

CPLR 602: Court Reestablishes Prerequisites to Consolidation

St. John's Law Review

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Recommended Citation

St. John's Law Review (1970) "CPLR 602: Court Reestablishes Prerequisites to Consolidation," *St. John's Law Review*: Vol. 45 : No. 2 , Article 14.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol45/iss2/14>

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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.⁴⁶ Indeed, consolidation is not prevented by the fact that one action is at law and the other in equity;⁴⁷ or by the fact that the parties in the two actions are not identical;⁴⁸ or by the fact that all of the issues raised are not common.⁴⁹ 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."⁵⁰

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*,⁵¹ 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. . . ."⁵²

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,⁵³ 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,"⁵⁴ the New York

⁴⁶ CPLR 602.

⁴⁷ See *Philip Shlansky & Brother, Inc. v. Grossman*, 273 App. Div. 544, 78 N.Y.S.2d 127 (1st Dep't 1948).

⁴⁸ See *Edelstein v. Hacker*, 152 N.Y.S.2d 525 (Sup. Ct. Westchester County 1956).

⁴⁹ See *Moore v. Parks*, 29 App. Div. 2d 912, 289 N.Y.S.2d 877 (4th Dep't 1968).

⁵⁰ *Philip Shlansky & Brother, Inc. v. Grossman*, 273 App. Div. 544, 566, 78 N.Y.S.2d 127, 128 (1st Dep't 1948).

⁵¹ 34 App. Div. 2d 680, 310 N.Y.S.2d 395 (2d Dep't 1970) (mem.).

⁵² *Id.*, 310 N.Y.S.2d at 396 (emphasis added).

⁵³ See *Augenbraun v. G&B Distrib.*, 17 App. Div. 2d 785, 232 N.Y.S.2d 635 (1st Dep't 1962); cf. *McCarthy v. Downes*, 17 App. Div. 2d 919, 233 N.Y.S.2d 402 (1st Dep't 1962).

⁵⁴ *ABC Process Serving Bureau Inc. v. City of New York*, 63 Misc. 2d 33, 34, 310 N.Y.S. 2d 859, 861 (Sup. Ct. N.Y. County 1970). See also *N.Y. Times*, Oct. 14, 1969, at 60, col. 1.