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Contempt: Criminal Contempt Fines Payable to City Treasury

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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,

fines imposed for a civil contempt have been utilized to redress the aggrieved party.[262] The basis for the distinction stems from the nature of the two offenses: Criminal contempt is "an offense against public justice, the penalty for which is essentially punitive, while the other is an invasion of private right, the penalty for which is redress or compensation to the suitor."[263] In New York, the statutory provisions embodying this distinction are found in sections 751 (criminal) and 773 (civil) of the Judiciary Law.

In 1967, however, in conjunction with New York's enactment of the Taylor Law,[264] section 751 was enlarged to provide for the imposition of criminal contempt penalties in the event public employees strike.[265] Additionally, the Taylor Law provides that, in the event of a strike, the governmental unit involved must apply for injunctive relief, which, if granted and subsequently defied by the employee organization, is to be followed by the institution of criminal contempt proceedings under the Judiciary Law.[266]

As a result, the anomalous situation can arise wherein a munici-

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113 N.Y. 476, 21 N.E. 182 (1889); *see also* Englander Co. v. Tishler, 285 App. Div. 1070, 139 N.Y.S.2d 707 (2d Dep't 1955). The earlier cases indicate that criminal contempt fines were payable to the "public treasury." Exactly how the "public treasury" became the "state treasury" is not clear. *Compare* People *ex rel.* Munsell v. Court of Oyer & Terminer, 101 N.Y. 245, 248, 4 N.E. 259, 260 (1886) *with* 1944 N.Y. ATT'Y GEN. REP. 197.

262 *See* King v. Barnes, 113 N.Y. 476, 21 N.E. 182 (1889). *See also* Stewart v. Smith, 186 App. Div. 755, 175 N.Y.S. 468 (1st Dep't 1919); Brill v. Brill, 148 App. Div. 63, 131 N.Y.S. 1030 (1st Dep't 1911).

263 King v. Barnes, 113 N.Y. at 480, 21 N.E. at 183.

264 N.Y. CIVIL SERV. LAW §§ 200 *et seq.* (McKinney Supp. 1971). Section 210(1) states:

> No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike.

265 Section 751(2)(a) states in part:

> Where an employee organization . . . wilfully disobeys a lawful mandate of a court of record or wilfully offer resistance to such lawful mandate, in a case involving or growing out of a strike in violation of subdivision one of section two hundred ten of the civil service law, the punishment for each day that such contempt persists may be by a fine fixed in the direction of the court. . . .

N.Y. JUDICIARY LAW § 751(2)(a) (McKinney Supp. 1971). The original amendment of section 751 did not permit the court to utilize "discretion" in determining the amount of the fine. A second amendment, permitting discretion, was enacted as L. 1971, ch. 503, § 17, and became effective on June 17, 1971.

266 [W]here it appears that public employees . . . threaten or are about to do, or are doing, an act in violation of section two hundred ten of this article, the chief executive officer of the government involved shall (a) forthwith notify the chief legal officer . . . and (b) provide such chief legal officer with such facilities . . . as will enable the chief legal officer to carry out his duties under this section. . . . If an order of the court enjoining or restraining such violation does not receive compliance, such chief legal officer shall forthwith apply to the supreme court to punish such violation under section seven hundred fifty of the judiciary law.

N.Y. CIVIL SERV. LAW § 211 (McKinney Supp. 1971). The statute was construed as compelling application to the court in Board of Educ. v. Shanker, 54 Misc. 2d 941, 283 N.Y.S.2d 548 (Sup. Ct. N.Y. County), *aff'd*, 29 App. Div. 634, 286 N.Y.S.2d 453 (1st Dep't 1967).

pality, having suffered the economic hardships resulting from both a public employee strike and mandatory litigation expenses, would see any contempt penalties ultimately imposed paid to the state.

Precisely this situation arose in *Goodman v. State of New York*.[267] Plaintiff Goodman, as Clerk of the Supreme Court in New York County, became the holder of contempt fines resulting from proceedings instituted by the city against certain public employee unions.

Both the city and state claimed the funds, the former because they resulted from litigation which the city was required to initiate,[268] the latter because the funds were punitive and not compensatory in nature. The court acknowledged that while the city was clearly the aggrieved party, the proceedings under which the fines were imposed were criminal and therefore the fines were not considered compensatory. But the court viewed the city as acting in a dual capacity, not only as the aggrieved party but also as the party statutorily compelled to institute the proceedings:

> In this posture, with the local governmental body . . . mandated to the expenses of litigation and protection of the rights of its constituent public, it lies implicit in the statute [Judiciary Law § 751(2)] that fines collected thereunder belong to that governmental body responsible for enforcement of the statute.[269]

Though subject to criticism, the Taylor Law was at least designed to allow governmental operation to proceed unimpeded by public employee strikes or threats of strike. When those operations are impeded, the parties who primarily suffer are the governmental body against which the strike is called and its constituents. Under the facts in *Goodman*, it would clearly be inequitable to allow the state, which has suffered minimally in comparison to the city, to recover the penalties.

SUMMARY PROCEEDING

Summary proceeding: Purpose of summary proceeding frustrated by litigious party.

The fundamental purpose of summary judgment is to avoid the necessity of a trial.[270] In the landlord-tenant area, the proceeding by which such judgment is obtained was "designed to provide the land-

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267 67 Misc. 2d 877, 325 N.Y.S.2d 680 (Sup. Ct. N.Y. County 1971).

268 *See* note 266 *supra*.

269 67 Misc. 2d at 878, 325 N.Y.S.2d at 681.

270 Smyser, *The Summary Judgment—Ascertainment of the Genuine Issue*, 16 S.D.L. REV. 20 (1971).