinarily deemed "interlocutory," and the parties must await a final disposition on the merits. Exceptions, however, are numerous. For example, denials of motions to dismiss that assert certain types of immunity issues have been deemed immediately appealable under the collateral order doctrine.³⁴ Prior cases mark the line between rulings within the class and those outside. On the immediately appealable side are orders rejecting absolute or qualified immunity. A state

actor has the benefit of the collateral order doctrine to appeal a decision denying its claim to Eleventh Amendment immunity, and a criminal defendant may collaterally appeal an adverse ruling on a defense of double jeopardy.³⁵ Also, an appellate court has jurisdiction under the collateral order doctrine to review a district court's order committing a defendant for custodial examination under 18 U.S.C. § 4241 because determinations about the defendant's mental capacity are separate from the issue of his guilt or innocence.³⁶ In light of the contingent question of appealability from a Rule 12(c) ruling, the issue must be carefully researched within the context of the specific issues presented in the motion.

Be warned that a "partial" summary disposition under Rule 12(c) is not a final judgment and, because it has no binding *res judicata* effect, the judge is not foreclosed from changing views and rescinding the order at trial. Similarly, the party who lost its challenge to a partial Rule 12(c) motion is best served to renew its position at trial. Further, the award of partial judgment on the pleadings does not generally constitute an appealable order.³⁷ On the other hand, be encouraged because an adversary who loses partial summary judgment cannot immediately appeal and therefore faces a trial in which the judge has already determined against it several critical factors.³⁸

Conclusion

Rule 12(c) motions for judgment on the pleadings are exceedingly effective tools in a litigator's arsenal. It ought to be a factor in deciding to commence litigation, in assessing a compromise value, and in reaching settlement. Ultimately, the effectiveness of a motion for judgment on the pleadings depends on the litigator's tactical acumen, sense of timing, and thorough understanding of both the facts of the case and the principles and case law underlying Rule 12(c).³⁹

Endnotes

1. *Winning Without Trial*, Vol. 14, No. 2 LITIGATION at 5 (Winter 1988).
2. *Noel v. Olds*, 149 F.2d 13, 15 (D.C. Cir. 1945).
3. T. Thomas Cottingham III & Stephen M. Nickelsburg, *Getting to Dismissal: Tactics for Narrowing the Issues and Resolving Your Case*, Vol. 28, No. 4 LITIGATION at 43 (Summer 2002).
4. Gregory Wallance, *Summary Judgment Ascending*, Vol. 14, No. 2 LITIGATION at 6 (Winter 1988).
5. *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997) (internal citations omitted).
6. *Smith v. Shaffer Stores Co.*, 28 F.R.D. 308, 310–11 (E.D. Pa. 1961).
7. FED. R. CIV. P. 12.
8. FED. R. CIV. P. 12.
9. FED. R. CIV. P. 12.
10. FED. R. CIV. P. 12.
11. BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS § 7:35 (Hon. Robert S. Lasnik) (Robert L. Haig ed., West Group & ABA Section of Litigation, 2d ed. 2005).
12. *U.S. v. Wood*, 925 F.2d 1580, 1582 (7th Cir. 1991).
13. *N. Ind. Gun & Outdoor Shows v. City of S. Bend*, 163 F.3d 449, 452 (7th Cir. 1998).
14. BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS § 7:35 (Hon. Robert S. Lasnik) (Robert L. Haig ed., West Group & ABA Section of Litigation, 2d ed. 2005).
15. *Doe v. United States*, 419 F.3d 1058, 1061 (9th Cir. 2005).
16. FED. R. CIV. P. 7.
17. FED. R. CIV. P. 10; see *R.G. Fin. Corp. v. Vergara-Nunez*, 446 F.3d 178, 182 (1st Cir. 2006) (district court may supplement the facts contained in the pleadings by considering documents fairly incorporated therein and facts susceptible to judicial notice); see also *N. Ind. Gun & Outdoor Shows v. City of S. Bend*, 163 F.3d 449, 456 (7th Cir. 1998) (For purposes of Rule 12(c), courts need not accept the probative value of "documents that do not by their nature imply some level of credibility.").
18. Kathryn R. Urbonya, *Interlocutory Appeals from Orders Denying Qualified Immunity: Determining the Proper Scope of Appellate Jurisdiction*, 55 WASH. & LEE L. REV. 3, 30–31 (Winter 1998).
19. *Mosely v. Bd. of Educ. of the City of Chicago*, 434 F.3d 527, 533 (7th Cir. 2006).
20. *N.H. Ins. Co. v. Patrick Cadillac Co.*, 1990 U.S. Dist. LEXIS 12911 (N.D. Ill. 1990).
21. *Petersen Sand & Gravel, Inc. v. Md. Casualty Co.*, 881 F. Supp. 309 (N.D. Ill. 2005).
22. FED. R. CIV. P. 12.
23. BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS § 7:35 (Hon. Robert S. Lasnik) (Robert L. Haig ed., West Group & ABA Section of Litigation, 2d ed. 2005).
24. *Skrtech v. Thornton*, 280 F.3d 1295, 1306 (11th Cir. 2002).
25. FED. R. CIV. P. 12.
26. FED. R. CIV. P. 6.
27. BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS § 7:35 (Hon. Robert S. Lasnik) (Robert L. Haig ed., West Group & ABA Section of Litigation, 2d ed. 2005).
28. BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS § 61:76 (John H. Shenefield, Peter E. Halle, and Edward D. Cavanagh) (Robert L. Haig ed., West Group & ABA Section of Litigation, 2d ed. 2005).
29. *Fed. Ins. Co. v. Helmar Lutheran Church*, 2005 U.S. Dist. LEXIS 13058, at *7 (N.D. Ill. June 8, 2005).
30. See *Republic Steel Corp. v. Pa. Eng'g Corp.*, 735 F.2d 174, 178 n.2 (7th Cir. 1986).
31. *McCann v. Neilsen*, 466 F.3d 619, 621 (7th Cir. 2006).
32. *Corestates Bank, N.A. v. Huls Am., Inc.*, 176 F.3d 187, 193 (3d Cir. 1999).
33. *George v. N.Y. City Dep't of City Planning*, 436 F.3d 102, 103 (2d Cir. 2006).
34. *Mitchell v. Forsyth*, 472 U.S. 511, 530 105 S. Ct. 2806 (1995).
35. *Will v. Hallock*, 126 S. Ct. 952, 958 (2006) (internal citations omitted).
36. *United States v. Lapi*, 458 F.3d 555, 560 (7th Cir. 2006).
37. *Volvo Constr. Equip. N. Am., Inc. v. CLM Equip. Co.*, 386 F.3d 581, 591 at n9 (4th Cir. 2004).
38. Gregory Wallance, *Summary Judgment Ascending*, Vol. 14, No. 2 LITIGATION at 6 (Winter 1988).
39. Gregory Wallance, *Summary Judgment Ascending*, Vol. 14, No. 2 LITIGATION at 6 (Winter 1988).