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CCA 202: Civil Court Can Enforce Foreign Decree of Support

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Concurrently, in a matrimonial action, a court is empowered under DRL 234 to determine questions concerning title to property and to make appropriate directions concerning possession. This raises an important question: When one party is awarded in a divorce decree exclusive possession of realty previously held by both as tenants by the entirety, is the other party precluded from obtaining partition?

Prior decisions on this point are in conflict. The Supreme Court, Nassau County, held, in *Pechstein v. Pechstein*, [249] that an award of exclusive possession does not bar an action for partition.[250] In *Ripp v. Ripp*,[251] however, the same court adopted the contrary view.[252]

In *Davies v. Davies*,[253] the Supreme Court, Monroe County, followed the *Ripp* case. The court viewed the property rights of the former husband as subject to the divorce decree, under which the former wife received exclusive possession of the real property which plaintiff sought to partition, and reasoned that allowance of an action for partition would "defeat" that part of the decree which granted exclusive possession to the former wife.[254] Hence, it refused to circumvent the decree rendered under DRL 234.[255]

The decisions in *Davies* and in *Ripp* are consistent with the broad discretionary power conferred upon the courts in DRL 234 and with the literal interpretation of RPAPL 901(1). The latter section permits partition at the instance of a tenant in common in possession. If one former spouse is granted exclusive possession of certain real property, the other cannot be a tenant in common in possession of said property.

New York City Civil Court Act

CCA 202: Civil court can enforce foreign decree of support.

Under section 466(c) of the Family Court Act, the family court and the supreme court are expressly granted original jurisdiction over actions to enforce or to modify decrees by foreign courts of competent jurisdiction granting support or alimony. There is no mention that this jurisdiction is exclusive, however, so the following issue has been raised: Does section 466(c) deprive the civil court of jurisdiction under CCA 202 to enforce a foreign decree of support?

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249 64 Misc. 2d 969, 316 N.Y.S.2d 4 (Sup. Ct. Nassau County 1970).

250 *Id.* at 970, 316 N.Y.S.2d at 5; *see* Rosensteil v. Rosensteil, 20 App. Div. 2d 71, 78, 245 N.Y.S.2d 395, 402 (1st Dep't 1963).

251 64 Misc. 2d 323, 314 N.Y.S.2d 461 (Sup. Ct. Nassau County 1970).

252 *Id.* at 324-25, 314 N.Y.S.2d at 463.

253 65 Misc. 2d 480, 318 N.Y.S.2d 97 (Sup. Ct. Monroe County 1971).

254 *Id.* at 482, 318 N.Y.S.2d at 99.

255 *Id.*

In *Slater v. Slater*,[256] plaintiff sought summary judgment in an action to recover support payments directed in a Nevada divorce decree. The New York City Civil Court, New York County, held that it had jurisdiction in the action subject to the monetary limitation upon its judgments.[257] The basis of this conclusion was the absence of an express statement of exclusivity of jurisdiction in the Family Court Act.[258]

CCA 1804: Substantial justice mandate limited by rules of substantive law.

Small-claims courts are mandated under CCA 1804 to render "substantial justice between the parties according to rules of substantive law . . . ." While the court is bound by substantive law, however, it is not restricted "by statutory provisions or rules of practice, procedure, pleading or evidence . . . ." This freedom of action expedites the small-claims process and enables litigants to represent themselves before a flexible forum.

An alleged exercise of this freedom by a small-claims court, in *Bierman v. City of New York*,[259] was arrested by the Appellate Term of the First Department, in *Bierman v. Consolidated Edison Co. of New York*.[260] The appellate court held that the lower court's departure from the traditional rules of negligence in adopting a rule of strict liability without fault was error.[261] Whether the rule of strict liability should be adopted, the court noted, is a matter for determination by the Legislature or the Court of Appeals, not by courts of original jurisdiction. For,

> [S]tability and certainty in the law requires adherence to . . . the decisions of the Court of Appeals . . . by all lower courts.[262]

Mrs. Bierman had brought an action for $300 in compensation for

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256 65 Misc. 2d 322, 317 N.Y.S.2d 638 (N.Y.C. Civ. Ct. N.Y. County 1971).

257 *Id.* at 323, 317 N.Y.S.2d at 640.

258 *Id.* 317 N.Y.S.2d at 639.

259 60 Misc. 2d 497, 302 N.Y.S.2d 696 (N.Y.C. Civ. Ct. N.Y. County 1969), *discussed in The Quarterly Survey*, 44 ST. JOHN'S L. REV. 532, 584-85 (1970); *1970 Survey of New York Law*, 22 SYRACUSE L. REV. 159-60 (1971).

260 66 Misc. 2d 237, 320 N.Y.S.2d 331 (App. T. 1st Dep't 1970).

261 *Id.* at 238, 320 N.Y.S.2d at 332.

262 *Id.*, *citing* Thomas v. Hendrickson Bros., Inc., 30 App. Div.2d 730, 731, 291 N.Y.S.2d 57, 58-59 (3d Dep't 1968); Brooks v. Horning, 27 App. Div. 2d 874, 875-76, 278 N.Y.S.2d 629, 632-34 (3d Dep't 1967); MacGilfrey v. Hotaling, 26 App. Div. 2d 977, 978, 274 N.Y.S.2d 850, 852 (3d Dep't 1966); Canter v. American Cyanamid Co., 12 App. Div. 2d 691, 692, 207 N.Y.S.2d 745, 746 (3d Dep't 1960).