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Judiciary Law § 148-a: Legislature Creates a Medical Malpractice Part in Each Judicial District

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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.*

tion of malpractice claims.[178] The panel will review all evidence concerning the malpractice action, and will conduct an informal hearing wherein both parties will be represented by counsel. After presentation of all evidence and statements, an appropriate order will be entered if an agreement between the parties to the action can be achieved. In the event the panel is unable to arrive at a satisfactory disposition, the case will be remanded to its regular position on the court calendar.[179]

SUMMARY PROCEEDING

Summary proceeding: Applicability of the "three-month rule" in landlord's action for arrears in rent.

The summary proceeding, as provided by article 7 of the RPAPL, offers the landlord a simple, inexpensive, and expeditious remedy against a holdover or non-rent paying tenant.[180] Although the original remedy merely contemplated the regaining of possession of the demised premises,[181] the statute now expressly provides for a recovery of rent arrears by the landlord.[182] With this enlargement of the landlord's rights, however, has come a corresponding increase in the potential hardships a tenant may suffer at the hands of his lessor.[183]

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178 *Id.*

179 These panels will not conduct themselves as courts. The case stays on the calendar of the court, yet undergoes this procedure before it reaches trial. *Id.*

180 At common law, where a landlord sought to regain possession of his premises, his sole recourse was an action in ejectment. Chapter 194 of the Laws of 1820 created a far more effective alternative in the summary proceeding. This new remedy was expanded and improved upon by legislative enactments during the next sixty years. In 1880, the proceeding was transferred to the Code of Civil Procedure § 2231 *et seq.* and later to the CPA 1410 *et seq.* which essentially embraced all the substantive content of the law today. Finally, in 1963, when the CPA was repealed, article 83 was replaced by article 7 of the RPAPL. 2 J. RASCH, NEW YORK LANDLORD AND TENANT LAW § 993 (2d ed. 1971).

181 *See* People *ex rel.* Terwilliger v. Chamberlain, 140 App. Div. 503, 125 N.Y.S. 562 (1st Dep't 1910). For the early history of the proceeding, see Reich v. Cochran, 201 N.Y. 450, 94 N.E. 1080 (1911).

182 RPAPL 741(5). A provision permitting a judgment for rent in favor of the landlord was added to the CPA in 1924 by way of amendment. N.Y. SESS. LAWS [1924], ch. 514, *amending* CPA 1425. *See* Byrne v. Padden, 248 N.Y. 243, 162 N.E. 20 (1928), for an explanation of this amendment.

183 In an attempt to improve the position of the tenant in the face of this landlord-oriented legislation, the New York Legislature has enacted statutory remedies intended to afford the tenant protection should the landlord fail to perform his duties. New York's rent withholding statute, RPAPL 755, provides for a stay of summary proceedings for eviction or nonpayment of rent or for any action for rent or rental value instituted by the landlord where the tenant establishes the landlord's failure to provide adequate services or to remove a dangerous condition on the premises. Section 302 of the Multiple Dwelling Law provides for rent abatement where the owner of the premises has violated municipal housing regulations. N.Y. MULT. DWEL. LAW § 302-a (McKinney 1974). For a procedural review of these remedies and a criticism of their shortcomings, see N. LEBLANC, A HANDBOOK OF LANDLORD-TENANT PROCEDURES AND LAW, WITH FORMS (2d ed. 1969). In addition, RPAPL 743 permits the tenant, in his answer, to interpose any legal or equitable defense against the landlord in a summary proceeding.