

CPLR 6301: Injunction May Be Granted in Special Proceeding

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financing statement, was a matter of public record and discovery proceedings were, therefore, unnecessary. Since the right of possession was in the petitioner, and not in the debtor, the levy by respondent was ineffective to transfer the right of possession.¹²⁶

The decision in *Iselin* illustrates with clarity the all-pervasive character of U.C.C. liens and, to a certain extent, establishes not only the priorities that will result when conflict with the rights of a judgment creditor arises, but also that CPLR 5239 is the medium through which such priority disputes are to be resolved.¹²⁷

ARTICLE 63 — INJUNCTION

CPLR 6301: Injunction may be granted in special proceeding.

In *City Commission on Human Rights v. Regal Gardens, Inc.*,¹²⁸ by order to show cause, petitioner, alleging discrimination, sought a preliminary¹²⁹ injunction pursuant to CPLR 6301 to restrain respondents from renting or otherwise disposing of a certain apartment.

Before addressing itself to the merits of the complaint, the court had to remove one technical hurdle argued by the respondents, viz., that the court could not entertain the application since it was not made in a pending action.¹³⁰ In answering this contention, the court pointed out that Section B1-8.0(4) of the Administrative Code of the City of New York authorizes the use of a show cause order under the facts of the present case as a "prosecution in the form of a special proceeding."¹³¹ The court also cited CPLR 103(c) which directs that, when the parties are before the court, it should not dismiss solely because the proceeding "is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution." However, the injunction was denied because the Commission had no knowledge of the merits of the complaint and the only basis of the charge of discrimination was a hearsay statement by the complainant.

¹²⁶ *William Iselin & Co. v. Burgess & Leigh Ltd.*, 52 Misc. 2d 821, 276 N.Y.S.2d 659 (Sup. Ct. N.Y. County 1967).

¹²⁷ See 7B MCKINNEY'S CPLR 5239, *supp. commentary* 86 (1967).

¹²⁸ 53 Misc. 2d 318, 278 N.Y.S.2d 739 (Sup. Ct. Queens County 1967).

¹²⁹ 7B MCKINNEY'S CPLR 6301, *commentary* 127 (1963). Note the difference between preliminary injunction (with notice) and temporary restraining order (without notice).

¹³⁰ CPLR 6301 makes the remedy of preliminary injunction available "in any action . . ."

¹³¹ CPLR 103(b) provides that "[a]ll civil judicial proceedings shall be prosecuted in the form of an action, *except where prosecution in the form of a special proceeding is authorized*" (emphasis added).