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Article 34

CCA § 201: No Jurisdiction to Award Money Judgment for Fraudulent Conveyance

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with orders issued after such production.[153] Thus, this decision, by denying enforcement under section 245, effectively frustrates the provision of section 240 permitting child support orders in habeas corpus proceedings.

NEW YORK CITY CIVIL COURT ACT

CCA § 201: No jurisdiction to award money judgment for fraudulent conveyance.

While the Civil Court of the City of New York is given jurisdiction over actions for the recovery of money where the amount sought to be recovered does not exceed $10,000,[154] it has no general equity jurisdiction.[155] This limit upon jurisdiction is closely adhered to by the court.[156]

A recent example of the stringency of the jurisdictional limitation is *Circulation Associates, Inc. v. Mother's Manual, Inc.*[157] There, plaintiff alleged that a transfer to the defendant by the judgment debtor of its customer lists and contracts was fraudulent under Article 10 of the Debtor and Creditor Law, since it was made while the judgment debtor was insolvent. Plaintiff sought a money judgment in lieu of a decree setting aside the conveyance.

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[153] CPLR 7006(a) provides that the "person upon whom the writ . . . is served . . . shall make a return to [the court which issued the writ] . . . and, if required by [the court] . . . produce the body of the person detained. . . ." This language suggests that only initial compliance with the writ, *i.e.*, production, is contemplated. This conclusion is supported by referring to cases under the predecessor of the present section, CPA § 1248. *See, e.g., In re* Sedgwick, 211 App. Div. 60, 206 N.Y.S. 850 (1st Dep't 1924); Application of Hebo, 95 N.Y.S.2d 545 (Sup. Ct. N.Y. County 1950); People *ex rel.* Kniffin v. Knight, 184 Misc. 545, 56 N.Y.S.2d 108 (Sup. Ct. N.Y. County 1945).

[154] CCA § 202 provides that "the court shall have jurisdiction of actions and proceedings for the recovery of money, actions and proceedings for the recovery of chattels and actions and proceedings for the foreclosure of liens on personal property where the amount sought to be recovered or the value of the property does not exceed $10,000." *See generally* WACHTELL, NEW YORK PRACTICE UNDER THE CPLR 8-10 (2d ed. 1966).

[155] N.Y. CONST. art. VI, § 15(b); CCA §§ 202-05; Petrides v. Park Hill Restaurant, 265 App. Div. 509, 39 N.Y.S.2d 645 (1st Dep't 1943); Kwoczka v. Dry Dock Sav. Bank, 52 Misc. 2d 67, 275 N.Y.S.2d 156 (N.Y.C. Civ. Ct. 1966).

[156] *See, e.g.*, Kwoczka v. Dry Dock Sav. Bank, 52 Misc. 2d 67, 275 N.Y.S.2d 156 (N.Y.C. Civ. Ct. 1966), where the court was requested to return a sum of money to plaintiff's account from a Totten Trust created by her late husband. The court stated that it could not return the money because to do so it would have to cancel the trust, an essentially equitable action.

[157] 53 Misc. 2d 225, 278 N.Y.S.2d 137 (N.Y.C. Civ. Ct. 1967).

The court granted judgment for the defendant, holding that it lacked jurisdiction since plaintiff's claim was equitable in nature.[158] The court found that Article 10 of the Debtor and Creditor Law dealing with fraudulent conveyances was, both in origin and upon principle, equitable in character. Plaintiff's request for the ordinary remedy of money damages as opposed to the equity remedy of setting the conveyance aside, the court stated, did not alter the basically equitable nature of the action.

The present case suggests a reminder to attorneys that they be especially clear in framing their pleadings so as to accurately reflect the nature of the remedy they seek. Furthermore, in a case where the law-equity distinction is somewhat beclouded, the practitioner should not rely on form pleadings, but, rather, should draft his own. As an additional safeguard against mistakenly dismissing an action where the pleadings lack clarity, the court might ask the plaintiff's attorney to submit a signed memorandum affirming that he is requesting solely legal relief, before deciding on whether there is jurisdiction over the subject matter.

MVAIC

MVAIC: No exception to filing requirements except those found in statute.

In *Jones v. Motor Vehicle Accident Indemnification Corporation*,[159] the Court of Appeals held that the failure of an injured party to file a claim with MVAIC within ninety days after an accident with an uninsured driver, as prescribed by Section 608(a) of the Insurance Law,[160] *absolutely* precludes recovery from MVAIC. Thus, the only exceptions to this ninety-day filing requirement are those expressly provided in the statute, viz., "where the qualified person is an infant or is mentally or physically incapacitated or is deceased, and by reason of such disability or death is prevented from filing as provided. . . ." [161]

This decision upholds an inequity of the law. Section 608 provides three sets of filing requirements to cover three situations: first, where the victim is in an accident with an uninsured driver;

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[158] 53 Misc. 2d at 226, 278 N.Y.S.2d at 140. *See* Davis v. Wilson, 150 App. Div. 704, 135 N.Y.S. 825 (1st Dep't 1912).

[159] 19 N.Y.2d 132, 224 N.E.2d 883, 278 N.Y.S.2d 382 (1967).

[160] For a general discussion of filing requirements for recovery from state accident funds (New York as well as others) *see generally* Annot., 2 A.L.R.3d 760 (1965). For a general discussion of MVAIC *see generally* Note, *MVAIC Six Years Later—A Practical Appraisal*, 39 ST. JOHN'S L. REV. 321 (1965).

[161] N.Y. INS. LAW § 608.