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Article 18

CPLR 2201: Court Stays Actions Under Comity To Avoid Multiple Suits

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more current view is to treat such mistakes as "formal" rather than jurisdictional.[111]

The purpose of a summons is to give a defendant notice that an action is being brought against him.[112] In the instant case the defendant *had* notice of the commencement of the action. Since the name, address and telephone number of the plaintiff's attorney were included in the summons,[113] the defendant could have obtained the necessary information by merely telephoning the plaintiff's attorney. In fact, communicational developments such as the telephone would appear to have conclusively vitiated the rationale of the nineteenth century cases. Failure to telephone could have been deemed a waiver of defect pursuant to CPLR 2101(f). In effect, by holding the summons jurisdictionally defective, the court has reversed the warning of an old adage and "painted the client with the sins of his attorney."

ARTICLE 22 — STAYS, MOTIONS, ORDERS AND MANDATES

CPLR 2201: Court stays action under comity to avoid multiple suits.

CPLR 2201 is substantially the same as its parent provision governing the granting of a stay under the CPA.[114] It therefore should delineate clear guidelines of precedent. Nevertheless, the verbal mainsprings of CPLR 2201 — "a proper case" and "terms that may be just" — can at times disarrange the orderly pattern of case law.[115]

The recent case of *Research Corp. v. Singer General Precision, Inc.*[116] illustrates how the court's discretion[117] is influenced by the division of power inherent in federalism. By granting a patent the federal government creates a "statutory monopoly."[118] Policing patent claims is a peculiarly federal activity.[119] Yet a breach of contract action typically requires invocation of state jurisdiction, absent a diversity of

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111 *See generally* 2A WK&M ¶ 2001.01-.03; *id.* ¶ 2101.06.

112 Stuyvesant v. Weil, 167 N.Y. 421, 60 N.E. 738 (1901).

113 *See* CPLR 2101(d).

114 *Compare* CPA 167 *with* CPLR 2201.

115 Bucky v. Sebo, 276 App. Div. 545, 95 N.Y.S.2d 769, *appeal denied and reargument denied*, 277 App. Div. 757, 97 N.Y.S.2d 369 (1st Dep't 1950). On facts remarkably similar to the instant case the court held that "the licensee is estopped from challenging the validity of a patent, until he has completely repudiated and renounced the licensing agreement." 276 App. Div. at 546, 95 N.Y.S.2d at 771.

116 36 App. Div. 2d 987, 320 N.Y.S.2d 818 (3d Dep't 1971).

117 *Id.* at 988, 320 N.Y.S.2d at 820. *Cf.* Trieber v. Hopson, 27 App. Div. 2d 151, 152, 277 N.Y.S.2d 241, 242 (3d Dep't 1967), *discussed in The Quarterly Survey*, 42 ST. JOHN'S L. REV. 283, 294 (1967) (CPLR 2201 grants the trial court discretionary power to issue a stay); O'Connor v. Papersian, 309 N.Y. 465, 471-72, 131 N.E.2d 883, 886-87 (1956) (appellate division may review a stay).

118 Sears, Roebuck & Co. v. Stiffel Co., 376 U.S. 225, 229 (1964).

119 *Id.* at 230-31.

citizenship. This principle governs even where the validity of the agreement depends on the validity of the patent.[120]

In the instant case, plaintiff's New York suit on the contract was stayed in favor of defendant's federal suit, which challenged the validity of the patent.

The Appellate Division, Third Department, affirmed the trial court's deference to "the Federal court's expertise"[121] and "the interests of comity, orderly procedure and uniformity."[122] Because defendant's contractual duty would be discharged if plaintiff's patent was declared void, determination of the validity of the patent logically should be decided before an action on the contract.[123] The appellate court emphasized, however, that the fact "that plaintiff must rely on a patent in support of his cause of action is not determinative and neither vests the Federal court with jurisdiction nor deprives the State court of power to entertain the action."[124]

ARTICLE 30 — REMEDIES AND PLEADINGS

CPLR 3031, 3033, 3034: Motion for settlement of terms is prerequisite to motion for judgment under Simplified Procedure.

CPLR 3031 through 3037 provides a consensual Simplified Procedure for disposition of cases.[125] Under section 3031, an action may be commenced by the filing of a statement, signed by both parties or by their attorneys, specifying claims, defenses and requested relief.[126] Neither a summons nor pleadings are necessary, and submission is deemed a waiver of the right to trial by jury.[127] The parties may contract in writing for submission of either present or future controversies, and then secure specific enforcement under section 3033.[128] Under rule 3034, in the event that one party to a contract refuses to submit the controversy under Simplified Procedure, or if the parties are unable to agree upon a statement, either party may move for an order directing determination of the controversy pursuant to Simplified Procedure.[129]

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120 American Harley Corp. v. Irvin Indus., Inc., 27 N.Y.2d 168, 172, 262 N.E.2d 552, 553, 315 N.Y.S.2d 129, 131 (1970), *cert. denied*, 401 U.S. 976 (1971).

121 36 App. Div. 2d 987, 988, 320 N.Y.S.2d 818, 820 (1971).

122 *Id.*

123 Lear Inc. v. Adkins, 395 U.S. 653 (1968).

124 36 App. Div. 2d at 988, 320 N.Y.S.2d at 821.

125 *See* 7B McKINNEY'S CPLR 3031, commentary at 231-35 (1970).

126 *See* 3 WK&M ¶ 3031.03.

127 CPLR 3031.

128 *See* 3 WK&M ¶¶ 3033.02, 3033.03.

129 *See id.* ¶ 3034.01.