

# UJCA 208: Appellate Court Prevents Inadvertent Waiver of Amount in Counterclaim Exceeding \$1,000

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## UNIFORM JUSTICE COURT ACT

*UJCA 208: Appellate court prevents inadvertent waiver of amount in counterclaim exceeding \$1,000.*

UJCA 208,<sup>202</sup> unlike its counterpart in other lower-court acts,<sup>203</sup> limits jurisdiction over counterclaims for money only to \$1,000. Since the section further provides that the amount in excess of \$1,000 is deemed waived, the practitioner is cautioned not to interpose such a counterclaim unless he is willing to relinquish a part thereof.<sup>204</sup> Although the court rescued an apparently unwary counterclaimant in *Harlee-Mitchell Camp Corp. v. Granite Lake Camp Inc.*,<sup>205</sup> it would be hazardous to rely upon the availability of such relief in the future.

In *Harlee* the plaintiff camp (Harlee) commenced an action in the supreme court to recover damages for fraud and malicious conduct. Simultaneously, the defendant camp brought an action to recover real property in the justice court. Harlee interposed as a counterclaim the same cause of action which was pending in the supreme court and moved to consolidate the actions. The appellate division affirmed an order denying the motion to consolidate but modified it to the extent of severing Harlee's counterclaim in the justice court action.

The appellate division was of the opinion that Harlee did not intend to waive that portion of its counterclaim which exceeded \$1,000. For, if that were Harlee's intention, it would not have commenced an action in the supreme court on the same claim. Relying upon CPLR 407 and CPLR 603 the court exercised sound discretion in preventing Harlee from proceeding with its counterclaim to its own detriment.<sup>206</sup> Nonetheless, the foresight to protect claims is exercised more properly by the practitioner than by the court.

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<sup>202</sup> UJCA 208 prescribes:

The court shall have jurisdiction of any counterclaim whose subject matter would be within its jurisdiction if sued upon separately. If a counterclaim for money only in excess of \$1,000 is interposed, the court may entertain it to the extent of \$1,000 but it shall be deemed waived as to the excess above \$1,000.

The waiver provision applies even if the counterclaim arises out of the same transaction or occurrence upon which the plaintiff's claim is grounded. 29A MCKINNEY'S JUDICIAL LAW, UJCA § 208, supp. commentary at 74 (1967).

<sup>203</sup> Other lower courts have unlimited jurisdiction over a counterclaim for money only. See CCA 208; UCCA 208; UDCA 208.

<sup>204</sup> The safer procedure is to commence an action in a court possessing jurisdiction over the claim and to move for an order consolidating the actions under CPLR 602(b). 29A MCKINNEY'S JUDICIAL LAW, UJCA § 208, supp. commentary at 74 (1967).

<sup>205</sup> 35 App. Div. 2d 551, 313 N.Y.S.2d 184 (2d Dep't 1970).

<sup>206</sup> See also *Home Gas Co. v. Banach*, 26 App. Div. 2d 758, 272 N.Y.S.2d 183 (3d Dep't 1966).