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CPLR 3212(c): Rule Now Authorizes Immediate Trial on Motion for Summary Judgment Where the Motion Is Based on Any of the Grounds Enumerated in CPLR 3211(a)

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answer written interrogatories[94] or examining her by open commission in Israel at his own expense. Both procedures are authorized by CPLR 3108.

It can be seen that by utilizing provisions of the CPLR, the court in *Ratner* was able to offer the petitioner most of the advantages of a proceeding under the Uniform Support of Dependents Law. When the latter is unavailable, the procedure adopted in *Ratner* allows a court to hear and enforce a meritorious support claim which might otherwise go unsatisfied.

ARTICLE 32 — ACCELERATED JUDGMENT

CPLR 3211(c): Amendment allows the court to treat a motion under 3211(a) or (b) as one for summary judgment before joinder of issue.

CPLR 3211(c) has been revised by the Judicial Conference[95] to settle case law conflict[96] as to whether a motion under 3211(a) or (b) may be treated as one for summary judgment before issue has been joined. The section now specifically allows this. The rule was further amended to require the court to give the parties adequate notice of its intention to treat the motion as one for summary judgment. The Judicial Conference's stated purpose in adding this requirement was to ensure "that an appropriate record and submission of the facts and law may be made by the parties. . . ."[97] Lastly, the rule was amended to provide that immediate trial of the issues raised on the motion can be ordered "when appropriate for the expeditious disposition of the controversy." The quoted clause was added to avoid *sub rosa* preferences.[98]

CPLR 3212(c): Rule now authorizes immediate trial on motion for summary judgment where the motion is based on any of the grounds enumerated in CPLR 3211(a).

CPLR 3212(c) has been changed to authorize an immediate trial of issues of fact where a motion for summary judgment is based on any

94 Written questions were used similarly in Zilken v. Leader, 23 App. Div. 2d 644, 257 N.Y.S.2d 185 (1st Dep't 1965) (mem.) and Ascona Cie., Anstalt v. Horn, 32 App. Div. 2d 755, 301 N.Y.S.2d 414 (1st Dep't 1969) (mem.), where depositions were taken in foreign countries.

95 JUDICIAL CONFERENCE OF THE STATE OF NEW YORK, REPORT TO THE 1973 LEGISLATURE IN RELATION TO THE CIVIL PRACTICE LAW AND RULES AND PROPOSED AMENDMENTS ADOPTED PURSUANT TO SECTION 229 OF THE JUDICIARY LAW 81 (1973) [hereinafter JUDICIAL CONFERENCE REPORT].

96 *See* 4 WK&M ¶ 3211.50a.

97 JUDICIAL CONFERENCE REPORT 82, *citing* Mareno v. Kibbe, 32 App. Div. 2d 825, 302 N.Y.S.2d 324 (2d Dep't 1969), *modifying* 56 Misc. 2d 451, 289 N.Y.S.2d 6 (Sup. Ct. Westchester County 1968), *discussed in The Quarterly Survey*, 44 ST. JOHN'S L. REV. 532, 560 (1970).

98 JUDICIAL CONFERENCE REPORT 82.

of the grounds permitted to be raised in a CPLR 3211 motion.[99] Prior law was inconsistent in permitting an immediate trial of such factual issues when a CPLR 3211 motion was treated as a motion for summary judgment, but denying it on an ordinary CPLR 3212 summary judgment motion. Formerly, an immediate trial was available under CPLR 3212(c) only where the extent of the damages was at issue. Its expansion to post-answer motions based on grounds enumerated in CPLR 3211(a) brings symmetry to the two sections which was, for no apparent reason, previously lacking.[100]

CPLR 3213: Court will not enter default judgment where instrument is not for money only and plaintiff gives short notice.

By allowing a plaintiff to serve summary judgment motion papers in lieu of a complaint, the Legislature has provided a convenient procedure for securing judgments in certain presumptively meritorious categories of actions.[101] The procedure is available only in actions based upon "an instrument for the payment of money only or upon any judgment. . . ."[102] In noticing the motion to be heard, the plaintiff must give the defendant at least as much time as would be allowed for making an appearance in an ordinary action.[103] The plaintiff may extend the notice period by as much as ten days[104] beyond the required minimum and may demand that the defendant serve answering papers upon him during the period of extension. Although courts have permitted deviations from these complicated requirements where the defendant has appeared and consented to the CPLR 3213 procedure,[105] a recent case indicates that strict compliance will be demanded as a condition to entry of judgment when the defendant defaults.

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99 JUDICIAL CONFERENCE REPORT 82-83.

100 *See* McLaughlin, *New York Trial Practice,* 169 N.Y.L.J. 111, June 8, 1973, at 4, col. 1.

101 *See* 7B McKINNEY'S CPLR 3213, commentary at 828 (1970); 4 WK&M ¶ 3213.01.

102 CPLR 3213.

103 The time within which an appearance must be made is governed by CPLR 320(a) in the Supreme and County Courts and by section 402 of the UDCA, UCCA, UJCA, and CCA in the District, City, Justice, and New York City Civil Courts. The period of time allowed for an appearance generally depends upon the method of service used.

104 In the lower courts there is no ten-day limitation. *See* section 1004 of the UDCA, UCCA, UJCA, and CCA. *See also* 7B McKINNEY'S CPLR 3213, commentary at 835 (1970); 4 WK&M ¶ 3213.02.

105 *See* Reilley v. Insurance Co. of North America, 32 App. Div. 2d 918, 302 N.Y.S.2d 435 (1st Dep't 1969) (mem.); Flushing Nat'l Bank v. Brightside Mfg., Inc., 59 Misc. 2d 108, 298 N.Y.S.2d 197 (Sup. Ct. Queens County 1969). The Court of Appeals in Stevenson v. News Syndicate Co., Inc., 302 N.Y. 81, 96 N.E.2d 187 (1950) held that

> [w]here . . . all parties to a litigation choose to do so, they may to a large extent chart their own procedural course through the courts.

Id. at 87, 96 N.E.2d at 190.