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Article 18

General Obligations Law § 15-108: Amendment Allows Plaintiff to Settle with One Tortfeasor Without Affecting His Rights Against Remaning Tortfeasors

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form of an undertaking by the plaintiff,[169] similar to the plaintiff's bond in Louisiana; the defendant may reclaim possession of the chattel;[170] the statute may be read to require the plaintiff to show that the chattel is in danger of being destroyed or removed; it may be construed to require that only a judge may grant an order of seizure; and the requirement of an immediate post-seizure hearing may be inferred. In short, the vagueness of the statute permits interpretation in accordance with *Mitchell*, thereby satisfying the flexibility espoused by the Supreme Court therein. However, it must be noted that New York courts may continue to require that the debtor receive notice and an opportunity to be heard prior to sequestration. In light of the *Porta* decision, this would appear unlikely.

General Obligations Law

General Obligations Law § 15-108: Amendment allows plaintiff to settle with one tortfeasor without affecting his rights against remaining tortfeasors.

A new subdivision (a) of section 15-108 of the General Obligations Law[171] provides that a release given to one of two or more joint tortfeasors, unless specified to the contrary, releases that tortfeasor only. Prior to its amendment, section 15-108 stipulated that a release reduced any eventual recovery of the releasor by the amount indicated in the release or by the consideration paid for it, whichever was greater.[172] As amended, section 15-108 provides that a release reduces the plaintiff's recovery by the amount of damages attributable to the released tortfeasor, if that amount is greater than the amount stipulated in the release or the consideration paid for it.[173] Additionally, subdivision (b)

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169 CPLR 7102(e).

170 Prior to revision, CPLR 7103 required that a defendant post a bond before he could regain possession of a chattel. N.Y. Sess. Laws [1962], ch. 308, § 7103 (McKinney). The plaintiffs in *Laprease* contended that such a requirement was violative of the equal protection clause of the fourteenth amendment since it was discriminatory against the poor. While the court found it unnecessary to consider that contention, the legislature eliminated the possibility of a recurrence of that argument with the removal of the bond requirement. 7B McKinney's CPLR 7103, supp. commentary at 139 (1971). *Mitchell*, however, approved the requirement for such a bond for the protection of the creditor. As a result, an issue arises as to whether the New York provision may be viewed as a violation of the creditor's rights.

171 N.Y. Sess. Laws [1974], ch. 742, § 3 (McKinney).

172 N.Y. Gen. Oblig. Law § 15-108 (McKinney 1970).

173 This amendment is intended to encourage settlements and simultaneously assure that no non-settling tortfeasor will be liable for more of the damages than his equitable share. *See* Twelfth Annual Report of the Judicial Conference to the Legislature on the CPLR, *as appearing in* 2 N.Y. Sess. Laws [1974] 1817 (McKinney). Another purpose of this subsection is to allow injured parties to settle their claims against one defendant

allows for a released tortfeasor to be free from any liability to any other tortfeasor for contribution, provided that a good faith release was given by the injured party.[174] A new subdivision (c) provides that a tortfeasor who procures his own release waives his right to contribution from any other tortfeasor.[175]

JUDICIARY LAW

Judiciary Law § 148-a: Legislature creates a medical malpractice part in each judicial district.

The newly added section 148-a of the Judiciary Law[176] provides that the supreme court in each judicial district is to have an additional part to deal exclusively with the disposition of medical malpractice suits.[177] Each part will consist of a three-member panel composed of a presiding justice appointed by the appellate division, an attorney, and a physician. The presiding justice will formulate a list of attorneys with trial experience. Each individual on the list will serve on the panel on a rotating basis, service being confined to one case at a time. A similar method will be employed with respect to the medical panel member.

The purpose of the new system is to encourage the pre-trial disposi-

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while maintaining their rights against any other defendants. *Id. See generally* Plath v. Justus, 28 N.Y.2d 16, 268 N.E.2d 117, 319 N.Y.S.2d 433 (1971).

The instant amendment was enacted in response to a number of cases which held that released tortfeasors were still liable to the remaining defendants for their equitable share of the plaintiff's recovery. *See, e.g.*, Codling v. Paglia, 32 N.Y.2d 330, 298 N.E.2d 622, 345 N.Y.S.2d 461 (1973); Michelucci v. Bennett, 71 Misc. 2d 347, 335 N.Y.S.2d 967 (Sup. Ct. Washington County 1972). Such a result would obviously stifle any incentive to settle out of court, and would be contrary to the judiciary's goal of encouraging private settlements of disputes. *See* Tiffany v. Town of Oyster Bay, 234 N.Y. 15, 136 N.E. 224 (1922); Post v. Thomas, 212 N.Y. 264, 106 N.E. 69 (1914).

[174] There is no need for contribution from the released tortfeasor. All the defendants benefit from a fellow tortfeasor's release, since, at minimum, the total amount of the plaintiff's claim is reduced by the amount he receives through the release. *See* TWELFTH ANNUAL REPORT OF THE JUDICIAL CONFERENCE TO THE LEGISLATURE ON THE CPLR, *as appearing in* 2 N.Y. SESS. LAWS [1974] 1818 (McKinney).

[175] This result may be considered inequitable in the situation where the settling tortfeasor has paid more than his equitable share. The inequity is justified if the tortfeasor is considered a volunteer as to the excess. *Id.* It must be remembered, however, that subsection (c) does not prevent the released tortfeasor from raising a claim by way of subrogation or indemnification under any applicable law. *Id.* at 1820.

[176] N.Y. SESS. LAWS [1974], ch. 146, § 1 (McKinney).

[177] On approving this amendment, Governor Wilson noted that medical malpractice suits had become an increasing problem in New York. 2 N.Y. SESS. LAWS [1974] 2086 (McKinney). One solution to the problem was the "Steven's Panel," the precursor of the panel structure established by this amendment, which was instituted three years ago in the First Department. The panel proved quite effective in settling many cases outside of court and in accelerating the trial of those cases that could not be settled. *Id.* The Governor also noted what he considered to be a defect in the amendment. He felt that the establishment of a medical malpractice part in each judicial district, rather than in each county, could create great problems of venue, resulting in inconvenience to the parties. *Id.*