CPLR 1007: Impleader Permitted in Summary Proceeding

St. John's Law Review
CPLR 1007: Impleader permitted in summary proceeding.

In Blackman v. Walker a landlord commenced a summary proceeding to evict respondent for nonpayment of rent. In turn, respondent impleaded the County Department of Social Services which had withheld payment of her shelter allowance. Respondent contended that violations of the Social Services Law by the landlord constituted a defense to the eviction proceeding and that it was because of alleged infractions that the department had withheld her allowance. Thus, respondent concluded that, inasmuch as the real dispute was between the landlord and the department, the latter should be made a party to the proceedings. The Nassau County District Court agreed.

Under the CPA, impleader was not permitted in a summary proceeding. Nevertheless, recent cases have recognized both the utility and justifiability of utilizing certain procedural devices contained in the CPLR in a summary proceeding. Attempts at impleader in such proceedings are rare, partially because in circumstances such as Blackman the department has undertaken to assist the tenant in preparing his defense. Where, for one reason or another, the department's aid is not forthcoming, impleader insures fairness to all parties. Although the landlord is certainly entitled to prompt consideration of his claim, it is manifestly unfair to deny the tenant every opportunity to pursue fully his defense.

CPLR 1201: Court vacates default judgment against party incapable of adequately protecting his rights.

In Rand v. Lockwood plaintiff was granted judgment upon the defendant Tiffany's default in appearing. After Tiffany died, his executor sought an order vacating the judgment on the ground that at the time the action was commenced and at the time the default judgment was

25 Id. § 143-b(2); see also Farrell v. Drew, 19 N.Y.2d 486, 227 N.E.2d 824, 281 N.Y.S.2d 1 (1967).
27 See CPLR 103(b).