

# CPLR 7101: Jus Tertii Relevant on Question of Relative Possessory Interests of Parties to Action

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## ARTICLE 63 — INJUNCTION

*CPLR 6301: Full Faith and Credit given without regard to finality.*

A court's power to affect litigation in the court of a sister state is limited to its power to restrain parties over whom it has jurisdiction. A court never enjoins another court. Practically speaking, however, a restraining order against a party may be viewed as an interference with the jurisdiction of the court in which the party has been enjoined from proceeding and there is danger of sister court retaliation with a counter-injunction. For these reasons a court will rarely enjoin the prosecution of an action in another court.<sup>139</sup>

In *Tinker v. Gorman*,<sup>140</sup> after the plaintiffs had commenced their action in New York to impress a constructive trust on land in Vermont, the defendant brought an action in Vermont to quiet title. The New York plaintiffs (the Vermont defendants) moved in the Vermont action for a stay but this motion was denied. The plaintiffs then moved in the New York action to enjoin the Vermont plaintiff from further proceedings in Vermont.

Viewing the motion as an attempt by plaintiffs to receive a second determination of what had already been decided in Vermont, special term, New York County, denied the motion and gave full faith and credit to Vermont's denial of the stay. The court explained that the mere precedence in time of the New York action was not sufficient to warrant an injunction.<sup>141</sup> More significantly, the court recognized that the full faith and credit clause is not limited to final judgments but is applicable to judicial proceedings without limitation as to finality.<sup>142</sup>

Probably the strongest practical reason for the decision is that the land in question was located in Vermont and New York would not wish to interfere with a Vermont court's decision as to Vermont land.

## ARTICLE 71 — RECOVERY OF CHATTEL

*CPLR 7101: Jus tertii relevant on question of relative possessory interests of parties to action.*

Section 1093 of the CPA, which provided for the defense of title in a third person, was omitted from Article 71 of the CPLR, recovery of chattels.<sup>143</sup>

<sup>139</sup> 7 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶6301.27 (1967).

<sup>140</sup> 56 Misc. 2d 673, 289 N.Y.S.2d 827 (Sup. Ct. N.Y. County 1968).

<sup>141</sup> See *Merritt-Chapman & Scott Corp. v. Mutual Benefit Life Ins. Co.*, 237 App. Div. 70, 260 N.Y.S. 374 (1st Dep't 1932).

<sup>142</sup> See *Barber v. Barber*, 323 U.S. 77, 87 (1944).

<sup>143</sup> See 7A WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶7101.06 (1967); 11 CARMODY-WAIT 2d, CYCLOPEDIA NEW YORK PRACTICE ¶82:139 (1967).

In *Bulman v. Bulman*,<sup>144</sup> an action for replevin of certain stock certificates and dividend checks, the defendant interposed a separate defense based on ownership in the "Estate of Virginia Bulman" and a counterclaim asking that the estate be adjudged the owner of the certificates and checks. The plaintiff moved, *inter alia*, to strike the defense and dismiss the counterclaim. Special term, Rensselaer County, granted this portion of plaintiff's motion, holding that the nature of the action was such that the plaintiff should succeed if his possessory right was superior to that of the defendant. The court pointed out that if a defendant is truly interested in the rights of the true owner he may use interpleader or give notice to the true owner so that he can intervene under CPLR 7103.

If a defendant would be liable to a third party if he is ordered to give possession of a chattel to plaintiff, should he be able to plead the title of the third party and his permissive connection therewith? If the defendant's claim rests on some basis other than his own title then a statement of that basis should be made.<sup>145</sup> In such a situation defendant would only be showing a stronger possessory right than the plaintiff.

#### ARTICLE 75 — ARBITRATION

*CPLR 7501: Commercial arbitration held to be improper medium for determining violations of state antitrust laws.*

In *Matter of Aimcee Wholesale Corp.*,<sup>146</sup> the Court of Appeals was presented with the issue of whether or not disputes raising questions of state law antitrust violations should be submitted to arbitration when the parties have previously agreed to submit all controversies arising out of or relating to their commercial dealings to arbitration.

In holding that, in spite of the presence of a broad arbitration agreement, alleged violations of state antitrust laws are non-arbitrable disputes and solely for a court to determine, the Court stated "the enforcement of our State's antitrust policy should not be left within the purview of commercial arbitration."<sup>147</sup> Commercial arbitration was characterized as an improper instrument for the determination of antitrust controversies "which are of such extreme importance to all of the people of this State."<sup>148</sup>

<sup>144</sup> 57 Misc. 2d 320, 292 N.Y.S.2d 572 (Sup. Ct. Rensselaer County 1968).

<sup>145</sup> 7A WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶7101.08 (1967).

<sup>146</sup> 21 N.Y.2d 621, 237 N.E.2d 223, 289 N.Y.S.2d 968 (1968).

<sup>147</sup> *Id.* at 624, 237 N.E.2d at 225, 289 N.Y.S.2d at 971.

<sup>148</sup> *Id.*, 237 N.E.2d at 224, 289 N.Y.S.2d at 969.