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CCA 306: Civil Court Changes Venue Sua Sponte with Caveat to the Bar

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UNIFORM JUSTICE COURT ACT

UJCA 1704: Once filed, justice's return is a conclusive record of proceedings below.

UJCA 1704 establishes the procedure for procuring a record suitable for appeal of proceedings held before a justice of the peace. If no stenographic minutes were taken, the clerk or justice must prepare minutes of the proceeding detailing the testimony and the court's rulings on disputed evidence and testimony. In addition, any exception taken during the proceeding must be indicated. Thereafter, the statement is "settled" by an adversary examination to check its accuracy. Thus authenticated, the statement, plus the pleadings, judgment and opinion, are filed with the appellate court as the justice's return.

In *Workman v. Bolen*,[249] the Sullivan County Court held that where a return does not contain an objection to an incomplete charge, this objection is foreclosed on appeal.[250] The appellant therein had not attempted to settle the justice's return to show that such an objection had been made, thereby "admitt[ing] the sufficiency and correctness of the return."[251] The appeal was therefore dismissed.

Both the CPLR[252] and decisional law[253] deem a filed return a conclusive record of town or village proceedings. The safeguards provided in the instant statute sufficiently protect the litigants' interests by permitting them to inspect and contest the records before filing. Here, however, these safeguards were ignored. Clearly, this rule is necessary, but the same result might have been attained by a remand for resettlement of the return, with less hardship on the appellant.

NEW YORK CITY CIVIL COURT ACT

CCA 306: Civil court changes venue sua sponte with caveat to the bar.

The procedure for change of venue in the Civil Court of New York City is found in CCA 306, which provides that when venue is improper the court may of its own motion transfer the action to the

249 Workman v. Bolen, 67 Misc. 2d 957, 326 N.Y.S.2d 811 (Sullivan County Ct. 1971).

250 *Id.* at 966, 326 N.Y.S.2d at 821, *citing* CPLR 4017, 5501(a).

251 *Id.* at 966-67, 326 N.Y.S.2d at 821, *citing* People v. Mason, 307 N.Y. 570, 122 N.E.2d 916 (1954) (return of criminal trial which was uncontested prior to appeal is conclusive record of the proceedings below).

252 CPLR 4017, 5501(a). UJCA 2102 provides that the CPLR is applicable to village or town proceedings insofar as it is consistent with the Act. Moreover, UJCA 1703 expressly provides that article 55 of the CPLR is applicable to appeals except where the UJCA provides otherwise.

253 *See, e.g.*, People v. Eastman, 46 Misc. 2d 674, 260 N.Y.S.2d 498 (Sup. Ct. Monroe County 1965) (decided under a similar provision of the Justice Court Act, now superseded by the UJCA).

proper county. Improper venue is not a jurisdictional defect and therefore the court may properly hear the case if a party defendant does not timely object to it. It has been noted that improper venue creates a greater problem in courts of limited territorial jurisdiction where venue requirements are waived more readily by the parties. A prominent consideration for the venue requirements is to distribute the court's business on a relatively even basis among the five counties.[254]

This consideration was decisive in *Towers v. Long Island Properties Inc.*,[255] a negligence action brought in New York County where the cause of action arose. Since both parties resided in Queens County, the venue was improper under CCA 301.[256] Although the defendant made no objection, the court on its own motion transferred the action to Queens County pursuant to CCA 306, noting the overburdening case load in New York County.[257] Judge Weiss took the opportunity to publicly announce to the bar that the court will no longer tolerate "the imposition of a case load emanating from the flagrant contravention of the requisites of proper venue. . . ."[258] Judge Weiss cited the administrative judge's directive of June 19, 1970,[259] which was enacted some six months later as subparagraph (b) of CCR section 2900.3,[260] in support of his conclusion that there has been a "cavalier disregard" of CCA 301.

The *Towers* case is significant (1) as a caveat to the bar to avoid improper venue, since the courts will readily transfer actions on their own motion, and (2) for its discussion of CCR section 2900.3 and the aforementioned directive.

CONTEMPT

Contempt: Criminal contempt fines payable to City Treasury.

The fines which result from criminal contempt proceedings have traditionally been regarded as payable to the state.[261] At the same time,

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254 *See* 29A MCKINNEY'S CCA 301, commentary at 70 (1963).

255 67 Misc. 2d 1062, 325 N.Y.S.2d 605 (N.Y.C. Civ. Ct. N.Y. County 1971).

256 CCA 301 sets out the venue requirements for the civil court. The primary basis of venue is the place of residence of one of the parties, with other stated bases of venue being proper if no party has a residence in New York City.

257 67 Misc. 2d 1062, 325 N.Y.S.2d 605 (N.Y.C. Civ. Ct. N.Y. County 1971). *See also* Blackstone Institute v. Agnelli, 153 Misc. 760, 276 N.Y.S. 713 (N.Y.C. Mun. Ct. N.Y. County 1935); Seligman Fabrics Corp. v. Bur-Lee Frocks, Inc., 150 Misc. 537, 260 N.Y.S. 649 (N.Y. City Ct. Bronx County 1934).

258 67 Misc. 2d 1062, 325 N.Y.S.2d 605 (N.Y.C. Civ. Ct. N.Y. County 1971).

259 *Id.* at 1063-64, 325 N.Y.S.2d at 606-07.

260 CCR 2900.3 states that "[t]he clerk shall not accept a summons for filing when it appears upon its face that the proper venue is a county division other than the one where it is offered for filing." *Id.* at 1064, 325 N.Y.S.2d at 607.

261 People *ex rel.* Stearns v. Marr, 181 N.Y. 463, 74 N.E. 431 (1905); *see* King v. Barnes,