

## CPLR 3213: Appellate Division Requires Pleadings in Appeal of Action Based upon an Instrument for the Payment of Money

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## ARTICLE 32 — ACCELERATED JUDGMENT

*CPLR 3213: Appellate division requires pleadings in appeal of action based upon an instrument for the payment of money.*

The purpose of CPLR 3213 is to provide a speedy and effective means of securing judgments on claims presumptively meritorious, *i.e.*, actions based upon judgments or instruments for the payment of money only. CPLR 3213 provides that "the plaintiff may serve with the summons a notice of motion for summary judgment and supporting papers in lieu of a complaint. . . . If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise." The "unless" clause in the last sentence of the statute was added to allow the court to require pleadings in the event that the moving and answering papers did not define the issues satisfactorily.<sup>35</sup>

In *Parkhurst v. Stockhausen*<sup>36</sup> the record on appeal was incomplete in that it did not contain the defendant's answering papers on the motion for summary judgment. The appellate division held, in reversing, that "in the absence of formal pleadings or all of the affidavits used on the application for summary judgment, there is no basis for ascertaining the 'issues'. . . ."<sup>37</sup>

The court determined, as an exercise of its proper discretion, that a complaint should be served and the action should proceed from that point in the usual course. This would have the effect of setting the issues to be adjudicated. It is an alternative available to the court under the section and, in this instance, was the only logical step in the progression of the controversy to final litigation. Without this procedure, the issues could not be crystallized, as the court would not see opposing papers. The court's action exemplifies the contingency allowed for by the inclusion of the "unless" clause in this section.

*Collateral Estoppel: Glaser v. Huette overruled.*

In an action arising out of an automobile collision, P1 (passenger in car number one) sued D1 (driver of car number one) and D2 (driver of car number two) for negligence, and recovered from both drivers. In a subsequent suit D1 sued D2 for personal injuries. In finding that the prior decision was dispositive on the issue of culpability, the New York Court of Appeals *held* that the doctrine of collateral estoppel precluded D1 from maintaining the second action since the control-

<sup>35</sup> SIXTH REP. 339.

<sup>36</sup> 31 App. Div. 2d 622, 295 N.Y.S.2d 973 (1st Dep't 1968).

<sup>37</sup> *Id.* at 622, 295 N.Y.S.2d at 974.