St. John's Law Review

Volume 44
Number 1 *Volume 44, July 1969, Number 1*

Article 9

CPLR 107: Judicial Praise for Official Forms

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ARTICLE 1 — SHORT TITLE; APPLICABILITY AND DEFINITIONS

CPLR 107: Judicial praise for official forms.

The Judicial Conference of the State of New York has adopted an appendix of twenty-nine official forms pursuant to the authority vested in it by CPLR 107. Intended to reduce judicial burdens,[1] these abbreviated forms meet the minimum due process requirement of notice. Facts heretofore stated in lengthy and detailed pleadings are now to be sought in pre-trial discovery,[2] although the forms were issued with the caveats that their use might be limited to actions "localized in both time and space"[3] and that there is "an emerging line of authority in the state which seems to establish a more rigorous standard of specificity in pleading unusual or complex cases as well as cases falling within unsettled areas of substantive law."[4]

In *Pritzker v. Falk*,[5] a suit in negligence arising out of the collision between a motorcycle and an automobile, what appears to be the first attack upon the new forms was waged and quelled. The complaint was challenged on the grounds of insufficiency because it stated little more than the date and place of the accident, the names of the parties, an allegation of the defendant's negligence and the damages sought. In spite of its seeming insufficiency and departure from cumbersome common-law pleadings, the court held that the complaint, as served, conformed in every way to the requirements of Official Form No. 12 and was sufficient as a matter of law. The court noted its belief that the widespread use of the abbreviated forms will serve to ease its work load. In conclusion, Judge Shapiro stated that "[w]hile not all change is progress, this reform would appear to be most salutary."[6]

Although *Pritzker* is an indication of judicial acceptance of the new forms, it should not be viewed as a conclusive determination of their validity. It is to be remembered that while an action for the negligent operation of a motor vehicle is a fairly simple one and is generally "localized in both time and place," situations may arise where

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1 *See* 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 107.01 (1968). Specifically, the forms were adopted to encourage uniformity of usage, brevity and simplicity; to avoid disputes over form; and, to reduce the time spent by judges and clerks in reviewing papers. *Id.*

2 *CPLR Appendix of Official Forms*, Form 12, comment, at 21 (Bender Pamphlet ed. 1968).

3 *Id.*

4 New York Judicial Conference Report 145-81 (Twelfth Annual Report 1967), *cited in* 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 107.01 (1968).

5 58 Misc. 2d 989, 297 N.Y.S.2d 622 (Sup. Ct. Queens County 1969).

6 *Id.* at 991, 297 N.Y.S.2d at 625.

more detailed pleading is required. Notwithstanding Judge Shapiro's praise, the practitioner is well advised to continue to heed the issuer's caveats.

ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

CPLR 302: Jurisdiction not obtained in defamation action because defamation did not arise from transaction of business.

CPLR 302(a)(1) enables a plaintiff to obtain jurisdiction over a non-domiciliary defendant where the cause of action arises out of the "transaction of business" by the defendant within the state. While the "long-arm" statute may not be used to obtain jurisdiction in defamation actions based on tortious acts committed within or without the state and resulting in injury within the state,[7] no such limitation exists where such a cause of action arises from the *transaction of business* within the state.[8]

In a recent libel action,[9] defendants moved to dismiss the complaint for lack of jurisdiction. In granting the motion, the Supreme Court, New York County, indicated that while the defendant had transacted business within the state, the claim did not arise from such transaction of business. The defendant's contacts with the state included the direct solicitation of advertising amounting to only slightly more than three percent of its advertising revenue. Furthermore, the average daily circulation in New York of defendant's newspaper, the Baltimore Sun, was less than three percent of its total average daily circulation. The court decided that the acts of publication and circulation which gave rise to plaintiff's complaint occurred in Baltimore.

If the cause of action had been brought by a New York subscriber for failure to deliver the paper, jurisdiction would obviously have been acquired by service under CPLR 302(a)(1), since the cause of action would then have arisen out of the transaction of business by the defendant within the state.

ARTICLE 10 — PARTIES GENERALLY

CPLR 1021: Motion to dismiss for failure to substitute denied pending the appearance of the adversary.

CPLR 1021 provides that "[i]f the event requiring substitution occurs before judgment and substitution is not made within a reason-

7 CPLR 302(a)(2) & (3).

8 CPLR 302(a)(1).

9 American Radio Ass'n v. A.S. Abell Co., 58 Misc. 2d 483, 296 N.Y.S.2d 21 (Sup. Ct. N.Y. County 1968).