St. John's Law Review

Volume 46, May 1972, Number 4 Article 39

Summary Proceeding: Purpose of Summary Proceeding Frustrated by Litigious Party

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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).

lord with a simple, expeditious and inexpensive means of regaining possession of his premises for non-payment of rent."[271]

Two such summary proceedings for non-payment and one holdover summary proceeding were involved in *Hotel Martha Washington Management Co. v. Swinick*.[272] The defendant-tenant did not file an answer in any of these actions, but rather moved in a federal district court to divest the state court of its jurisdiction, alleging that she would be denied her constitutional rights in the civil court. In each instance the landlord filed a petition in the district court to secure an order remanding the proceedings to the civil court. Ultimately, the landlord's motions were granted.

On the day of trial, the tenant "made a demand for the appointment of counsel, leave to file a jury demand and for the issuance of subpoenas."[273] In the two non-payment proceedings the court denied this request on the ground that the tenant had demonstrated that she was cognizant of the risks involved in not answering the complaints.[274] The court declared that

> [t]his is not a case where the failure to interpose an answer was the result of mistake, oversight or other inadvertent failure. On the contrary, it was with the knowledge that her time to file an answer was limited. . . .[275]

It therefore concluded that "she should bear the consequences of [her] course of action. . . ."[276]

In the holdover proceeding, which was "based on the claim that the tenant's term had expired and on the further claim that her conduct [was] objectionable. . . ,"[277] the court denied the tenant's application for counsel, jury and subpoenas only in relation to her affirmative defenses and counterclaims, which the court deemed unassertable. The fact that the tenant failed to file an answer did not, however, shift

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271 Emray Realty Corp. v. Jackson, 12 Misc. 2d 62, 174 N.Y.S.2d 618 (App. T. 1st Dep't 1958).

272 67 Misc. 2d 390, 324 N.Y.S.2d 687 (N.Y.C. Civ. Ct. N.Y. County 1971).

273 *Id.* at 394, 324 N.Y.S.2d at 692.

274 In the tenant's second petition to the federal court to divest the state court of jurisdiction, she stated:

> I am due in Civil Court of the County of New York . . . pursuant to the notice of petition and petition in that I must put in an answer within five (5) days after service upon me.

Id.

275 *Id.* at 395, 324 N.Y.S.2d at 693.

276 *Id.* at 396, 324 N.Y.S.2d at 694; *see* Gooden v. Galashaw, 42 Misc. 2d 8, 247 N.Y.S.2d 186 (N.Y.C. Civ. Ct. N.Y. County 1964).

277 67 Misc. 2d at 398, 324 N.Y.S.2d at 695.

the burden of proof from the landlord in establishing the truth of his claims. With respect to these issues the tenant was permitted a jury trial and the issuance of subpoenas. The court further observed that the legal aid society would represent the plaintiff if she were found eligible.[278]

As previously indicated, the primary purpose of a summary judgment is to save the time and expense ordinarily entailed in a trial. Its speed is its justification. Any attempt by a litigant to thwart this purpose should be seriously considered. The tenant in the case under consideration has continually frustrated attempts to obtain summary judgments. These tactics have consumed a substantial amount of judicial time and energy and have subjected the courts and judges to much abuse. Since 1968 the tenant has instituted twenty-two actions naming as defendants "the Sheriff of New York City, the District Attorney of New York County, a judge of the Criminal Court, the Police Department, the Department of Social Welfare and the Criminal Court."[279] The tenant claimed as justification that "she want[ed] security."[280]

The court recommended that an action be brought in the supreme court to ascertain whether the tenant should be punished for contempt and enjoined from bringing any action in the criminal court, civil court, or supreme court without authorization. No such action has yet been brought.

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278 At the outset, the court noted that the tenant was relying upon Hotel Martha Washington Management Co. v. Swinick, 66 Misc. 2d 833, 322 N.Y.S.2d 139 (App. T. 1st Dep't 1971), *discussed in The Quarterly Survey*, 46 ST. JOHN'S L. REV. 355, 368 (1971). The appellate term therein reversed the civil court and allowed the tenant "'to defend . . . as a poor person, without liability for the payment of jury fees and with leave to apply to the Court below for issuance of subpoenas and the appointment of counsel.'" 67 Misc. 2d at 391, 324 N.Y.S.2d at 689, *quoting* Hotel Martha Washington Management Co. v. Swinick, 66 Misc. 2d 833, 322 N.Y.S.2d 139 (App. T. 1st Dep't 1971).

279 67 Misc. 2d at 406, 324 N.Y.S.2d at 703.

280 *Id.* at 410, 324 N.Y.S.2d at 707.