CPLR 602: Court Reestablishes Prerequisites to Consolidation

St. John's Law Review
ARTICLE 6 — JOINDER OF CLAIMS, CONSOLIDATION AND SEVERANCE

CPLR 602: Court reestablishes prerequisites to consolidation.

Much has been said about the broad discretion of the courts to order the consolidation of actions involving a common question of law or fact. Indeed, consolidation is not prevented by the fact that one action is at law and the other in equity; or by the fact that the parties in the two actions are not identical; or by the fact that all of the issues raised are not common. Consolidation “is not only a saving in time, trouble, and expense to the parties and the state, but a preventive of the injustice which may result from divergent decisions in each separate case.”

Despite the ostensible ease with which actions may be joined, counsel should not be lulled into a false sense of security. As recently ruled by the Second Department in Rubin v. Grossman, consolidation is not automatic; certain prerequisites must be met. In Rubin an order granting a motion to consolidate a personal injury action and a wrongful death action was reversed on the ground that plaintiff failed to produce “medical proof showing the causal relationship between the accident and the subsequent death...”

At first glance, the actions in Rubin would seem to invoke similar questions of law and fact, particularly defendant’s liability for the infliction of the initial injury. Nonetheless, courts have stated in the past, and now again in Rubin, that some medical proof is required to show the causal connection between the injury and the death; conjecture on the part of the movant is insufficient. Obviously, the medical affidavits need not be so extensive as to prove the causation, but they must, at least, connect the death to the injury.

ARTICLE 21 — PAPERS

CPLR 2103(a): Licensing statute upheld by lower court.

In an apparent attempt to control the “systematic and widespread abuses so prevalent in the field of process serving,” the New York