

Art. 6, § 19(f): Status of Litigation in Supreme Court Affected by Proceedings in New York City Civil Court Even Though Civil Court Transferred the Action Because It Lacked Jurisdiction

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questions or the underlying equities. Inasmuch as the present approach appears unsatisfactory, two alternatives are submitted: (1) the legislature "affirm" *Logan* and, realizing its implications, extend the time period within which to commence the special proceeding; or, (2) the Court seize upon the earliest opportunity to distinguish *Logan* on its facts.

NEW YORK STATE CONSTITUTION

Art. 6, § 19(f): Status of litigation in supreme court affected by proceedings in New York City Civil Court even though civil court transferred the action because it lacked jurisdiction.

The mandatory transfer provision contained in article 6, section 19(f) of the state constitution⁶¹ is self-executing;⁶² hence, the burden of effectuating the intent behind that section falls upon the judiciary. And, although the language of the section is explicit, delicate questions of interpretation surround its implementation.⁶³ For example, in *Kemper v. Transamerica Insurance Co.*,⁶⁴ the New York City Civil Court was confronted with the problem of determining the effect, if any, of previous proceedings in the civil court upon the status of the litigation in the supreme court.

In *Kemper*, the defendant, already in default, moved in the New York City Civil Court to dismiss the complaint on the ground that plaintiff's claim exceeded the court's monetary jurisdiction. Recognizing the validity of the defendant's assertion,⁶⁵ the court, nevertheless, denied the motion; instead, it directed, *sua sponte*, that the action be transferred to the supreme court.

Concerning the stage at which the action should reach the supreme court, the civil court held that despite the absence of legislative guidance the status of the case should be no different than if it had

⁶¹ N.Y. CONST. art. 6, § 19(f) (1962) provides that the court "shall transfer to the supreme court . . . any action . . . over which the said courts for the city of New York have no jurisdiction." (Emphasis added.)

⁶² Cf. *Frankel Assoc., Inc. v. Dun & Bradstreet, Inc.*, 45 Misc.2d 607, 257 N.Y.S.2d 555 (Sup. Ct. N.Y. County 1965).

⁶³ Many of the problems of construction arise because the CPLR was drafted prior to the judiciary article of the state constitution, and, in several aspects, they are inconsistent. 7B MCKINNEY'S CPLR 325, commentary 622-23 (1963). Nevertheless, the constitutional provisions take precedence over the CPLR. *Garland v. Raunheim*, 29 App. Div. 2d 383, 288 N.Y.S.2d 417 (1st Dep't 1968).

⁶⁴ 61 Misc. 2d 7, 304 N.Y.S.2d 515 (N.Y.C. Civ. Ct. N.Y. County 1969).

⁶⁵ Although the complaint in *Kemper* stated several causes of action, the court held that it alleged one primary right of the plaintiff and one wrong by the defendant. Therefore, the court viewed the complaint as stating one cause of action which exceeded its jurisdiction.

been transferred by motion in the supreme court.⁶⁶ In the latter instance, CPLR 326(b) governs, and subsequent proceedings are had in the supreme court "as if the action had been originally commenced there and no process, provisional remedy or other proceedings taken in the court from which the action was removed [is] invalid as the result of removal." Hence, the civil court reasoned that if a similar approach were not adopted when an identical motion was made before it, a lesser measure of relief would be provided and the constitutionally directed procedure might rarely be utilized.⁶⁷

The New York City Civil Court cannot exercise jurisdiction over a cause of action for money damages exceeding \$10,000.⁶⁸ Prior to the constitutional amendment, unless an application for a transfer was promptly made to the court with the requisite monetary jurisdiction,⁶⁹ the practice was for the court in which the action was brought to dismiss the complaint.⁷⁰ However, *Kemper* illustrates that the state constitution now gives the civil court the power to transfer causes of action seeking damages in excess of its jurisdiction to the supreme court rather than dismiss the complaint. Inasmuch as the transfer can be effectuated sua sponte by the civil court,⁷¹ the practitioner is encouraged not to ignore a summons and complaint even though that court patently lacks jurisdiction.⁷² For, a defendant who fails to serve his responsive pleadings may have no alternative but to submit to the bothersome procedure of moving to open his default in the supreme court.

ARTICLE 2 — LIMITATIONS OF TIME

CPLR 203(e): Plaintiff permitted to add second cause of action arising out of the same occurrence even though statute of limitations had run.

CPLR 203(e) declares that claims interposed by an amended pleading relate back to the date of the original pleading unless the

⁶⁶ CPLR 325(a) & (b).

⁶⁷ 61 Misc. 2d at 10, 304 N.Y.S.2d at 519.

⁶⁸ N.Y. CONST. art. 6, § 15 (1962).

⁶⁹ See *Taylor v. Goodrich*, 284 App. Div. 928, 134 N.Y.S.2d 202 (4th Dep't 1954).

⁷⁰ See *Vigil v. Cayuga Constr. Corp.*, 185 Misc. 676, 54 N.Y.S.2d 94 (N.Y.C. Civ. Ct.), *aff'd*, 185 Misc. 680, 55 N.Y.S.2d 909 (App. T. 1st Dep't), *aff'd*, 269 App. Div. 934, 58 N.Y.S.2d 343 (1st Dep't 1945).

⁷¹ Cf. *Keegan v. Queens County Jockey Club*, 34 Misc. 2d 958, 228 N.Y.S.2d 729 (Sup. Ct. Kings County 1962). On the other hand, CPLR 325 requires a motion by the plaintiff. 7B MCKINNEY'S CPLR 325, commentary 623 (1963).

⁷² Authority that the action must be commenced in a court that had jurisdiction at least over the kind of action brought by the plaintiff is no longer controlling. 7B MCKINNEY'S CPLR 325, commentary 623 (1963). Clearly, therefore, the rationale in *Kemper* is not limited to claims in excess of the monetary jurisdiction of the city court.