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Moving for a Judgment on the Merits During a Bench Trial

Fed. R. Civ. P. 52(c) and SCRCP 41(b)

By Abby Kobrovsky and Jennifer Thiem

It's that moment every lawyer hopes for in a bench trial. Opposing counsel has finished presenting all of the evidence supporting an issue critical to their client's case, and the evidence is simply not enough to establish their claim. At this point, a lawyer may consider moving for a judgment on the merits. One may be tempted to move for a judgment as a matter of law under Federal Rule of Civil Procedure 50(a), but the correct procedure in federal court is to move for judgment on the merits pursuant to Federal Rule of Civil Procedure 52(c) or, in state court, for involuntary non-suit under SCRCP 41(b). While these two sets of rules are commonly confused by lawyers, such a mistake need not occur. The purpose of this article is to clarify the scope of Rule 52(c) and SCRCP 41(b) and explore the differences be-

tween a motion brought under this rule and other dispositive motions.

Scope of Rule 52(c)

Rule 52(c) provides:

> If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

A judgment under Rule 52(c) "operates as a decision on the merits in favor of the moving party."[1] Importantly, judgment may be "entered against both plaintiffs and defendants with respect to issues or defenses that may not be wholly dispositive of a claim or defense."[2] The current version of Rule 52(c) incorporates a former version of Rule 41(b), which provided for bench trials to be involuntarily dismissed as a matter of law when the plaintiff failed to carry its burden of proof. In 1991, this provision was deleted from Rule 41(b) and inserted into Rule 52(c),[3] although that transfer was never made to the South Carolina rules. A judgment rendered under this rule is properly referred to as a "judgment on partial findings" or "judgment,"[4] although it is often still called an involuntary dismissal.[5]

Rule 52(c) contemplates that a judge in a bench trial is to fully engage in fact finding when entering a judgment on partial findings. Specifically, when considering a motion under Rule 52(c), the court "applies the same standard of proof and weighs the evidence as it would at the conclusion of the trial."[6] In other words, the court "does not view the evidence through a particular lens or draw inferences favorable to either party."[7] An appellate court will review the court's findings of fact under Rule 52(c) under the clearly erroneous standard.[8]

Timing

Rule 52(c) expressly permits the court to enter judgment "at any time that it can appropriately make a dispositive finding of fact on the evidence."[9] This may occur "earlier than the close of the case of the party against whom judgment is rendered."[10] In addition, a court may enter judgment on partial findings *sua sponte* "at any time during a bench trial, so long as the party against whom judgment is to be rendered has been 'fully heard' with respect to an issue essential to the party's case."[11] While the Rule implies that a party need not wait until the close of the opposing party's case to move for a judgment, logistically, that is when this motion is most likely to be made. Regardless, if the motion is made before the end of the trial, the court can choose to take it under advisement and proceed with the trial.[12] Under such circumstances, the movant should renew the motion at the close of the case.[13]

Waiver

Importantly, if the court denies or reserves ruling on a Rule 52(c) motion made during trial, and the moving party puts additional evidence on the issue raised in the motion, the movant waives its right to appeal the court's denial of, or failure to rule on, the motion.[14] "The significance of this rule is that on appeal from a final judgment the court will look to all of the evidence and not merely that put in as part of the plaintiff's case."[15] Thus, a lawyer should consider carefully when to make a motion under Rule 52(c) and what evidence to put on if the motion is not immediately granted. A lawyer may ultimately conclude that the prospect of waiver renders the motion unsuitable and wait to challenge the sufficiency of the evidence on appeal. Such a strategy is possible, as failure to make a Rule 52(c) motion does not preclude appealing the court's findings based on insufficiency of the evidence supporting the court's conclusions.[16]

Comparison to judgment as a matter of law under Rule 50(a)

As noted above, a motion for judgment on partial findings can easily be confused with a motion for judgment as a matter of law under Rule 50(a). Rule 50(a)(1) provides:

> If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may: (A) resolve the issue against the party; and (B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.
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> Motions under both Rule 50(a)

and Rule 52(c) operate as a decision on the merits in favor of the moving party and can be entered in favor of plaintiff or defendant. The timing for these motions is also similar. Like a Rule 52(c) motion, a motion for judgment as a matter of law can be made once a party "has been fully heard on an issue."[17] However, a Rule 50(a) motion is only applicable in jury trials.[18] And, unlike Rule 52(c), a party cannot challenge the sufficiency of the evidence in a jury trial unless it first makes a Rule 50(a) motion and then reasserts that motion under Rule 50(b)[19] after the jury returns its verdict.[20] In addition, unlike a bench trial wherein the court is the factfinder,[21] under Rule 50(a) the court may not make credibility determinations or weigh the evidence.[22] Also, a trial court's grant or denial of a Rule 50(a) motion is reviewed *de novo*.[23]

While the distinction between Rule 50(a) and Rule 52(c) is important, courts in this circuit generally have not denied a motion for judgment on partial findings for failure to identify the applicable rule. Rather, where a party has incorrectly moved for judgment as a matter of law under Rule 50(a) in a bench trial, courts have identified the error and proceeded to resolve the motion under Rule 52(c).[24]

Comparison to summary judgment under Rule 56(a)

While Rule 52(c) and Rule 50(a) apply to trial settings, Federal Rule of Civil Procedure 56 provides an avenue to bring a dispositive motion prior to trial. Rule 56(a) provides:

> A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

Unlike judgment entered under Rule 52(c), summary judgment is made "on the basis of facts established on the strength of the absence of contrary evidence or presumptions and without the benefit of live testimony and cross-examination."[25] In addition, a grant or denial of summary judgment is reviewed *de novo*, rather than under the clearly erroneous standard of a Rule 52(c) judgment.[26]

Comparison to involuntary nonsuit under SCRCP 41(b)

SCRCP 41(b) provides, in pertinent part, that:

> After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has

shown no right to relief.

The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Other than a slight difference in nomenclature, South Carolina still uses the phrases "involuntary dismissal" and "involuntary nonsuit," the same general approach as the Federal Rules apply. Thus, it is this rule, not SCRCP 50, that must be invoked in bench trials.[27] As in federal court, Rule 41(b) allows the judge as fact finder to weigh the evidence and determine the facts.[28] That also means that, on appeal, the trial court's determination will be given substantial deference. "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings."[29]

In sum, other than a difference in the rule cited and the wording, the South Carolina approach is virtually identical to the federal approach.

Conclusion

While a motion for judgment on partial findings under Rule 52(c) is fairly straightforward, its similarities to other dispositive motions can lead to some confusion. This confusion need not occur, however. Take the time to review Rule 52(c) prior to the start of a bench trial and you will have a much better chance of reaping the rewards of a successful motion.

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Endnotes

[1] *In re Lawrence*, 516 B.R. 59, 65 (Bankr. E.D.N.C. 2014) (quoting *In re Earle*, 307 B.R. 276, 289 (Bankr. S.D. Ala. 2002)).

[2] Fed. R. Civ. P. 52(c) advisory committee's note to 1993 amendment.

[3] *See* Fed. R. Civ. P. 41(b) advisory committee's note to 1991 amendment ("A motion to dismiss under Rule 41 on the ground that a plaintiff's evidence is legally insufficient should now be treated as a motion for judgment on partial findings as provided in Rule 52(c).").

[4] *See* Fed. R. Civ. P. 52(c) advisory committee's note to 2007 amendment.

[5] *See Reeder v. Bally's Total Fitness Corp.*, 963 F. Supp. 530, 532 n.3 (E.D. Va. 1997) (noting that a motion under Rule 52(c) "is still occasionally referred to as a motion for involuntary dismissal in reference to Rule 41(b)"); *see also Knowles v. United States*, No. 5:12-CT-3212-F, 2015 WL 13214314, at 7 (E.D.N.C. Dec. 14, 2015) (referring to a motion under Rule 52(c) as motion "for involuntary dismissal").

[6] *In re Patchell*, 569 B.R. 635, 649 (Bankr. D. Md. 2017) (quoting *EBC, Inc. v. Clark Bldg. Sys., Inc.*, 618 F.3d 253, 272 (3d Cir. 2010)).

[7] *Id.*

[8] *See Carter v. Ball*, 33 F.3d 450, 457 (4th Cir. 1994).
[9] Fed. R. Civ. P. 52(c) advisory committee's note to 1991 amendment.
[10] Fed. R. Civ. P. 41(b) advisory committee's note to 1991 amendment.
[11] *See EBC, Inc.*, 618 F.3d at 272.
[12] *See Ethox Chem., LLC v. Coca-Cola Co.*, No. CV 6:12-1682-KFM, 2015 WL 12807733, at 2 n.4 (D.S.C. Sept. 30, 2015), *aff'd sub nom.*, 683 F. App'x 958 (Fed. Cir. 2017) (wherein defendant made Rule 52(c) motion at the close of plaintiff's case, the court took the motion under advisement and proceeded with the trial, and defendant renewed the motion at the close of its case).
[13] *Id.*
[14] *See Northeast Drilling v. Inner Space Servs.*, 243 F.3d 25, 37 (1st Cir. 2001) ("[B]ecause [defendant] put on evidence following the district court's denial of the motion for judgment on partial findings, it waived its right to appeal from the denial of that motion."); *Bituminous Const., Inc. v. Rucker Enters., Inc.*, 816 F.2d 965, 967 (4th Cir. 1987) (discussing Rule 52(c) predecessor, Rule 41(b); "By presenting evidence, a defendant waives his right to appeal from the denial of his motion to dismiss") (quoting *DuPont v. Southern Nat'l Bank*, 771 F.2d 874, 881 (5th Cir.1985), *cert. denied*, 475 U.S. 1085, 106 S.Ct. 1467, 89 L.Ed.2d 723 (1986)).
[15] *Bituminous Const.*, 816 F.2d at 967 (quoting 9 C. Wright & A. Miller, Federal Practice & Procedure § 2371, at 221 (1971) (internal marks omitted)).
16 *See Golden Blount, Inc. v. Robert H. Peterson Co.*, 365 F.3d 1054, 1061 (Fed. Cir. 2004) (considering appeal challenging the sufficiency of the evidence supporting district court's factual findings under Rule 52(a)); *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1089 (9th Cir. 2002); *Equal Emp't Opportunity Comm'n v. United Virginia Bank/Seaboard Nat.*, 555 F.2d 403, 406 (4th Cir. 1977).
[17] Fed. R. Civ. P. 50(a)(1).
[18] *Id.*
[19] "A Rule 50(b) motion is not a freestanding motion, but is a post-verdict renewal of a 50(a) motion. Accordingly, a 50(b) motion may only assert arguments fairly raised in the 50(a) motion." *Goodman v. Praxair Servs., Inc.*, No. CV MJG-04-391, 2011 WL 13176593, at 3 (D. Md. Mar. 30, 2011), *aff'd sub nom. Goodman v. Praxair, Inc.*, 471 F. App'x 133 (4th Cir. 2012).
[20] *See Exxon Shipping Co. v. Baker,* 554 U.S. 471, 486 n.5 (2008) ("A motion under Rule 50(b) is not allowed unless the movant sought relief on similar grounds under Rule 50(a) before the case was submitted to the jury."); *Singer v. Dungan*, 45 F.3d 823, 828 (4th Cir. 1995) (noting that, although subject to some exceptions, "the general rule [is] that a Rule 50(a) motion at the close of all evidence is required to raise a Rule 50(b) motion").
[21] *W.L. Gore & Assocs., Inc. v. Medtronic, Inc.*, 874 F. Supp. 2d 526, 540 (E.D. Va. 2012), *aff'd*, 530 F. App'x 939 (Fed. Cir. 2013) (noting that "a district judge must weigh the evidence and resolve credibility" in order to grant judgment under Rule 52(c)) (quoting *Yamanouchi Pharm. Co. v. Danbury Pharmacal, Inc.*, 231 F.3d 1339, 1343 (Fed. Cir. 2000)).
[22] *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–151, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000).
[23] *Id.*
[24] *See, e.g., Sailor v. Hubbell, Inc.*, 4 F.3d 323, 325 n.2 (4th Cir. 1993) ("Because this was a bench trial, not a jury trial, [defendant's] motions should have been for involuntary dismissal under Fed. R. Civ. P. 52(c), not for judgment as a matter of law under Fed. R. Civ. P. 50(a). However, the mistake was a technicality and it can safely be assumed that the judge treated [defendant's] motion as a Rule 52(c) motion."); *see* also, Knowles, *supra* note 5, at 7 (noting defendant incorrectly moved for judgment as a matter of law under Rule 50(a) in the bench trial and ruling on the motion as one under Rule 52(c)).
[25] Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure: Civil § 2573.1 (3d ed.).
[26] *See Drewitt v. Pratt*, 999 F.2d 774, 778 (4th Cir. 1993).
[27] "As Rule 50 by its nature is applicable to jury trials, the proper motion for Paragon to have made was a motion for involuntary non-suit under Rule 41, SCRCP." *Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc.*, 342 S.C. 454, 458, 536 S.E.2d 878, 880 (Ct. App. 2000).
[28] *Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992).
[29] *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).