

Understanding Motions to Dismiss: Why They Are Not the Easy Escape Many Defendants Hope For

September 17, 2026

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No one wants to be a defendant in a lawsuit. This is especially so when you feel like the claims against you are inaccurate and/or spurious. As a result, if you've been sued, one of your first questions may be: "Can we get this case thrown out right away?"

It's a natural reaction. Litigation is expensive, time-consuming, and stressful. The idea of ending a lawsuit before spending money on document exchanges, depositions, court appearances, and even a trial is appealing to anyone facing legal action.

That is where a motion to dismiss comes in. A motion to dismiss asks the court to end a lawsuit or at least dispense with individual claims at a very early stage, often before any evidence has been exchanged between the parties.

While that sounds straightforward, motions to dismiss are often much harder to win than most people expect. Understanding why can help you make a more informed decision about whether pursuing one makes sense in your case.

What Is a Motion to Dismiss?

Put simply, a motion to dismiss is a formal application asking the court to decide that, even if everything alleged in the lawsuit were true, the plaintiff still lacks a valid legal claim. At this early stage of a case, the court generally is not deciding who is telling the truth. Instead, the court is determining whether what the plaintiff has asserted in the complaint could, even if proven later, legally support a claim.

This can be one of the most confusing aspects of litigation for defendants. It is easy to read a complaint and immediately conclude that it contains and/or identify exaggerations, inaccuracies, or outright falsehoods. A defendant considering a motion to dismiss might understandably ask: "Why would a court ever assume any of this is true?"

The answer is that, with a few limited exceptions, it legally has to in order to apply applicable law governing motions to dismiss. In doing so, it is often creating a legal fiction solely for the purpose of deciding the motion to dismiss and is not deciding whether the allegations are actually true. It merely, temporarily, accepts them as true to decide whether the lawsuit is legally sufficient to move forward. If the answer is no—if even accepting all the allegations as true, there is still no claim—the court can dismiss a case right away, before any discovery, on the ground that there is no legally supportable claim.

Those limited exceptions (that the court does not have to accept as true) are bald allegations that amount to conclusions only and are really fact-free; allegations that are conclusively refuted by documentary evidence. For instance, if the complaint simply accuses a defendant of committing fraud but does not say how, the Court need not accept it as true. Similarly, if there is a document or record that shows, in fact, that the defendant did not commit fraud, the Court does not need to accept that

allegation as true. Therefore, in addition to the above, where the claims are refuted by documentary evidence or not supported by sufficient facts, the court can also dismiss a case right away, before any discovery, on the ground that there is no legally supportable claim.

Why Motions to Dismiss Are Difficult to Win

Motions to dismiss are extremely difficult to win. This is because the court must create the legal fiction discussed above. It looks at a complaint in the light most favorable to the person who filed it, and therefore, the burden on the person seeking dismissal is significant. To win, the defendant typically must show that the plaintiff would not be entitled to relief under any reasonable interpretation of the alleged facts, or that records definitively undermine their claim. In other words, the defendant must show that the lawsuit is legally defective from the start as it is written.

That is a high bar.

Many defendants believe they are right on the facts and have evidence to prove it. While they may very well be correct, since a motion to dismiss comes into play before evidence is exchanged, if there are any issues that cannot be definitively decided, the case must move on to the discovery phase. As evidence usually comes into play later in the case, after discovery has occurred, unless it is available to the court on the motion to dismiss, it cannot be considered in dismissing the case.

As a result, cases that ultimately fail may survive an early motion to dismiss. Some of the most spurious cases require discovery to show their lack of merit. Many losing cases can defeat motions to dismiss if they reach the minimal bar of plausibly stating a claim.

What Happens If the Motion Is Denied?

One of the most important points for clients to understand is that losing a motion to dismiss does not mean losing the case.

It simply means the lawsuit will continue.

The movant will answer the complaint. The parties then move into discovery, where they exchange documents, take depositions, and gather evidence. The defendant still has the opportunity to challenge the plaintiff's claims later through a motion for summary judgment or at trial.

A denial means only that the court believes the plaintiff has alleged enough facts for the case to proceed. It is not a determination that the plaintiff is correct.

The Cost-Benefit Analysis

A motion to dismiss necessarily creates additional legal fees at the beginning of a case; therefore, every client should be educated on to the risks and strategic aims of submitting this permissive filing. Preparing the motion often requires detailed legal research, drafting extensive papers, reviewing opposition papers, preparing a reply, and often appearing in court for oral argument.

If the motion is denied, the case generally returns to the same stage it would have reached if no motion had been filed. For that reason, clients should view a motion to dismiss as an investment with both potential rewards and risks. The reward is obvious: a successful motion could end the lawsuit early and save substantial litigation costs. The risk is that the client may spend money pursuing the motion only to end up proceeding to discovery anyway.

Does Winning End the Case Forever?

Not necessarily. In some situations, a successful dismissal allows the plaintiff to revise the complaint and try again. The court may determine that the lawsuit, as written, is inadequate and give the plaintiff an opportunity to fix the problem.

In other cases, the court dismisses the claims permanently. This is often referred to as a dismissal "with prejudice." When that occurs, the plaintiff generally cannot bring the same claims again, although an appeal may still be possible. The likelihood of a permanent dismissal depends on the facts of the case, the legal issues involved, and the court handling the matter. A client should include this in its risk-reward analysis discussed above in when deciding to make such a motion.

So When Does a Motion to Dismiss Make Sense?

Despite the challenges, motions to dismiss remain valuable tools in many cases. They can be appropriate when there is a strong legal defect in the complaint, when key claims are clearly barred by law, or when eliminating claims early could significantly reduce litigation costs and exposure. In some situations, even filing the motion can help clarify the issues in dispute and force the plaintiff to identify the legal basis for the case. The key is understanding that a motion to dismiss is not a guaranteed shortcut. It is a strategic decision that should be weighed carefully against the costs, risks, and potential benefits.

The Bottom Line

Many people enter litigation hoping there is a quick way to make the lawsuit disappear. Occasionally, a motion to dismiss provides exactly that result. More often, however, the case proceeds beyond the initial stage and into discovery.

The decision to file a motion to dismiss should therefore be made with realistic expectations. The client should go in with eyes wide open. It can be a powerful tool when the circumstances are right, but it is not a magic wand.

The most important thing is to understand both the opportunities and the risks before making the investment. An informed client is better positioned to make sound decisions, manage litigation costs, and develop an effective overall case strategy.