St. John's Law Review

Volume 43, October 1968, Number 2 Article 39

Collateral Estoppel: Court of Claims Interprets DeWitt Requirements

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In light of this liberal trend, the appellate division, second department, recently decided *Bartolone v. Niagara Car & Truck Rentals, Inc.*[150] Plaintiff was the owner and operator of a car involved in a collision with an automobile owned by a corporate defendant and operated by an individual defendant. Personal injury actions, brought by passengers in plaintiff's car, against plaintiff and defendants resulted in judgments against the three defendants. Plaintiff thereupon brought an action against the owner and operator of the other vehicle. Defendants contended that they should be permitted to plead res judicata, since the issues of negligence and contributory negligence were determined in the other actions. In a memorandum opinion, the court held that *Glaser v. Huette* "is presently the law of New York and we apply it to this case." [151]

Collateral Estoppel: Court of Claims interprets DeWitt *requirements.*

In *Alberto v. State*,[152] the court of claims was afforded the opportunity to interpret the requirements for the use of collateral estoppel, as posited by *B. R. DeWitt, Inc. v. Hall*,[153] and *Cummings v. Dresher*.[154] Claimant had been involved in an accident near the Tappan Zee Bridge, where his car skidded into an automobile operated by one Siccardi. Siccardi, and the passengers in his car, brought a personal injury action against claimant in federal court. There claimant sought to prove that the State had been negligent by maintaining the road in a dangerous condition. However, his offer of proof was rejected on the ground that the State was not a party to the action, and could not, therefore, defend itself. The jury found claimant negligent and returned a verdict for the plaintiffs.

In the instant action, the State moved to dismiss claimant's assertion of negligence under CPLR 3211(a)(5) on the ground that the findings in the federal court were res judicata as to the issues presented.

In rejecting the State's contention, the court reasoned that *DeWitt* limited the application of collateral estoppel to cases in which a party has had the opportunity to present *all* evidence available in order to exonerate himself. It was said that

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[150] 29 App. Div. 2d 689, 288 N.Y.S.2d 312 (2d Dep't 1968).
[151] *Id.* at 690, 288 N.Y.S.2d at 313.
[152] 56 Misc. 2d 235, 289 N.Y.S.2d 14 (Ct. Cl. 1968).
[153] 19 N.Y.2d 141, 225 N.E.2d 195, 278 N.Y.S.2d 596 (1967). For a further discussion of *DeWitt*, see *The Quarterly Survey of New York Practice*, 42 ST. JOHN'S L. REV. 128, 150 (1967).
[154] 18 N.Y.2d 105, 218 N.E.2d 688, 271 N.Y.S.2d 976 (1966).

'[w]here a full opportunity has been afforded to a party to the prior action and he has failed to prove his freedom from liability or to establish liability or culpability on the part of another, there is no reason for permitting him to retry these issues.' [155]

Clearly, claimant was not afforded the opportunity to show that it was the State's negligence which forced his car to skid. Moreover, the State could not be made a party to the former action since its liability can only be determined by the court of claims, which has exclusive jurisdiction thereof.

Collateral Estoppel: DeWitt *principle held inapplicable in fellow passenger situation.*

In *B. R. DeWitt, Inc. v. Hall*,[156] the Court of Appeals, for the first time, allowed the offensive use of collateral estoppel. Two requirements were posited:

1. it must be unquestioned that the original action had been vigorously defended, and;
2. the second cause of action must be derivative of the first.[157]

While the Court did not explicitly define "derivative action," the editors of the *Survey* have assumed it to encompass the owner-operator relationship.

The question left unanswered by *DeWitt* was whether a passenger-driver relationship would be sufficiently derivative to invoke collateral estoppel. An affirmative answer to this question logically extends the offensive use of the doctrine to the train wreck hypothetical.[158]

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[155] 19 N.Y.2d at 146, 225 N.E.2d at 198, 278 N.Y.S.2d at 600, *quoting* Cummings v. Dresher, 18 N.Y.2d 105, 107-08, 218 N.E.2d 688, 689, 271 N.Y.S.2d 976, 977 (1966).

[156] 19 N.Y.2d 141, 225 N.E.2d 195, 278 N.Y.S.2d 596 (1967).

[157] For a ufrther discussion of the *DeWitt* holding, see *The Quarterly Survey of New York Practice*, 42 ST. JOHN'S L. REV. 128, 150 (1967).

[158] A rain crashes with 100 passengers aboard. 50 passengers in separate negligence actions are denied recovery. The fifty-first passenger, possibly because he is an infant, is awarded a verdict from a sympathetic jury. The defendant could not use the fifty adjudications of its innocence against the remaining forty-nine plaintiffs, since they had not litigated the issue of defendant's negligence themselves. However, a broad interpretation of the doctrine of collateral estoppel could allow these 49 plaintiffs to receive summary judgment on the issue of defendant's negligence, based upon the single recovery by the infant plaintiff. *See* 32 BROOKLYN L. REV. 428, 431 (1966); Currie, *Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine*, 9 STAN. L. REV. 281 (1957).