CPLR 602: Consolidation of Actions Pending in Different Inferior Courts Refused by the Supreme Court

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ARTICLE 5 — Venue

CPLR 503(c): Corporation's office as filed with Secretary of State recognized proper for venue purposes.

Under prior law, an authorized foreign corporation was not considered a resident for venue purposes, but was treated as any other nonresident. CPLR 503(c) dictates that proper venue is to be laid, for domestic corporations or authorized foreign corporations, in the county where its "principal office" is located. In General Precision, Inc. v. Ametek, Inc., the defendant sought a change of venue, claiming that the "principal office" for venue purposes of the plaintiff-corporation was as designated in the certificate filed with the Secretary of State. Defendant's contention was sustained despite the fact that the actual location of plaintiff's principal office was in a county different from the one designated in the certificate filed with the Secretary.

Most authorities anticipated such a result due to the interplay of CPLR 503(c) and BCL § 102(a)(10). The latter section defines "office of a corporation" as the office registered with the Secretary of State, notwithstanding the existence of another office which, in reality, is the principal office. Although CPLR 503(c) refers to "principal office" as opposed to "office of the corporation," the court held these terms to be synonymous. Since this case is consistent with prior treatment of domestic corporations, little confusion is expected to arise. However, plaintiff's attorneys should bear this ruling in mind in order to maintain control of the setting of venue.

ARTICLE 6 — Joinder of Claims, Consolidation and Severance

CPLR 602: Consolidation of actions pending in different inferior courts refused by the supreme court.

It has long been established in New York that a court may order the consolidation of actions pending before it. In addition,
where an action is pending in either a supreme or county court, each has the power to remove to itself an action pending in any other court for the purposes of consolidation. Under the CPA, it was clear that no court possessed the power to consolidate actions pending in different courts of inferior jurisdiction but due to recent changes in the CPLR and the state constitution, the unavailability of such relief has been put in issue.

In Grimaldi v. Graziano, the defendants sought consolidation of two closely related actions pending respectively in Nassau County District Court and Kings County Civil Court. They moved in the supreme court, praying for removal of both actions to that court, for consolidation while there, and for an order remanding the consolidated action to the civil court. Movants contended that Article VI Section 19(a) of the New York Constitution authorized the legislature to empower the supreme court to effect removal in this situation. Therefore, by virtue of CPLR 325(b), which allows removal where "the court in which an action is pending does not have jurisdiction to grant the relief to which the parties are entitled . . .," this constitutional authorization was given the force of law. The supreme court rejected this argument, intimating that the legislature would have been far more explicit had it sought to effect so fundamental a change in procedure. Citing a noted text writer, the court acknowledged that the supreme court might have the power to grant such relief, but reiterated that even should it exist, it would best be left unexercised "as a matter of comity."

It is a stated purpose of the CPLR to facilitate the acquisition of consolidation and joint trials for the obvious purposes of expedit-
ing litigation and decongesting court calendars. The desirability
of such procedure notwithstanding, there are several substantial
considerations which justify the court's refusal to grant the relief
requested in the instant case. These include: (1) the general
propriety of allowing lower courts to administer their own litiga-
tion; (2) the policy against burdening the supreme court with
further administrative duties; and (3) the absence of guidelines
to determine under which circumstances consolidation should be
granted and to which inferior court the consolidated action should
be remanded.

It is submitted that, by a statute directed at the resolu-
tion of the aforementioned obstacles, the legislature could ex-
pand the availability of consolidation to encompass the situation
presented in the instant case. Whether this would be effected by
granting such power to the supreme court or, as would seem more
appropriate, to the respective departments of the appellate division,
it would be a procedural liberalization in accord with the basic
purposes of the CPLR.

ARTICLE 12—INFANTS AND INCOMPETENTS

CPLR 1201: Plaintiff must establish defendant's inability to defend
and nonfeasibility of instituting proceedings for the appointment of
a committee before a guardian ad litem will be appointed.

In Abrons v. Abrons,\(^6\) the trial court granted plaintiff's
motion to have a guardian ad litem appointed for the defendant.
The appellate division reversed, relying upon plaintiff's failure to
serve notice of the motion upon defendant,\(^6\) and upon the additional
grounds that plaintiff neither demonstrated defendant's incapacity
nor showed that the institution of proceedings for the appointment
of a committee was not feasible.

Under the CPA, it was provided that "a person of unsound
mind but not judicially declared incompetent may sue and be sued
in the same manner as any ordinary member of the community.\(^6\)
CPLR 1201, however, provides that "a person shall appear by a
guardian ad litem . . . if he is an adult defendant incapable of
adequately protecting his rights." By the incorporation of this
section in CPLR 321(a), there is a clear burden cast upon plaintiff

\(^6\) 24 App. Div. 2d 970, 265 N.Y.S.2d 381 (1st Dep't 1965).
\(^6\) Upon a motion for the appointment of a guardian ad litem, notice must
"be served upon the person who would be represented if he is more than
fourteen years of age and has not been judicially declared to be incompetent." 
CPLR 1202(b).
\(^6\) Anonymous v. Anonymous, 3 App. Div. 2d 590, 594, 162 N.Y.S.2d 984,
988 (2d Dep't 1957); see CPA § 236.