

CCA 401(c): Constructive Notice Given Regarding Use of Standard Notice of Petition Form

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NEW YORK CITY CIVIL COURT ACT

CCA 401(c): Constructive notice given regarding use of standard notice of petition form.

Under section 401(c) of the Civil Court Act, a notice of petition in a summary proceeding to regain possession of leased realty must be issued by a judge or a court clerk. The Civil Court rules include a suggested form for the notice of petition which has been adopted verbatim by most landlord-tenant lawyers.¹⁹⁹

In *150 East 58th Street Associates v. Birnbaum*,²⁰⁰ the landlord's counsel submitted such a notice of petition to the court clerk to commence a summary proceeding against the defendant for nonpayment of rent. The petition invited the tenant to assert whatever counterclaims he might have against the landlord in answering his petition.²⁰¹ The tenant then interposed counterclaims against the plaintiff although the parties' lease expressly precluded any counterclaims in such actions. At issue was whether the petitioner, through strict compliance with the Civil Court rules, had waived the "no counterclaim" clause of the lease.

In denying the tenant the right to assert counterclaims in the present action, the court found that the landlord's counsel had not knowingly and intentionally waived his client's rights under the clause by employing the suggested notice of petition form.²⁰² The court noted that use of this form is not mandatory in the Civil Court, and warned that conflicts between a lease and the form will be resolved in favor of the form.²⁰³ Thus, the Civil Court notice of petition form should be amended to avoid the waiver issue and the resulting delay of summary proceedings when counterclaims are tried therein.

CCA 404(a)(1): Successful solicitation of patronage through advertising in New York City constitutes transaction of business in New York City.

CCA 404(a)(1) authorizes personal jurisdiction over any nonresident as to a cause of action arising out of his transaction of business within New York City. In *Reich v. Pines Hotel*,²⁰⁴ the plaintiff com-

¹⁹⁹ See *150 East 58th St. Assocs. v. Birnbaum*, 68 Misc. 2d 756, 757, 327 N.Y.S.2d 878, 880 (N.Y.C. Civ. Ct. N.Y. County 1972).

²⁰⁰ *Id.* 756, 327 N.Y.S.2d 878.

²⁰¹ 22 NYCRR 2900.21(c) provides: "Your answer may set forth any defense or counterclaim you may have against the petitioner."

²⁰² 68 Misc. 2d at 757, 327 N.Y.S.2d at 880.

²⁰³ *Id.*

²⁰⁴ *Id.* 1001, 328 N.Y.S.2d 918 (N.Y.C. Civ. Ct. Queens County 1972).