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CPLR 407: Personal Injury Counterclaim Denied in Summary Proceeding Where "Inordinate Delay" Would Result

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Although the *General Motors* court recognized that CPLR 302 (a)(3) was primarily intended to provide jurisdictional bases for the traditional products liability or negligence action,[64] it somewhat reluctantly admitted that the statute applied to conversion cases as well.[65] The court also noted that the main purpose of the statute, *i.e.*, to assist a domiciliary in prosecuting litigation in local courts at minimal expense, had been circumvented here due to the plaintiff's large corporate size and its resultant ability to litigate in various other jurisdictions, including Pennsylvania. Nevertheless, the court believed that the corporate size of the plaintiff was immaterial in view of the express language of the statute.

If large corporations have indeed found a "loophole" in our long-arm statute, it will require legislative action to remedy the defect. However, the objection voiced by the court applies to the many other causes of action for which jurisdiction can be obtained pursuant to 302 because large corporations by their very nature generally have the ability to select the forum in which they wish to prosecute a claim against a nondomiciliary. And, if the corporations themselves are subjected to jurisdiction wherever they do business, it would clearly be inequitable to deny them the use of the same courts which are available to parties bringing actions against them.

ARTICLE 4 — SPECIAL PROCEEDINGS

CPLR 407: Personal injury counterclaim denied in summary proceeding where "inordinate delay" would result.

In *Great Park Corp. v. Goldberger*,[66] the court recognized that a

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[64] 59 Misc. 2d at 749, 300 N.Y.S.2d at 762; *see* Homburger & Laufer, *Expanding Jurisdiction over Foreign Torts: The 1966 Amendment of New York's Long-Arm Statute*, 16 BUFF. L. REV. 67, 70 (1966), where it is recognized that the expansion of products liability throughout the nation

> did much to stimulate the rapid growth of long-arm jurisdiction in the United States: widening products liability as a matter of substantive law would be of limited help to a victim who is denied access to a convenient forum. Hence, the 1966 change is designed to let these plaintiffs freely enter the "tortgate" of New York's jurisdiction instead of turning many of them away and forcing still others to squeeze awkwardly through the half-opened doors of the business clause.

[65] It would appear that the phrase "commits a tortious act," as employed in CPLR 302(a)(2) and (3) was *specifically* intended to encompass conversion cases. Before the enactment of the CPLR, the Advisory Committee proposed that 302(a)(2) be limited to "tortious acts within the state only if the acts result in *physical injury* to a person or property." SECOND REP. 39 (emphasis added). However, this limitation was expressly rejected: "Under the former proposal a conversion of property within the state would not have been included as an act of providing a basis for jurisdiction. It is now included." FINAL REP. A-156.

[66] 41 Misc. 2d 988, 246 N.Y.S.2d 810 (N.Y.C. Civ. Ct. N.Y. County 1964).

summary proceeding is, by its very nature, designed to speedily determine whether a landlord is entitled to the immediate possession of his real property when he alleges that a tenant's rent is due and owing.[67] Although the proceedings are meant to be expeditious, the tenant generally may interpose any equitable defense in the nature of a counterclaim. But when the counterclaim bears no relationship to the question of whether the landlord may gain immediate possession of the property, the courts will not permit such interposition.[68] Accordingly, it has been suggested that the court must "have broad powers of severance where the joinder or interposition of such claims would interfere with the summary nature of the special proceeding."[69]

Of course, in terms of general practice, a defendant may usually counterclaim for any cause of action he could prosecute against the plaintiff in an independent proceeding.[70] By sanctioning the liberal use of counterclaims, the legislature sought to encourage parties to adjudicate all their disputes in one action.[71] However, the courts possess wide discretionary powers which enable them to order a severance of a counterclaim pursuant to CPLR 603 for convenience or to avoid prejudice.

Similarly, CPLR 407 grants a court-wide latitude when a severance in summary proceedings is sought. Thus, in *Tankoos-Yarmon Hotels, Inc. v. Smith*,[72] the plaintiff-landlord made a motion to sever the defendant-tenant's personal injury counterclaim in the amount of $25,000. The Appellate Term, First Department, reversing the New York City Civil Court, held that the counterclaim was unrelated to the landlord's claim of possession and rent, and, if permitted, would cause an "inordinate delay." It therefore granted the motion to sever. A different result might encourage tenants to utilize counterclaims so freely that the very purpose of the summary device would be defeated.

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67 For a more complete factual discussion of this case see *The Biannual Survey*, 38 ST. JOHN'S L. REV. 406, 456-57 (1964).

68 Great Park Corp. v. Goldberger, 41 Misc. 2d 988, 989, 246 N.Y.S.2d 810, 812. (N.Y.C. Civ. Ct. N.Y. County 1964).

69 THIRD REP. 159; *see also* 1 WK&M ¶ 407.01 (1966).

70 H. WACHTELL, NEW YORK PRACTICE UNDER THE CPLR 125 (2d ed. 1966). The CPLR specifically provides for liberal use of counterclaims. *See* CPLR 203(c). The test as to the sufficiency of a counterclaim is whether it will itself support an independent cause of action against the plaintiff in the same capacity in which he sues. (*E.g.*, as an executor, an individual or a corporation.) *See* Geddes v. Rosen, 22 App. Div. 2d 394, 255 N.Y.S.2d 585 (1st Dep't), *aff'd*, 16 N.Y.2d 816, 210 N.E.2d 362, 263 N.Y.S.2d 10 (1965).

71 *See generally* 7B MCKINNEY'S CPLR 3019, supp. commentary 166 (1969).

72 58 Misc. 2d 1072, 299 N.Y.S.2d 937 (App. T. 1st Dep't 1968).