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CPLR 3221: Judgment by Consent in Property Damage Action May Be Alleged in Later Personal Injury Action

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in the underlying action, he may nevertheless find himself the subject of disciplinary proceedings by the Bar Association for his negligence.¹⁰³

CPLR 3221: Judgment by consent in property damage action may be alleged in later personal injury action.

CPLR 3221 allows a defendant in any other than a matrimonial action to serve plaintiff a written offer to allow judgment to be entered against him. If the plaintiff accepts, judgment is entered accordingly. The section further provides that "[a]n offer of judgment shall not be made known to the jury."

In *Card v. Budini*,¹⁰⁴ the plaintiff in a personal injury action alleged in her complaint a judgment entered, in accordance with CPLR 3221, against defendant in a prior property damage action arising out of the same accident. The appellate division, third department, reversed the supreme court's decision to strike out the allegation. The court carefully noted the language of 3221 that an offer of judgment shall not be made known to the jury. The court interpreted this to mean that the prohibition lay in using an offer which had not been reduced to a judgment. The court stated, further, that the words "the jury" indicated not any jury in a subsequent action but the jury in the case where an offer had been made and rejected. The judgment in the property damage action could, therefore, be properly pleaded in the present action.¹⁰⁵

It was early established by the Court of Appeals that a judgment entered by a stipulation of the parties was conclusive in a later action involving the same issues.¹⁰⁶ The rationale of the Court was that a judgment by consent or by express stipulation should not be given any less conclusive effect than a judgment by default.¹⁰⁷ Furthermore, the Court of Appeals has expressed the opinion that the plaintiff as well as the defendant can make use of a prior judgment.¹⁰⁸

With this foundation, then, it appears that any settlement or compromise which is reduced to a judgment will be given conclu-

¹⁰³ See *In re Satz*, 12 App. Div. 2d 232, 209 N.Y.S.2d 1009 (1st Dep't 1961); *In re Shelton*, 7 App. Div. 2d 135, 181 N.Y.S.2d 14 (1st Dep't 1959).

¹⁰⁴ 29 App. Div. 2d 35, 285 N.Y.S.2d 734 (3rd Dep't 1967).

¹⁰⁵ See WACHTELL, *NEW YORK PRACTICE UNDER THE CPLR* 316 (2d ed. 1966).

¹⁰⁶ *Crouse v. McVickar*, 207 N.Y. 213, 100 N.E. 697 (1912). In that case a stipulation entered into by the parties in an action to determine who was entitled to an estate, that each would share equally, was conclusive in a later action by one of the parties grounded upon fraud.

¹⁰⁷ See *Canfield v. Elmer E. Harris & Co.*, 252 N.Y. 502, 170 N.E. 121 (1930).

¹⁰⁸ *B. R. DeWitt, Inc. v. Hall*, 19 N.Y.2d 141, 225 N.E.2d 195, 278 N.Y.S.2d 596 (1967).

sive effect in later actions involving the same parties concerning the same issues. Therefore, an attorney who desires to concede an insignificant property damage claim should strive for a settlement and discontinuance of the action lest he endanger a subsequent personal injury defense.¹⁰⁹

Res Judicata: Collateral attack on Mexican divorce.

In *Schoenbrod v. Siegler*,¹¹⁰ the parties to the dispute had been married in the British West Indies. They subsequently entered into a separation agreement in New York, and a month later were divorced in Mexico, the husband appearing personally and the wife by attorney. The separation agreement was incorporated into the Mexican decree. Later, the husband discovered that the marriage had been performed illegally and instituted an action in the Mexican court to vacate the judgment of divorce; but he failed because Mexico does not allow a divorce decree to be reopened for the admission of new evidence. In the meantime the wife had instituted a suit against the husband for arrears due under the separation agreement, and the husband in turn instituted the instant action to have the separation agreement declared null and void. Evidence was introduced to show that while Mexico would not permit a direct attack on its divorce decree, it would allow a collateral attack on the separation agreement incorporated into the decree. The wife's motion to dismiss was ultimately denied by the Court of Appeals which held that the Mexican divorce was not *res judicata* as to the validity of the marriage.

The Court of Appeals had previously held in *Statter v. Statter*¹¹¹ that a separation decree conclusively established the existence of a valid marriage and therefore barred a subsequent action for annulment. The Court in that case stressed the need for stability and security in judgments and, therefore, if new evidence were discovered, the proper procedure would be to vacate the original decree.

The Court in the instant case, while recognizing that the conclusive effect on the validity of a marriage is the same when the first judgment is for divorce rather than separation,¹¹² and while recognizing that it made no difference, because of comity, that the

¹⁰⁹ See *Schenker v. Bourne*, 278 App. Div. 699, 102 N.Y.S.2d 928 (2d Dep't 1951); *Johnson v. Tyler*, 275 App. Div. 726, 87 N.Y.S.2d 177 (3d Dep't 1949).

¹¹⁰ 20 N.Y.2d 403, 230 N.E.2d 638, 283 N.Y.S.2d 881 (1967).

¹¹¹ 2 N.Y.2d 668, 143 N.E.2d 10, 163 N.Y.S.2d 13 (1957).

¹¹² See *Frost v. Frost*, 260 App. Div. 694, 23 N.Y.S.2d 754 (1st Dep't 1940), where a Nevada divorce was held to conclusively establish the existence of the marriage, thus barring a subsequent action to declare the marriage void.