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## CCA § 212: Reinstatement of Evicted Tenants

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of the term "difficult case"<sup>245</sup> and the question must necessarily be determined on a case-by-case basis.<sup>246</sup>

*UDCA § 204: District court has jurisdiction to determine right to possession although issue of title is raised.*

*Mohar Realty Co. v. Smith*<sup>247</sup> involved a summary proceeding, in the District Court of Suffolk County, to recover possession of realty. Defendant, raising title as an issue, obtained a dismissal on the ground of lack of subject matter jurisdiction. The supreme court unanimously reversed, holding that the district court has jurisdiction to entertain summary proceedings to recover possession of real property and that the defense involving a question of title did not divest the court of jurisdiction.

Of course, the district courts have no jurisdiction over real property actions, including actions to determine title. But the courts do have jurisdiction of *summary proceedings* concerning real property and they are not ousted from their jurisdiction merely because one of the parties raises an issue of title. When questions of title are raised in summary proceedings, the courts only have to determine whether the relationship of landlord and tenant exists, and then they can award possession to the party entitled to the premises.<sup>248</sup> In such cases, title is considered only collaterally in issue and the courts may pass upon it to determine which party has the present right to possession. As long as the main issue, therefore, concerns the recovery of possession, the courts also may pass upon the collateral issue of title.<sup>249</sup>

*CCA § 212: Reinstatement of evicted tenant.*

Section 212 of the New York City Civil Court Act states: "in the exercise of its jurisdiction the court shall have all of the powers that the supreme court would have in like actions and proceedings." This provision was not intended to increase or diminish the jurisdiction of the court.<sup>250</sup> This construction, however,

<sup>245</sup> *Addamo v. Scaturro*, 41 Misc. 2d 60, 244 N.Y.S.2d 836 (N.Y. City Civil Ct. 1963).

<sup>246</sup> See 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 8303.12 (1965).

<sup>247</sup> 46 Misc. 2d 849, 260 N.Y.S.2d 685 (App. Term 2d Dep't 1965).

<sup>248</sup> *Drake v. Cunningham*, 127 App. Div. 79, 111 N.Y. Supp. 199 (2d Dep't 1908); *Quinn v. Quinn*, 46 App. Div. 241, 61 N.Y. Supp. 684 (2d Dep't 1899); *Dorsehel v. Burkly*, 41 N.Y. Supp. 389 (App. Term 1st Dep't 1896).

<sup>249</sup> *E.g.*, *Blumenauer v. Richelson*, 219 App. Div. 462, 219 N.Y. Supp. 612 (3d Dep't 1927); *Hoffman v. Hoffman*, 212 App. Div. 531, 208 N.Y. Supp. 734 (4th Dep't 1925); *People v. Goldfogle*, 30 N.Y. Supp. 296 (Sup. Ct. N.Y. County 1894).

<sup>250</sup> 29A MCKINNEY'S CCA § 212, commentary 68 (1963).

appears to have been rejected by the New York City Civil Court which liberally interpreted *McLeod v. Shapiro*,<sup>251</sup> wherein the appellate division, first department, combining CCA § 212 and CPLR 2201, stated that the civil court had the same power as the supreme court with respect to granting a stay of proceedings.<sup>252</sup>

This liberal interpretation was manifested in two recent civil court decisions involving the question of whether a tenant could obtain reinstatement if wrongfully evicted even though another tenant might be in possession. In the first case, *Marluted Realty Corp. v. Decker*,<sup>253</sup> the court, faced with a landlord-tenant conflict declared, in dicta, that CCA § 212 granted to the court new or additional powers in the exercise of its jurisdiction. Thus, the court announced that it has the power to reinstate a tenant wrongfully evicted although a new tenant might be in possession since the supreme court has the power to do so by virtue of its broad equity jurisdiction.<sup>254</sup> The court reasoned that this would remedy situations where under prior law the court could only decide whether the tenant was entitled to possession. The tenant if he desired reinstatement, would be required to seek this remedy in the appellate term or the supreme court, thereby being subjected to additional delay and expense.

The court, however, was doubtful as to whether it had the power to reinstate a tenant wrongfully evicted, expressing the hope that an appeal might be taken so that the higher courts could render a decision. The court was not confronted with the problem of transferring possession of the premises since at the time of trial the original tenant had ousted the new tenant and had actual possession. The court noted that the original tenant has the right to dispossess the new tenant immediately if he can do so peacefully.<sup>255</sup>

The court's statements in *Marluted* concerning reinstatement, although merely dicta, formed the basis for its subsequent holding in *Albany v. White*.<sup>256</sup> In that case, the plaintiff-tenant brought an action for reinstatement, asking the court to set aside the final judgment and the executed warrant. The dispossessed tenant claimed that he sent past rent to the landlord and did not receive notice that the landlord refused to accept payment. At the time of trial

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<sup>251</sup> 20 App. Div. 2d 424, 247 N.Y.S.2d 423 (1st Dep't 1964).

<sup>252</sup> The civil court, in granting the stay, could have used CCA § 2102. See 29A MCKINNEY'S CCA § 212, supp. commentary 16 (1965).

<sup>253</sup> 46 Misc. 2d 736, 260 N.Y.S.2d 988 (N.Y. City Civil Ct. 1965).

<sup>254</sup> The court cited N.Y. CONST. art. VI, § 1; N.Y. JUDIC. LAW § 140-b; CPLR 5015(b), 5523, 6301, 6311.

<sup>255</sup> Under the common-law rule, a person wrongfully dispossessed could take possession by force. Although today in New York it is a misdemeanor under New York Penal Law § 2034 to use violence to repossess the premises, the question remains whether peaceful repossession is permitted, especially where there is a new tenant in possession.

<sup>256</sup> 46 Misc. 2d 915, 261 N.Y.S.2d 361 (N.Y. City Civil Ct. 1965).

the premises were not relet. Under prior law the courts had generally held that they had no power to vacate a warrant or open a default because once the landlord-tenant relationship was terminated there was no basis for jurisdiction.<sup>257</sup> The court in *Albany*, construing CCA § 212 in the same manner as in *Marluted*, reasoned that since the supreme court has the power to reinstate a tenant wrongfully evicted, the civil court has the same power. This statutory construction resulted in the setting aside of an executed warrant and an ordering that the tenant be immediately restored to possession of the premises.

Assuming that the supreme court has the power to reinstate a tenant wrongfully evicted,<sup>258</sup> it is highly questionable whether the civil court has the same power. Under prior law, upon the dissolution of the landlord-tenant relationship the court's jurisdiction terminated, and with it, the power to grant the necessary relief. Thus, once the warrant was executed, the court had no jurisdiction to open the tenant's default and vacate the warrant.<sup>259</sup> In fact, RPAPL § 749(3) explicitly states that "the issuing of a warrant for the removal of a tenant . . . annuls the relation of landlord and tenant." Yet, the civil court, in order to achieve an equitable result, thought that the right to direct reinstatement was merely a power given to it under CCA § 212 and that it was not exceeding its jurisdictional limits. Since the prior law, however, appears to have considered the relief granted in *Albany* as outside the jurisdiction of the municipal courts, it is extremely doubtful that the civil court was exercising a power only and not exceeding its limited jurisdiction.

Another difficulty remains, due to the civil court's implied approval of the ousting of the new tenant as long as it is done by "peaceful means." This could lead to a do-it-yourself type of justice whereby two tenants, both innocent, are at odds, although the landlord is the party who should be held ultimately responsible. These problems demand clarification and resolution by the courts.

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<sup>257</sup> *E.g.*, *Gooden v. Galashaw*, 42 Misc. 2d 8, 247 N.Y.S.2d 186 (N.Y. City Civil Ct. 1964); *Home Owners' Loan Corp. v. McShane*, 184 Misc. 579, 56 N.Y.S.2d 91 (App. Term 2d Dep't 1945). See RPAPL § 749.

<sup>258</sup> It is questionable whether the supreme court has the jurisdiction to reinstate a tenant wrongfully evicted. CPA § 1002, permitting restoration of property to persons paying rent in arrears, was repealed. In addition, it is questionable whether a final order of redemption issued to a tenant entitles him to reinstatement even assuming that a new tenant is not in possession. See *Terwilliger v. Browning*, 152 App. Div. 552, 137 N.Y. Supp. 572 (3d Dep't), *appeal dismissed*, 207 N.Y. 47 (1912).

<sup>259</sup> *Gooden v. Galashaw*, *supra* note 257.