

CPLR 1025: Obstacles to an Action Against an Unincorporated Association

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1974) "CPLR 1025: Obstacles to an Action Against an Unincorporated Association," *St. John's Law Review*: Vol. 48 : No. 3 , Article 16.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol48/iss3/16>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

to recommence the action, pending in the New York courts since 1969 and now ready for trial, in the Province of Ontario, and the fact that the site of the accident and the plaintiff's residence, although in Canada, were only a few miles from the courthouse.

As courts continue to exert their expanded discretion with respect to the exercise of jurisdiction, further refinements will be engrafted upon the doctrine of *forum non conveniens*. The decision in *Neumeier* is consistent with the Court of Appeals' view that a pertinent factor to be weighed is "the unavailability elsewhere of a forum in which the plaintiff may obtain *effective* redress. . . ."⁵⁰ A court should properly be reluctant to invoke the doctrine at the insistence of a resident defendant where the plaintiff would otherwise be faced with the prospect of bringing suit on a foreign judgment.

ARTICLE 10 — PARTIES GENERALLY

CPLR 1025: Obstacles to an action against an unincorporated association.

Section 13 of the General Associations Law, incorporated by reference into the CPLR by section 1025,⁵¹ provides that a party with a claim against all the members of an unincorporated association may seek recovery from the association itself by maintaining an action against its president or treasurer.⁵² The association is considered a natural person for purposes of service of process.⁵³

It has generally been held that these sections are purely procedural, and that the traditional rule remains that the association's treasury cannot be reached unless the act or agreement giving rise to the claim has been ratified by all the members of the organization.⁵⁴ A recent case in the District Court of Nassau County provides an illustration. In *Fairfield Lease Corp. v. Empire Employees Sunshine Club*,⁵⁵ the lessor of a coffee-making machine attempted to recover the balance due on a

⁵⁰ *Varkonyi v. Varig*, 22 N.Y.2d 333, 338, 239 N.E.2d 542, 544, 292 N.Y.S.2d 670, 673 (1968) (emphasis added).

⁵¹ CPLR 1025 states in part: ". . . actions may be brought by or against the president or treasurer of an unincorporated association on behalf of the association in accordance with the provisions of the general associations law."

⁵² N.Y. GEN. ASS'NS LAW § 13 (McKinney 1973). See *Stefania v. McNiff*, 49 Misc. 2d 480, 482, 267 N.Y.S.2d 854, 857 (Sup. Ct. Queens County 1966).

⁵³ The "person" of the association is the president or treasurer and therefore personal jurisdiction can be obtained by personal service on one of these officers within New York. Since the association is deemed a natural person, this is a sufficient jurisdictional basis, and the "doing business" concept is inapplicable. See *Gross v. Cross*, 28 Misc. 2d 375, 211 N.Y.S.2d 279 (Sup. Ct. N.Y. County 1961).

⁵⁴ *Martin v. Curran*, 303 N.Y. 276, 101 N.E.2d 683 (1951).

⁵⁵ 74 Misc. 2d 328, 345 N.Y.S.2d 305 (Dist. Ct. Nassau County 1973).

lease with an unincorporated association consisting of the employees of a major insurance company. The action failed on the basis of numerous procedural defects, but the court stated that, even apart from these objections, the absence of a showing of ratification would have been a bar.⁵⁶

The rules regarding the liability of unincorporated associations, largely historical in origin, have been criticized. At common law, the association was perceived not as an entity, but as an aggregate of individuals joined together under a common name to serve various civic, social and charitable purposes.⁵⁷ The conceptual distinction between an aggregate and an entity gave rise to the ratification requirement. Since an aggregate could not have an agent, the only way it could act was through the concurrence of all its members. Thus an association was not bound by the act of an individual purporting to act for it if all the members did not authorize the action.⁵⁸

Criticism of the ratification requirement stems largely from the fact that the character of unincorporated associations has changed drastically. When the rule developed, they were primarily small, close-knit and community-based. Today, the designation "unincorporated association" has been applied to a wide range of organizations of varying size, scope and economic power.⁵⁹ Labor unions in particular possess characteristics more analogous to corporations than to the common law notion of an unincorporated association.⁶⁰

This form of immunity has been justified on the ground that the law seeks to encourage membership in private associations.⁶¹ But there exists the countervailing consideration of providing an effective remedy for one who is wronged. In this regard, the distinction is sometimes drawn between contract and tort actions. In an action brought on contract, the argument lies that the plaintiff had notice that the association is not a legal entity and thus dealt with it at his peril.⁶² The victim of a

⁵⁶ *Id.* at 330, 345 N.Y.S.2d at 308.

⁵⁷ *Martin v. Curran*, 303 N.Y. 276, 101 N.E.2d 683 (1951); *Ostrom v. Greene*, 161 N.Y. 353, 55 N.E. 919 (1900); *Prin v. DeLuca*, 218 N.Y.S.2d 761 (Sup. Ct. Kings County 1961).

⁵⁸ See Comment, *Liability of Members and Officers of Non-Profit Unincorporated Associations for Contracts and Torts*, 42 CALIF. L. REV. 812, 817 (1954).

⁵⁹ See Note, *Hazards of Enforcing Claims Against Unincorporated Associations in Florida*, 17 U. FLA. L. REV. 211 (1964).

⁶⁰ See *Marshall v. I.L.W.U.*, 57 Cal. 2d 781, 371 P.2d 987, 22 Cal. Rptr. 211 (1962) (labor union deemed a "separate legal entity" for purposes of a personal injury suit against the union by one of its members); *Oleck, Nonprofit Unincorporated Associations*, 21 CLEV. ST. L. REV. 44 (1972) [hereinafter cited as *Oleck*].

⁶¹ See *Developments in the Law—Judicial Control of Actions of Private Associations*, 76 HARV. L. REV. 983, 987-89 (1963).

⁶² Judge Conway, dissenting in *Martin v. Curran*, 303 N.Y. 276, 296, 101 N.E.2d 683, 694 (1951), stated that "[k]nowledge of the limited liability of the association's members

tort, on the other hand, generally has had no opportunity to weigh the disadvantages of dealing with the association. But whether an injured party's claim against an association is in tort or contract, the protection afforded its assets by the law has been looked upon with growing disfavor.⁶³ Some commentators have urged legislation that would treat unions as independent entities for substantive purposes.⁶⁴ On the federal level, the Taft-Hartley Act provides that a labor union "may sue or be sued as an entity,"⁶⁵ and abandons the ratification requirement.⁶⁶ Even without such legislation, the New York Court of Appeals has held that ratification by the membership need not be proved in an action for wrongful expulsion from a labor organization.⁶⁷

The common law also embodied procedural obstacles to a suit against an incorporated association. For example, all the members of the organization were deemed necessary parties to an action against it. Many states now permit suit by or against the association in its common name.⁶⁸ As noted above, however, New York requires that the action be brought in the name of the president or treasurer,⁶⁹ and that the summons and complaint are technically defective if they contain only the association name. Although liberal amendment of the pleadings is generally allowed,⁷⁰ unnecessary inconvenience results from this rule.⁷¹

and the limited authority of the association's agent in entering into the specific contract is chargeable to the third party." See Note, *Hazards of Enforcing Claims Against Unincorporated Associations in Florida*, 17 U. FLA. L. REV. 211, 239-40 (1964).

⁶³ In recent years the courts have shown a tendency to fasten liability on both the organization and all persons concerned in wrongs committed by labor unions. Oleck, *supra* note 60, at 49. However the author notes that, due to the "vagueness of organizational liability," unions "sometimes fall in a liability twilight zone . . ." *Id.*

⁶⁴ See, e.g., 7B MCKINNEY'S CPLR 1025, *supp.* commentary at 135 (1973), where Dean McLaughlin states:

[P]erhaps legislation should be considered which would distinguish between unincorporated associations of the civic club variety and associations as large as labor unions. The obvious differences in function and in finance would seem to indicate that more careful thought should be given to the General Associations Law. . . . [A] comprehensive legislative analysis seems in order.

⁶⁵ Labor-Management Relations (Taft-Hartley) Act § 301(b), 29 U.S.C. § 185(b) (1970).

⁶⁶ *Id.* § 301(e), 29 U.S.C. § 185(e) (1970).

⁶⁷ See *Madden v. Atkins*, 4 N.Y.2d 283, 151 N.E.2d 73, 174 N.Y.S.2d 633 (1958), *distinguishing* *Martin v. Curran*, 303 N.Y. 276, 101 N.E.2d 683 (1951).

⁶⁸ See, e.g., CAL. CIV. PRO. CODE § 388 (West 1973). See generally Comment, *Liability of Members and Officers of Nonprofit Unincorporated Associations for Contracts and Torts*, 42 CALIF. L. REV. 812 (1954).

⁶⁹ N.Y. GEN. ASS'NS LAW § 13 (McKinney 1973).

⁷⁰ *But see* *King v. Town of Oyster Bay*, 194 N.Y.S.2d 939 (Sup. Ct. Nassau County 1959), where the court refused to allow a *nunc pro tunc* substitution of the treasurer of the association as defendant since the statute of limitations had expired. The court quoted *Motor Haulage Co. v. Teamsters Local 807*, 298 N.Y. 208; 212, 81 N.E.2d 91, 92 (1948), wherein it was held that such amendment may be allowed "in the absence of prejudice to a substantial right of any party."

⁷¹ See *Sturges, Unincorporated Associations as Parties to Actions*, 33 YALE L.J. 383, 405 (1924); 2 WK&M ¶ 1025.06.

It is urged that the Legislature respond to the difficulties presented by the diverse and complex nature of unincorporated associations. Those associations that function as major forces in society should be subject to those obligations imposed on corporate bodies. Labor unions in particular should be treated as entities for substantive as well as procedural purposes. Unincorporated associations should possess the capacity to sue or be sued in their own name, and the association's treasury must be available to satisfy a judgment resulting from the activities of its members in areas germane to the organization's normal purposes or functions. An examination of this area of the law is long overdue.

ARTICLE 11 — POOR PERSONS

CPLR 1102: Indigent defendant has constitutional right to counsel in matrimonial action.

In *Boddie v. Connecticut*,⁷² the United States Supreme Court held that a state's refusal to allow an indigent divorce plaintiff access to its courts without first paying fees for filing and service of process violates his due process rights. The New York courts have applied this holding to auxiliary expenses such as publication costs.⁷³

Boddie recently received a broad construction by the Supreme Court, Kings County. In *Vanderpool v. Vanderpool*,⁷⁴ the court held that the defendant-wife in a divorce action was constitutionally entitled to counsel where her indigency and her husband's inability to pay⁷⁵ are undisputed. Relying on the due process clause of the fourteenth amendment, the court found that while CPLR 1102⁷⁶ gives the court discretion to assign counsel to poor persons, it confers no authority to direct payment of counsel fees. However, the court reasoned that without counsel a defendant has no meaningful opportunity to be heard, and the mere fact that he is in the action as a defendant does not constitute access since "*presence is distinguishable from access. . .*"⁷⁷

⁷² 401 U.S. 371 (1971).

⁷³ See, e.g., *Deason v. Deason*, 32 N.Y.2d 93, 296 N.E.2d 229, 343 N.Y.S.2d 321 (1973); *Jeffreys v. Jeffreys*, 38 App. Div. 2d 431, 330 N.Y.S.2d 550 (2d Dep't 1972); *McCandless v. McCandless*, 38 App. Div. 2d 171, 327 N.Y.S.2d 896 (4th Dep't 1972).

⁷⁴ 74 Misc. 2d 122, 344 N.Y.S.2d 572 (Sup. Ct. Kings County 1973) (mem.).

⁷⁵ DRL 237 provides that generally the husband can be compelled to pay the wife's counsel fees if she is unable to do so.

⁷⁶ CPLR 1102(a) provides that "[t]he court in its order permitting a person to proceed as a poor person may assign an attorney." The meaning of "may" in this context is unsettled. See 2 WK&M ¶ 1102.01 (suggesting that the appointment of counsel is discretionary); but see 7B MCKINNEY'S CPLR 1102, commentary at 480 (1963) (suggesting that the validity of an order to proceed as a poor person when the court does not appoint counsel is an open question).

⁷⁷ 74 Misc. 2d at 125, 344 N.Y.S.2d at 576 (emphasis in original), citing *Gideon v. Wainwright*, 372 U.S. 335 (1963).