

CPLR 1007: Impleader Permitted in Summary Proceeding

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ARTICLE 10 — PARTIES GENERALLY

CPLR 1007: Impleader permitted in summary proceeding.

In *Blackman v. Walker*²³ 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 proceeding²⁴ and that it was because of alleged infractions that the department had withheld her allowance.²⁵ 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.²⁶ Nevertheless, recent cases have recognized both the utility and justifiability²⁷ of utilizing certain procedural devices contained in the CPLR in a summary proceeding.²⁸ 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.²⁹ 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.

ARTICLE 12 — INFANTS AND INCOMPETENTS

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

In *Rand v. Lockwood*³⁰ 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

²³ 65 Misc. 2d 138, 316 N.Y.S.2d 930 (Dist. Ct. Nassau County 1970).

²⁴ N.Y. Soc. SERVICES LAW § 143-b(5)(b) (McKinney 1966).

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).

²⁶ *Edaviel Corp. v. Boykin*, 205 Misc. 622, 129 N.Y.S.2d 149 (1st Dep't 1954).

²⁷ See CPLR 103(b).

²⁸ See, e.g., *Metropolitan Life Ins. Co. v. Carroll*, 43 Misc. 2d 639, 251 N.Y.S.2d 693 (App. T. 1st Dep't 1964) (motion for summary judgment).

²⁹ See, e.g., *Farrell v. Drew*, 19 N.Y.2d 486, 227 N.E.2d 824, 281 N.Y.S.2d 1 (1967) (department appeared as *amicus curiae*); *Caravetto v. Springfield*, 54 Misc. 2d 759, 283 N.Y.S.2d 298 (Dist. Ct. Suffolk County 1967) (employees of department served as witnesses).

³⁰ 65 Misc. 2d 182, 316 N.Y.S.2d 950 (Sup. Ct. Nassau County 1970).