

# SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF  
**Paul X. Escandon**  
SUPERIOR COURT JUDGE



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## FAX COVER SHEET

Date: June 10, 2014

**TO:** Ralph Ferrara, Esq.  
**FAX:** 1-609-498-7440  
**FROM:** Paul X. Escandon, J.S.C

**RE:** Case Title: State of New Jersey v Amboy National Bank A/C  
Docket No.: L-005279-10  
Attached please find Order(s) related to the above matter.

Laurie Gonzales  
Secretary to Hon. Paul X. Escandon

Number of pages ( 13 ) including this cover sheet.

If you have any questions, please contact me us at 732-677-4142

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY SPECIAL CIVIL PART

DOCKET NO. : L-005279-10

STATE OF NEW JERSEY  
Plaintiff(s),

vs.

AMBOY NATION BANK ACCT.  
No. 053-3916-2 VALUED AT  
FOUR HUNDRED THIRTY SIX  
THOUSAND EIGHT HUNDRED  
FOURTY-FIVE DOLLARS AND  
EIGHTY-SIX CENTS, et al.  
Defendant.

ORDER OF THE COURT



**THIS MATTER** having been brought before the court through motions, opposition motions, replies, and cross motions filed by both parties; and the case originally initiated by the Plaintiff, the State of New Jersey, through Deputy Prosecutors Fritch and Huff, against the above listed bank accounts, claimed to be held by John Boverly Jr., represented by counsel, Ralph Ferrara, Esq., and the court now considering both parties' motion for summary judgment;

**IT IS ORDERED** on this 10th day of June, 2014 as follows:

1. Defendant's motion for summary judgment is DENIED.
2. State's motion for summary judgment is GRANTED.

Honorable Paul X. Escandon, J.S.C.

All issues not expressly addressed herein are dismissed without prejudice.

For reasons set forth in the annexed opinion.

## OPINION OF THE COURT

Honorable Paul X. Escandon, J.S.C.

Both parties currently move for summary judgment in this forfeiture action; the court, having considered the moving papers, opposition papers, and reply briefs of both parties, finds the State is entitled to judgment as a matter of law in their favor. Conversely, claimant's motion for summary judgment is denied in consideration of the facts and finding set forth herein.

Troubling as the reality often is, the judiciary is not always tasked with adjudicating a palatable and fair outcome. Quite contrarily, the courts must often reach troubling conclusions, as the law mandates. Courts are not asked to determine moral propriety, but rather our judicial obligation is to apply and enforce the laws of this state; these laws must be applied regardless of the public's near universal impunity from a given activity's illegality. The current case, which asks whether operating a sports pool is unlawful and if the state can seize pool dues reserved for the pool winner(s), requires these chambers to swallow such a bitter pill.

Considering the applicable statutes, the Court must now allow the state to seize the prize money from Mr. Boverly's sports pools, which the Court finds unlawful, although thousands of others around the state organize and facilitate sports pools for cash without even a mild threat of prosecution or forfeiture. This court would be remiss to ignore the web of contradictions, hypocrisy, and opportunism this seizure presents. Although the State's recitation and application of the law to Mr. Boverly's sports pools is sound, I cannot help but feel parasitic, larcenous, and disconcerted as this opinion ratifies a surreptitious cash grab perpetrated at the expense of nearly 8,000 innocent pool participants.

### **STATEMENT OF FACTS**

The extensive discovery in this forfeiture matter has provided the court with a well-defined factual record; the following facts are largely undisputed by the parties. This case arises from what has become a fairly common occurrence in many social circles and work environments across the country, participation in sports pools. This court has defined a sports pool as "any gaming scheme structured as a collection of persons or individuals that participate in an organized competition to correctly chose the winner of certain sporting events; the winner

of which is the person that is most successful in choosing the outcomes of the specified sporting events.” (Cf. NJSA 2C:37-1a) The State contends that operation of a sports pool and the associated prize money constitutes the proceeds of illegal activity, rendering the funds eligible for seizure under the NJ forfeiture statute.

Pursuant to the NJ forfeiture provisions, the State seized just over \$846,000 in September 2010 from a number of bank accounts belonging to the claimants, John Boverly Jr, John Boverly Sr., and Mary Boverly. The State contends that Mr. Boverly managed or ran a large number of sports pools whereby participants paid an entry fee for the chance at winning a grand prize exceeding half a million dollars. These sports pools often had anywhere from a few dozen to several thousand participants, allowing the total prize money to reach huge sums. The exact entry fee varied, as did the prize for winning a given pool. Mr. Boverly ran more than a dozen of these pools in any given year, and he had been managing these pools for almost twenty years.

In May of 2010 the Monmouth County Prosecutor interviewed Mr. Boverly in relation to an unrelated matter. During this interview he was fairly forthcoming about his operations and the money he received for managing the aforementioned sports pools. The structure of Mr. Boverly’s operation was as follows. Participants would pay an entry fee between \$20 and \$200 to participate in any given pool. The participants paid this entry fee directly to John Boverly Jr. Mr. Boverly would then collect the pool of money and deposit the funds into one of a couple bank accounts he set up with Amboy National Bank. The funds were left in the account until a winner for the pool prevailed. Upon winning the pool, Mr. Boverly would mail a check or series of checks to the winner(s).

After submitting an entry fee, the participant was instructed to review a website that Mr. Boverly maintained to operate his pools, JRWinkle.com. This site listed important league rules and contained various messages from Mr. Boverly. Additionally, participants registered a user name on the site officefootballpools.com. Mr. Boverly used this site as a third party provider to operate his pools. The participants would submit their weekly picks for their given pool on this site.

Further, when registering for one of Mr. Boverly’s pools, each participant was prompted to give a “gift” to Mr. Boverly for organizing the pool. No specific amount was required, but in almost all cases, the “gift” amounted to 10% of the entry fee. In this manner, rather than receiving one 10% “gift” amounting to nearly \$60,000 from the pool winner, Mr. Boverly would

receive 6,000 “gifts” of \$10 from each participant. Mr. Bovery would keep this “gift” money for himself as remuneration for organizing and operating the pool. Whether this “gift” was mandatory or optional is the subject of some debate within this case, and serves as a principle argument of claimant to avoid summary judgment by raising an issue of material fact.

Having described the structure and organization of Mr. Bovery’s sports pool operation, the specific facts leading up to the seizure are as follows. After learning of Mr. Bovery’s sports pool operation during their interview with him in May of 2010, the Monmouth County Sheriff began to monitor Mr. Bovery and his bank accounts. In the Summer of 2010, Mr. Bovery had an active baseball pool, active golf pool, and was collecting money and organizing his 2010 football pools. Prior to the start of the 2010 NFL Football season, Mr. Bovery made a series of deposits into his two Amboy Bank Accounts. In account 05339162 Mr. Bovery deposited approximately \$75,000 on August 24<sup>th</sup>, 2010, \$50,500 on August 25, 2010, \$17,420 on August 26, 2010, \$28,000 on August 27, 2010, and \$127,000 on September 7, 2010. In account 05339324 Mr. Bovery deposited approximately \$71,000 on August 24, 3010, \$60,000 on August 25, 2010, \$44,000 on August 26, 2010, \$28,000 on August 30, 2010, and \$29,600 on September 7, 2010. Mr. Bovery identified these deposits as entry fees for his sports pools. In total, the record indicates that \$124,000 of the seized funds belong to Mr. Bovery personally and \$722,000 are attributable as player contributions or entry fees for the sports pools.

After observing these deposits the Monmouth County Prosecutor sought and received a warrant for the funds’ seizure. The prosecutor’s office executed the seizure on September 9, 2010 at Amboy National Bank. Additionally, sheriff’s deputies executed a search warrant on the Bovery home the same day. Investigators seized a series of computers, bank records, and \$8,615 in cash. The total amount of the seizure, and now this forfeiture action, was approximately \$854,000. Following the investigation, search, and seizure, the State charged Mr. Bovery with third degree promotion of gambling under NJSA 2C:37-2(a).<sup>1</sup>

#### **LEGAL STANDARD OF REVIEW UNDER R. 4:46-2**

Pursuant to NJ Ct. R. 4:46-2, summary judgment is proper when the “pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any,

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<sup>1</sup> Mr. Bovery was also charged with first degree money laundering, but the court does not feel it is necessary to discuss this allegation in detail as the violation under the gambling statute is sufficient to warrant seizure.

show that there is no genuine issue as to any material fact. . . and that the moving party is entitled to a judgment as a matter of law.” An issue is only material when it is genuinely in dispute. The court should ask, when considering the burden of persuasion at trial does the evidence presented require submission of the issue to the fact finder. R. 4:46-2. When reviewing the evidence for issues of material fact the court will extend all inferences and construe all facts in the light most favorable to the non-moving party.

In Brill v. The Guardian Life Ins. Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court held that when considering a motion for summary judgment pursuant to Rule 4:46-2, the court must, “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” If not, then summary judgment should be granted to the moving party. *Id.*

The party or parties moving for summary judgment in their behalf must carry the heavy burden of excluding any reasonable doubt as to the existence of a genuine issue of material fact. R. 4:46-2; See also Porte v. Jaffee, 84 N.J. 88, 90 (1980); See also Pierce v. Othro Pharmaceutical Corp., 84 N.J. 58, 61 (1980). Thus, all inferences of doubt concerning the facts, which are gleaned from the moving papers will be resolved against the movant and in favor of the party opposing summary judgment. See Mazzilli v. Accident and Causalty Co. of Winterhur, Switzerland, 26 N.J. 307 (1958). The trial judge need not decide issues of fact, he or she must only decide that there are none. See State of New Jersey v. Nasir, 355 N.J. Super. 96 (App. Div. 2002), cert. den. 175 N.J. 549.

## LEGAL ANALYSIS

### **I. The State is Entitled to Summary Judgment with Regard to the \$124,000 Attributable to Mr. Boverly because the Money Constitutes Proceeds of Unlawful Activity, Specifically the Illegal Act of Promoting Gambling Under NJSA 2C:37-2(a).**

The forfeiture of the \$124,000 belonging to Mr. Boverly in the Amboy National Bank Accounts under his name is proper, as the State clearly showed that he derived the funds from the operation of his sports pools. Mr. Boverly established, advertised, solicited, managed, and operated a number of sports pools during the time leading up to his arrest, actions that are

expressly forbidden under New Jersey's gambling statute. NJSA 2C:37-2(a). In return for his continued management and effort, Mr. Bovery repeatedly acknowledged that he derived substantial amounts of money by way of contributions given to him by his sports pool participants. Accordingly, he is in violation of NJSA 2C:37-2(a)(1), prohibiting the acceptance or receipt of money or property pursuant to an agreement to participate in some form of gambling activity.

**A. Mr. Bovery's sports pools constitute unlawful activity under NJSA 2C:37-2(a) because the pools are structured as a game of chance and are not listed as an exception to New Jersey's gambling regulations**

New Jersey's forfeiture statute states that property intended to become a part of unlawful activity, including money earmarked for illegal gambling activity, is subject to seizure by the state. NJS 2C:64-1(a)(3). Provided the State can show that the sports pools organized by Mr. Bovery are unlawful, the proceeds and profits from these pools is properly subject to seizure by the state.

The New Jersey Constitution prohibits the legislature from legalizing gambling without a public referendum, except in a few well delineated and well established exceptions such as atlantic city casinos, paramutuel racing, and religious institutions operating certain games of chance. CONST. Art IV. Sec VII Para 2. Sports Pools are not listed among the exceptions to New Jersey's gambling prohibition. As such, provided a sports pool falls within New Jersey's definition of gambling activity, then a sports pool would constitute unlawful activity for the purpose of the forfeiture statute. New Jersey's definition of "gambling activity" is "staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the actor's control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome." NJSA 2C:37-1b. Considering New Jersey's prohibition against gambling should be construed in the broadest possible reading, to be activity prohibitive rather than permissive, sports pools clearly constitute gambling activity. These sports pools involve participants that post monetary dues into a central pot, whereby they are given the opportunity to make picks on sporting events whose outcome is solely a matter of chance. Regardless of a players proclivity to picking winning teams more often than another player, the structure of a sports pool is still a game of chance that qualifies as gambling activity. NJSA 2C:37-1(a), see generally, Boardwalk Regency corp. v. Attorney General of the State of New Jersey, 188 N.J. Super. 372, 377, 457 A.2d 847, 849 (Law. Div. 1982).

The Claimant ardently contends that the optional nature of these gifts means the claimant did not receive or accept a bet, leading to the conclusion that his money is not proceeds of gambling activity; he posits they were merely a good faith showing of respect disconnected from the pool proceeds. Mr. Boverly admitted, however, that the gifts were a contribution for his continued organization and effort with the pool, "a showing of respect" as he said. Whether these contributions were "optional" or "mandatory," is inconsequential for the purpose of 2C:37-2. Mr. Boverly accepted thousands of checks, deposited them into an account with his name on it, and admitted to paying pool winners out of that same account with those funds. New Jersey courts, applying NJSA 2C:37-2a determined that whether a gambling organizer receives a percentage of the take or is given "voluntary contributions" from his players is irrelevant for the purpose of the NJ gambling statute. Chomatopolous, 212 NJ Super 447, 451(1985). The mere fact that the contribution is exchanged is sufficient to satisfy accepting proceeds of gambling activity. Id. Further, NJ Courts held in Benevento that the presence or absence of remuneration does not impact whether bookmaking, or analogously, promotion of gambling has occurred. State v. Benevento, 350 A.2d 485, 487 (App. Div. 1975). Merely receiving the money as a straw man, or receiving the money as a "gift", "aside", or "voluntary contribution" does not affect the ultimate illegality of the enterprise. Id. Regardless of the semantics, Mr. Boverly benefited from his role as manager or operator of the sports pools.

Having come to the general conclusion that "sports pools" constitute unlawful 'gambling activity' under NJSA 2C:37-2(a), the relevant question now becomes whether the claimant received proceeds of gambling activity or actively promoted gambling activity. The court is convinced that claimant violated both sections of NJSA 2C:37-2, thus legally sanctioning the forfeiture of any funds belonging directly to Mr. Boverly.

New Jersey courts have determined that "participating in the proceeds," includes accepting any profit-in any form, name, or nature- from a gambling activity. State v. Fischer, 443 A.2d 249, 251 (App. Div. 1981). Whether Mr. Boverly accepted a voluntary or mandatory gift, discovery showed that he used those proceeds to pay his mortgage, daughters tuition, and any number of other bills; as such, he clearly profited from the contributions that the players provided to him. Based on this analysis, there is quite clearly a violation of the law under NJSA 2C:37-1(a)(1). Accordingly, the \$124,000 belonging to Mr. Boverly is subject to forfeiture under NJSA 2C:64-1 to -9.



**B. Mr. Bovery Violated NJSA 2C:37-2(a)(2) because he materially aided an unlawful gambling enterprise**

Alternatively, the \$124,000 belonging to Mr. Bovery is subject to forfeiture because Mr. Bovery's activities violated NJSA2C:37-1(a)(2) as well. The statute states that a person is guilty of promoting gambling when they,

“Engage in conduct, which materially aids any form of gambling activity. Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device, or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of an of its financial or recording phases, or toward any other phase of its operation.” NJSA2C:37-1(a)(2)

Mr. Bovery has virtually no defense to this section other than the contention that sports pools do not constitute “gambling activity.” Having determined above that sports pools do qualify as “gambling activity,” if this court finds Mr. Bovery created, established, maintained, solicited, induced to play, or managed financial ends of the sports pools, then he has engaged in unlawful promotion of gambling under this section. Mr. Bovery deposited hundreds of checks into his bank accounts related to his football and baseball sports pools. The checks are itemized and are clearly for the purpose of paying dues for pool participants. As the financial organizer, Mr. Bovery has engaged in conduct that violates this section. Further, Mr. Bovery admitted in his depositions and interviews with investigators that he would pay the pool winners by issuing a check or series of checks from his bank account. This is further proof that he financially arranged and organized the sports pools, another violation of the aforementioned section. Additionally, Mr. Bovery paid for the upkeep and operation of his website JRWinkle.com where he posted messages to players advising them of league procedures and rules. In this manner he established and maintained the organization of the sports pools through his direct actions and direction. Finally, Mr. Bovery admitted in his deposition and

interviews that he received "gifts" or contributions for his role as pool manager or organizer out of respect for the time and effort he put into arranging the pools. This shows that the money belonging to him in the accounts was directly attributable to his unlawful conduct as sports pool organizer. Accordingly, Mr. Bovery's actions also violate the statutory section above, NJSA 2C:37-1(a)(2). This court, having concluded that Mr. Bovery clearly violated section (a)(2) of the gambling statute, and that \$124,000 of the seized funds are attributable to his role in this unlawful activity, now determines that the funds are subject to forfeiture under NJSA 2C:64-1.

**II. The remaining \$722,000 in "player money" seized in the bank accounts is subject to forfeiture because Mr. Bovery, Mrs. Bovery, and the individual players have no legal claim of title to the seized funds.**

This court is forced to its decision not through justice nor equity, but obligation, to follow the laws of this state, although the laws as applied to the current facts have left this court in the midst of a troubling logical and legal incongruity. The NJ forfeiture statute prohibits seizure of property belonging to innocent owners who did not consent to or know of the illegal use of their property. State v. 1979 Pontiac Trans Am., 98 NJ 474, 485 (1985). The NJ Gambling statute provides an affirmative defense to promotion of gambling when the individual merely participates as a "player" or "bettor." NJSA 2C:37-2(c). Sports pools and fantasy sports leagues have become such a pervasive element of the American sporting experience that individuals ranging from police officers to lawyers to legislators participate in these groups with impunity. How can this court now point the finger and say that these players consented to the use of their money in something illegal when virtually every one of these sports pools operates without consequence from law enforcement. This is the logical and legal incongruity facing this court;

However, the law in its current state requires the forfeiture of these funds, regardless whether this court might now feel more like an accomplice than an adjudicator. While a number of issues trouble this court, such as, the State's failure to provide notice of the seizure to the participants, and the categorization of participants as innocent under the gambling law, each of these concerns can be disposed of in turn based on the guiding legal precedent.

New Jersey categorizes seized property as either prima facie contraband (controlled substances, illegal firearms, or counterfeited items) or derivative contraband (items that are not by their nature illegal but have become so through the way in which they were appropriated or used). Money is considered a derivative contraband when seized in connection with unlawful activity. When the State attempts to seize derivative contraband they must first put all parties with colorable claim of title on notice of the forfeiture action. The forfeiture action then dissipates any and all claims that could have been made to the property. Parties claiming an ownership interest in seized property have three years from the time notice of seizure is provided to exercise their claim.

In the current case, no notice was ever provided directly to the players by the state, however, despite claimant's contentions, the State was not required to provide notice to parties other than the named parties on the Amboy Bank Accounts. Even assuming arguendo this Court determined that the players retained their ownership interest in their dues after paying them over to the claimant - Mr. Bovery - the New Jersey Forfeiture statute 2C:64-5(b) states, "a person who uses or possesses property with the consent or knowledge of the owner is deemed to be the agent of the owner for purposes of this chapter." In that case, the money, freely given to the agent who then proceeded to perpetrate unlawful activity-- rendered the funds subject to seizure--would be subject to forfeiture because the innocent owner exception would no longer apply since the agent acted unlawfully with the owner's authority.

However, the court need not take such a precarious route to determine that the player participants do not have a legitimate claim to title in any of the seized funds. The money in these accounts was money largely paid as dues for the sports pools. For forfeiture to be appropriate, the State must show that the money was proximately and substantially connected to an indictable crime. Seven Thousand Dollars, 136 NJ at 233. The player money in these accounts was money intended for distribution to the pool winners. The funds were the principle inducement and prize to solicit participants to play in Mr. Bovery's unsanctioned and unauthorized sports pools. In the courts opinion, this constitutes a proximate and substantial connection to the indictable offense of promoting gambling.

Further, this money constitutes funds earmarked as proceeds of illegal gambling that constitutes derivative contraband subject to forfeiture. State v. Link, 14 NJ 446, 454 (1954). New Jersey has a history of ruling that bettors lose claim of title to money when it becomes an

integral part of the gaming operation. Spagnuolo, 16 NJ at 558. The appropriation of this money to finance, facilitate, or otherwise further the sports pool extinguishes the participants' legal claim to their dues. Accordingly, these dues then transfer to the sole and exclusive control and possession of the gaming promoter, or in our case, the account holders John Boverly Jr. Mary Boverly, and John Boverly Sr.. Accordingly, the state is required to provide notice only to the account holders for the purpose of satisfying the forfeiture statute. The moment the dues were paid and earmarked for contribution into the sports pool they became proceeds of gambling activity, at which time the players no longer held an ownership interest in those funds. NJSA 2C:64-1(a), (3)(4) e.g. Spagnuolo, 16 NJ at 558.

An analogous federal case, United States v. 734,578.82, in which the federal court applied New Jersey law, offers this court the best guidance as a participant or bettor's claim of title to seized gambling funds held by a party charged with promotion of gambling under 2C:37-2a. 286 F. 3d 261(3d Cir. 2002) In this matter, a foreign gambling organization used a proxy located in New Jersey to collect money from American customers for use in their gambling enterprise. Id. American customers would wire funds to a representative in New Jersey, who would then set up their player account and deposit the wired funds into a general bank account for player money. Id. The company representative was charged with promotion of gambling and the funds in the general bank account were seized. The court determined that the funds became proceeds of an unlawful gambling enterprise in New Jersey when the company representative received the money and took steps to allow the bettor to place wagers. The court further determined that the entirety of the bank account funds were subject to legal seizure. Id. The court was not troubled by the government's failure to return the money to innocent participants.

Although this case applies federal forfeiture law, 18 USC 1955, the statutes are largely similar and prescribe the same requirements on the state and federal government. The case presents a very similar factual circumstance. In both cases, innocent bettors are relinquishing funds to a managerial party for deposit into a central bank account. The balance of this general bank account was seized under the forfeiture law with the underlying indictable offense being the promotion of gambling. The federal court is not the least bit concerned with the return of the seized money to the innocent participants. Similarly, here the court has innocent participants providing funds to a manager, who then deposits those funds into a general bank account that is used to further an unlawful gambling enterprise. These participants were required to register a

username and make picks each week, thereby actively participating in the enterprise and demonstrating to the court that they consented to the use of their dues in furtherance of the illegal gambling enterprise.

Additionally, New Jersey law provides that bank account funds belong to the account holders. NJSA 17:161-4(a). This account holder has dominion and control over these funds, while other contributing parties can appeal to the account holder for return of their funds, they have no legal title to the account funds. In the current case, the participants relinquished their control and title to their funds by purchasing an entry into Mr. Bovery's sports pool. They could be thought to have an ownership interest in this entry, or chance to win, but nothing indicates that this entry is redeemable for the specific funds deposited with Amboy National Bank.

### CONCLUSION

The Court is satisfied that the foregoing precludes any claim to these funds by the participants in Mr. Bovery's pools. Further, none of the named claimants, John Bovery Jr., Mary Bovery, or John Bovery Sr. have any legal claim to the seized funds in the bank accounts or the funds found in the home. This Court has determined that they were all accumulated as a direct result of Mr. Bovery's illegal gambling operation. While this Court does not find the tactics of the prosecutor's office particularly noble by allowing the bank balance to accumulate until just before the start of football season before seeking a warrant for seizure, the court is also satisfied that New Jersey law permits the state to seize these funds. The prosecutor chose to appropriate their executive resources in this manner. While some professional chiding at their expense is permitted, precluding them from seizing these funds is not. Such off-putting selective prosecution is not befitting the esteem and reputation of this state's prosecutors, and this court would hope such devious cash grabs are discouraged in the future.

Lastly, this Court will not specifically address the claimant's motion for summary judgment as it is clear that in this Court's opinion the State has carried their burden of persuasion in this matter, precluding any merit to claimants summary judgment motion.