

Looking Beyond the Pleadings: Outside Evidence Courts May Consider for Motions to Dismiss

by Cathy Trent-Vilim and Janae Hofer

As attorneys who frequently defend parties to lawsuits, we sometimes file a motion to dismiss in lieu of an answer. Depending on the grounds for the dismissal, we may even offer (or attempt to offer) evidence in support of the motion. At times, efforts to adduce evidence are met with resistance, both by opposing counsel and the court. Most commonly, opposing counsel objects on grounds that the admission of evidence would convert the motion to dismiss to a motion for summary judgment. If the trial court agrees, evidence that should be admissible is excluded. After months of discovery, the issue raised in the motion to dismiss likely ends up the subject of a motion for summary judgment, with the previously unadmitted evidence being received by the court.

If the motion to dismiss was meritorious, chances are the motion for summary judgment is granted. Although the client eventually achieves the desired outcome (dismissal), it often comes with a hefty price tag. However, that need not always be the case. In certain circumstances, evidence is properly admis-

sible on a motion to dismiss by virtue of the ‘incorporation by reference’ doctrine. The purpose of this article is to discuss the types of evidence the Nebraska state courts and the federal courts have determined a court may appropriately consider on a motion to dismiss without converting the motion to one for summary judgment.

A trial court’s hesitation in receiving documents into evidence on a motion to dismiss is understandable. After all, Nebraska’s pleading rules¹ specifically state:

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in §§ 25-1330 to 25-1336, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by statute.

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Most practitioners focus on the language providing that “the motion shall be treated as one for summary judgment.”² They gloss over the important language immediately preceding this: “matters **outside the pleading** are presented to and not excluded by the court.”³

Reading § 6-1112 too narrowly does the parties and the courts a disservice. Motions to dismiss are an instrumental part of the pleading process. If successful, these motions save clients (on both sides of the “v.”) from spending valuable time and money fighting unfounded lawsuits. Yet success can be difficult on motions to dismiss because courts must assume all well-pled facts in favor of the non-moving party; and generally, courts may only consider evidence within the pleadings. Still, courts across jurisdictions recognize that even limiting evidence to matters within the pleadings does not require that the courts exclude all evidence on a motion to dismiss.

While the ‘incorporation by reference’ doctrine is widely-known and utilized in the federal courts, it has also been explicitly recognized and accepted by the Nebraska Supreme Court and Court of Appeals.⁴ For example, in *DMK Biodiesels, LLC v. McCoy*,⁵ the Nebraska Supreme Court embraced the doctrine, holding:

For purposes of a motion to dismiss, “the court generally must ignore materials outside the pleadings, but it may consider some materials that are part of the public record or do not contradict the complaint, as well as materials that are necessarily embraced by the pleadings.” These documents embraced by the complaint are not considered matters outside the pleading. Documents embraced by the pleadings are materials “alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading.” The majority of circuits appear to agree that the document must be referred to in the complaint and must be central to the plaintiff’s claim.

Courts allow such external documents because doing otherwise would put the pleading party at a disadvantage over the defending party. The plaintiff could cite a document and rely on that document for its claim, but not attach it to the complaint. The defendant, however, would be prohibited from offering the very document into evidence to prove that the plaintiff’s suit fails to state a claim. The ‘incorporation by reference’ doctrine redresses this and places the parties on equal footing. As the Second Circuit has explained,⁶

[W]hen a plaintiff chooses not to attach to the complaint or incorporate by reference [a document] upon which it solely relies and which is integral to the complaint, the defendant may produce the [document] when attacking the complaint for its

failure to state a claim, because plaintiff should not so easily be allowed to escape the consequence of its own failure.

Conversely, allowing a defendant to offer evidence not attached to, referenced or incorporated into the complaint would disadvantage the plaintiff, as the plaintiff will not have had time to review the materials and prepare its response. In those instances, the motion must be treated as one for summary judgment and proper notice must be given to the non-moving party.⁷

With this backdrop in mind, it is helpful to explore some of the types of evidence courts may properly consider on a motion to dismiss *without* converting the motion to one for summary judgment.⁸ Keep in mind, however, that courts will not consider documents where the authenticity of the document is under dispute.⁹ They also will not consider documents where parties dispute the actual content of the documents.¹⁰

1. Documents Submitted with the Complaint

Perhaps most obviously, courts may consider documents attached to or submitted with the complaint when deciding motions to dismiss.¹¹ This encompasses any exhibit a plaintiff submits with her complaint, even when the exhibit contradicts the complaint.¹² When the exhibit contradicts the complaint, the exhibit will control.¹³ For example, courts can consider letters, reports, and affidavits attached to complaints.¹⁴

2. Documents Incorporated by Reference in the Pleadings

Courts may also consider documents not attached to the complaint but incorporated by reference into the pleadings.¹⁵ Where plaintiffs reference documents (or portions of a document), courts may consider the entirety of the referenced documents when deciding motions to dismiss.¹⁶ Even if the names of the documents are not referenced in pleadings, courts consider “documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading.”¹⁷ Most commonly, these documents include written contracts incorporated into a pleading. Other examples have included:

- an employee handbook alleged in a plaintiff’s complaint;¹⁸
- a collective bargaining agreement incorporated by reference in a complaint;¹⁹
- in a libel action, an entire book published by the defendants;²⁰
- the content of a website at issue in a defamation case;²¹
- a group insurance policy;²² and

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- in a dispute arising from representations made in a guarantee policy of a ticket vendor, the policy referenced in the plaintiffs' complaint.²³

3. Documents Relied Upon in Bringing Suits and Central to Claims

"In addition to considering the pleadings, the court may consider . . . 'documents possessed by or known to the plaintiff and upon which it relied in bringing the suit.'"²⁴ The First Circuit held that "when a complaint's factual allegations are expressly linked to—and admittedly dependent upon—a document (the authenticity of which is not challenged), then the court can review it upon a motion to dismiss."²⁵ In other words, even if a party fails to attach or reference a document, but the document is "integral" to the complaint, or is "necessarily embraced" by the pleading, courts may consider the document.²⁶

Documents are "integral" or "central" to the complaints where plaintiffs are suing primarily on the basis of documents.²⁷ As the *DMK Biodiesel* court explained, "A prime example of documents 'necessarily embraced' by a pleading is a written contract in a case that involves a dispute over the terms of the contract."²⁸ As one court clarified, "[t]o consider a document on a dismissal motion a plaintiff's mere notice or possession is not enough. Instead, a plaintiff's reliance on the terms and

effect of a document in drafting the complaint is a necessary prerequisite to the court's consideration of the document at this stage of a case."²⁹

Applying this "Eight Corners Rule," other courts have considered:

- loan agreements;³⁰
- cardholder agreements, account histories, and monthly statements in claims for violations of the Truth in Lending Act;³¹
- where a complaint challenged the reasonableness of school regulations, the court considered the regulations;³² and
- in a Title VII suit, the court considered the EEOC charges when deciding a motion to dismiss.³³

Outside of conventional documents, courts have also considered television and radio show recordings and transcripts, along with articles from newspapers and magazines, upon which plaintiffs relied in bringing their suits.³⁴ The Tenth Circuit agreed the lower court could consider a seminar recording and TV episode in a motion to dismiss a defamation action against a television network where the materials were "(1) attached to or referenced in the amended complaint, (2) central to [the plaintiff's] claim, and (3) undisputed as to their accuracy and authenticity[.]"³⁵



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4. Matters of Public Records and Subject to Judicial Notice

“[E]ven within the Rule 12(b)(6) framework, a court may consider matters of public record and facts susceptible to judicial notice.”³⁶ Consideration of these matters generally requires no persuasion beyond attaching the record because authenticity is not generally an issue.³⁷ Matters of public record and subject to judicial notice have been held to include:

- judicially noticed filings from a previous juvenile court proceeding;³⁸
- a paternity case court file where a litigant sought a permanent injunction to prevent the state from seizing funds from his Social Security disability benefits;³⁹
- a prior Court of Appeals opinion for a claim under the Nebraska Claims for Wrongful Conviction and Imprisonment Act;⁴⁰
- the date on which an estate entered probate;⁴¹
- decisions rendered by government agencies;⁴²
- documents authored by government agencies;⁴³
- deeds of trust;⁴⁴
- current and superseded case law, regulations, ordinances, and statutes;⁴⁵
- legislative history;⁴⁶ and
- in a claim premised on wrongful registration, other lawsuits the plaintiff had brought against a corporate entity.⁴⁷

5. Concessions in Plaintiffs’ Responses to Motions to Dismiss

Courts may consider concessions made by plaintiffs in their responses to motions to dismiss, including statements made by counsel in oral arguments and opposing briefs.⁴⁸ In an action alleging violations of golf caddies’ rights to publicity and federal antitrust and trademark laws, the Ninth Circuit affirmed the consideration of plaintiffs’ concession that “the PGA Tour has required caddies to wear bibs for decades,” which directly contradicted the complaint, in deciding the motion to dismiss.⁴⁹

6. Evidence Supporting Certain Defenses

Sometimes, a motion to dismiss is not based on the sufficiency of the plaintiff’s allegations, but an alleged procedural defect in the suit. In cases where the procedural defense would be dispositive, courts have allowed extrinsic evidence on a motion to dismiss without converting the motion to summary judgment. These include:

- *Lack of jurisdiction*: Where defendants make a factual challenge to jurisdiction, courts may consider evidence outside the pleadings to resolve disputed facts necessary for the determination of jurisdiction.⁵⁰ Courts have applied this rule to challenges of both subject matter jurisdiction and personal jurisdiction.⁵¹
- *Improper venue*: Where defendants seek dismissal on the basis of improper venue, courts may consider matters outside the pleadings without converting the motion to one for summary judgment.⁵² One court stated that in a motion to dismiss for improper venue, “the court may consider matters outside the pleadings such as affidavit testimony, particularly when the motion is predicated upon key issues of fact.”⁵³
- *Lack of capacity*: Where dismissal is premised on a plaintiff’s lack of capacity to sue, courts may consider affidavits and other evidence outside of the pleadings regarding plaintiffs’ capacities.⁵⁴
- *Insufficient service*: Where defendants seek dismissal on the basis of insufficient service of the complaint, including plaintiffs’ failure to provide timely service, courts may consider evidence regarding service.⁵⁵ “Because the pleadings themselves will typically shed no light on service issues, motions to dismiss need not be treated as motions for summary judgment even if they are supported by affidavits or other evidence outside the pleadings.”⁵⁶

Conclusion

Despite the seemingly stringent prohibition of evidence on a motion to dismiss, Nebraska state law and federal procedural law allow certain types of evidence to be introduced without converting a motion to dismiss to a motion for summary judgment. Thorough and consistent application of the ‘incorporation by reference’ rule will enable courts to make determinations earlier in a proceeding, thereby leading to greater judicial economy and economic benefit for all parties to an action. 

Endnotes

- ¹ See Neb. Ct. R. § 6-1112(c).
- ² *Id.*
- ³ *Id.*
- ⁴ See, e.g., *DMK Biodiesel, LLC v. McCoy*, 285 Neb. 974, 980, 830 N.W.2d 490 (2013).
- ⁵ *DMK Biodiesel, LLC v. McCoy*, 285 Neb. at 980.
- ⁶ *Cortec Industries, Inc. v. Sum Holding L.P.*, 949 F.2d 42 (2d Cir. 1991)
- ⁷ Neb. Ct. R. § 6-1112 (stating that if matters outside the pleadings are offer, the motion must be converted to summary judgment and “all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by statute.”). See, also, *Perks v. Town of Huntington*, 96 F. Supp. 2d 222, 225-26 (E.D.N.Y. 2000) (applying this rationale to affidavits and refusing to consider the affidavit in ruling on the motion to dismiss).

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- ⁸ Since Nebraska's pleading rules are modeled after the Federal Rules of the Civil Procedure, the Nebraska appellate courts frequently look to federal decisions for guidance. So, too, does this article, and many of the citations herein will be to federal case law. Although this case law is not authoritative and binding on the Nebraska trial and appellate courts, it should be persuasive authority where direct Nebraska authority is lacking.
- ⁹ *Williams v. Employers Mut. Cas. Co.*, 845 F.3d 891, 903-04 (8th Cir. 2017); *Martinez-Rivera v. Commonwealth of Puerto Rico*, 812 F.3d 69, 74 (1st Cir. 2016); *Sams v. Yahoo! Inc.*, 713 F.3d 1175, 1179 (9th Cir. 2013); *Am. Corp. Soc. v. Valley Forge Ins. Co.*, 424 F. App'x 86, 88 (3d Cir. 2011).
- ¹⁰ *Iowa Health Sys. v. Trinity Health Corp.*, 177 F. Supp. 2d 897, 927 (N.D. Iowa 2001) (Bennett, C.J.), quoting *Jenisio v. Ozark Airlines, Inc. Ret. Plan for Agent & Clerical Employees*, 187 F.3d 970, 972 (8th Cir. 1999).
- ¹¹ *Humphrey v. Eureka Gardens Pub. Facility Bd.*, 891 F.3d 1079, 1081 (8th Cir. 2018); *McBride v. Warden of Allegheny Cty. Jail*, 577 F. App'x 98, 99 (3d Cir. 2014); *Williams v. Time Warner Inc.*, 440 F. App'x 7 (2d Cir. 2011); *In re MobileMedia Sec. Litig.*, 28 F. Supp. 2d 901 (D.N.J. 1998); *Walker v. Oglethorpe Power Corp.*, 341 Ga. App. 647, 671, 802 S.E.2d 643, 665 (2017); *Kelllogg v. Nebraska Dep't of Corr. Servs.*, 269 Neb. 40, 45, 690 N.W.2d 574, 578-79 (2005).
- ¹² *Ganino v. Citizens Utilities Co.*, 56 F. Supp. 2d 222, 226 (D. Conn. 1999), rev'd in part, vacated in part on other grounds, 228 F.3d 154 (2d Cir. 2000).
- ¹³ For example, in *Zapata v. Kelly's Carpet Ltd.*, No. A-16-1172, 2017 Neb. App. LEXIS (Neb. App. November 14, 2017) (although Zapata brought suit on his own behalf, the documents he attached to the complaint referenced an agreement with an apartment complex; relying on the documents, the court dismissed Zapata's suit, finding he had no standing, right, title or interest in the subject matter of the alleged contract). See, also, *Ganino v. Citizens Utilities Co.*, 56 F. Supp. 2d 222, 226 (D. Conn. 1999), rev'd in part, vacated in part on other grounds, 228 F.3d 154 (2d Cir. 2000).
- ¹⁴ *Reese v. Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211, 1216 (11th Cir. 2012); *Walker v. Oglethorpe Power Corp.*, 341 Ga. App. 647, 671, 802 S.E.2d 643, 665 (2017).
- ¹⁵ *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 323 (2007); *McChesney v. Fed. Election Comm'n*, 900 F.3d 578, 583 (8th Cir. 2018), reh'g denied (Oct. 30, 2018); *Lister v. Bank of Am., N.A.*, 790 F.3d 20, 22 n.2 (1st Cir. 2015); *Katyle v. Penn Nat. Gaming, Inc.*, 637 F.3d 462, 466 (4th Cir. 2011); *Nadeem v. State*, 298 Neb. 329, 334-35, 904 N.W.2d 244, 249 (2017).
- ¹⁶ *Havenick v. Network Exp., Inc.*, 981 F. Supp. 480, 509 (E.D. Mich. 1997).
- ¹⁷ *Ashanti v. City of Golden Valley*, 666 F.3d 1148, 1151 (8th Cir. 2012) (internal quotations omitted).
- ¹⁸ *Dyer v. Wal-Mart Stores, Inc.*, 535 F. App'x 839, 844 (11th Cir. 2013).
- ¹⁹ *Caravello v. Am. Airlines, Inc.*, 315 F. Supp. 2d 1346, 1348-49 (S.D. Fla. 2004).
- ²⁰ *Hoffman-Pugh v. Ramsey*, 312 F.3d 1222, 1225-26 (11th Cir. 2002).
- ²¹ *Kniewel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).
- ²² *Strom v. Goldman, Sachs & Co.*, 202 F.3d 138, 141 (2d Cir. 1999).
- ²³ *Nooney v. StubHub, Inc.*, 873 N.W.2d 497, 499 (S.D. 2015).
- ²⁴ *Arias ex rel. Almonte*, 2010 WL 4724263, at *1, quoting *ATSI Communications, Inc.*, 493 F.3d at 98.
- ²⁵ *Diva's Inc. v. City of Bangor*, 411 F.3d 30, 38 (1st Cir. 2005) (internal quotations omitted).
- ²⁶ *Williams*, 845 F.3d at 903; *Chambers v. Time Warner, Inc.*, 282 F.3d 147 (2d Cir. 2002); *Berg v. Empire Blue Cross & Blue Shield*, 105 F. Supp. 2d 121, 126 (E.D.N.Y. 2000).



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- ²⁷ *Id.*; *Greenberg v. Life Ins. Co. of Virginia*, 177 F.3d 507, 514 (6th Cir. 1999).
- ²⁸ *DMK Biodiesel*, 285 Neb. at 980-981.
- ²⁹ *Guo v. IBM 401(k) Plus Plan*, 95 F. Supp. 3d 512, 522 (S.D.N.Y. 2015) (internal citations omitted).
- ³⁰ *Sandza v. Barclays Bank PLC*, 151 F. Supp. 3d 94, 102 n.5 (D.D.C. 2015).
- ³¹ *Schnall v. Marine Midland Bank*, 225 F.3d 263, 266 (2d Cir. 2000).
- ³² *Angstadt v. Midd-W. Sch. Dist.*, 377 F.3d 338, 342-43 (3d Cir. 2004).
- ³³ *Whitehead v. AM Int'l, Inc.*, 860 F. Supp. 1280, 1286 (N.D. Ill. 1994).
- ³⁴ *Condit v. Dunne*, 317 F. Supp. 2d 344, 357 (S.D.N.Y. 2004).
- ³⁵ *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1103-1104 (10th Cir. 2017).
- ³⁶ *Doe ex rel. Doe v. Omaha Pub. Sch. Dist.*, 273 Neb. 79, 83, 727 N.W.2d 447 (2007) ("a court may take judicial notice of matters of public record without converting a rule 12(b)(6) motion to dismiss into a motion for summary judgment."). See, also, *Meaghan H. v. Mark J. (In re Kenten H.)*, 272 Neb. 846, 852, 725 N.W.2d 548 (2007); *Ferer v. Erickson, Sederstrom*, 272 Neb. 113, 718 N.W.2d 501 (2006).
- ³⁷ *Tellabs, Inc.*, 551 U.S. at 322-23; *Funk v. Stryker Corp.*, 631 F.3d 777, 782 (5th Cir. 2011).
- ³⁸ *Meaghan H. v. Mark J. (In re Kenten H.)*, 272 Neb. 846, 852, 725 N.W.2d 548 (2007) ("a court may take judicial notice of matters of public record without converting a rule 12(b) motion to dismiss into a motion for summary judgment. We therefore consider the judicially noticed filings from the previous proceedings in resolving the motion to dismiss.") (internal citation omitted).
- ³⁹ *Stonebrook v. Green*, No. A-15-394, 2016 Neb.App. LEXIS 96 (Neb. Ct. App. May 17, 2016) (motion to dismiss not converted to summary judgment motion by the court taking judicial notice of a court file).
- ⁴⁰ *Nadeem v. State*, 298 Neb. 329, 904 N.W.2d 244 (2017).
- ⁴¹ *Ennenga v. Starns*, 677 F.3d 766, 773-774 (7th Cir. 2012).
- ⁴² *Johnson v. Perdue*, 862 F.3d 712, 715 (8th Cir. 2017); *Thomas v. Noder-Love*, 621 Fed.Appx. 825, 829 (6th Cir. 2015); *ZMC Pharmacy, LLC v. State Farm Mut. Auto. Ins. Co.*, 307 F. Supp. 3d 661, 668 (E.D. Mich. 2018).
- ⁴³ *Yosowitz v. Covidien LP*, 182 F. Supp. 3d 683, 687 (S.D. Tex. 2016).
- ⁴⁴ *Johnson v. Wells Fargo Bank, NA*, 999 F. Supp. 2d 919, 926 (N.D. Tex. 2014).
- ⁴⁵ *Morton v. United States Parole Comm'n*, 318 F. Supp. 3d 40, 43 (D.D.C. 2018); *Sebastian v. United States*, 185 F.3d 1368, 1373-74 (Fed. Cir. 1999).
- ⁴⁶ *Lopez v. Stages of Beauty, LLC*, 307 F. Supp. 3d 1058, 1064 (S.D. Cal. 2018); *Second Amendment Arms v. City of Chicago*, 135 F. Supp. 3d 743, 756 (N.D. Ill. 2015); *United States v. Tuente Livestock*, 888 F. Supp. 1416 (S.D. Ohio 1995).
- ⁴⁷ *Ferer v. Erickson, Sederstrom*, 272 Neb. 113, 123, 718 N.W.2d 501 (2006) ("the district court did not err in considering the other cases brought by the appellants against AFSC and the majority shareholders").
- ⁴⁸ *McCorkle v. Bank of Am. Corp.*, 688 F.3d 164, 170, 172 (4th Cir. 2012); *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50, 55-56 (1st Cir. 2012); *Maio v. Aetna, Inc.*, 221 F.3d 472, 500 (3d Cir. 2000).
- ⁴⁹ *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1117 (9th Cir. 2018).
- ⁵⁰ *United States ex rel. Customs Fraud Investigations, LLC v. Victaulic Co.*, 839 F.3d 242, 251 (3d Cir. 2016), cert. denied sub nom. *Victaulic Co. v. U.S., ex rel. Customs Fraud Investigations, LLC*, 138 S. Ct. 107, 199 L. Ed. 2d 30 (2017); *Patel v. Facebook Inc.*, 290 F. Supp. 3d 948, 951-52 (N.D. Cal. 2018); *Sierra Club v. Clinton*, 689 F. Supp. 2d 1147, 1154 (D. Minn. 2010); *Doe v. Diocese of Raleigh*, 242 N.C. App. 42, 44, 776 S.E.2d 29, 33 (2015); *Myers v. Utah Transit Auth.*, 2014 UT App 294, ¶ 13, 341 P.3d 935, 938; *Conley v. Crisafulli*, 2010 VT 38, ¶ 3, 188 Vt. 11, 14, 999 A.2d 677, 679 (2010); *Hutterville Hutterian Brethren, Inc. v. Waldner*, 2010 S.D. 86, ¶ 20, 791 N.W.2d 169, 174.
- ⁵¹ *Id.*
- ⁵² *Laibe Corp. v. Gen. Pump & Well, Inc.*, 317 Ga. App. 827, 831, 733 S.E.2d 332, 336 (2012); *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 643 (Tenn. 2009); *Willbros USA, Inc. v. Certain Underwriters at Lloyds of London*, 2009 OK CIV APP 90, ¶ 7, 220 P.3d 1166, 1171.
- ⁵³ *Whitwam v. JetCard Plus, Inc.*, 34 F. Supp. 3d 1257, 1259 (S.D. Fla. 2014) (internal quotations omitted).
- ⁵⁴ *Halmos v. Bombardier Aerospace Corp.*, 404 F. App'x 376, 377 (11th Cir. 2010); *Lake Point Tower Condo. Ass'n v. Waller*, 2017 IL App (1st) 162072, ¶ 11, 82 N.E.3d 719, 723, reh'g denied (Aug. 1, 2017), appeal denied sub nom. *Lake Point Tower Condo. Ass'n v. Grogan*, 93 N.E.3d 1056 (Ill. 2017).
- ⁵⁵ *Haidon v. Budlong & Budlong, LLC*, 318 F. Supp. 3d 568, 572 (W.D.N.Y. 2018); *Rucker v. Taylor*, 828 N.W.2d 595, 598-99 (Iowa 2013); *Cushman v. Raiford*, 221 Ga. App. 785, 786, 472 S.E.2d 554, 556 (1996).
- ⁵⁶ *Boulger v. Woods*, 306 F. Supp. 3d 985, 993 (S.D. Ohio 2018).



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