

# CPLR 603: Court Grants Separate Trial for Severable Issues

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authority from relying on a defense of failure to file properly a notice of claim.

#### ARTICLE 6—JOINDER OF CLAIMS, CONSOLIDATION AND SEVERANCE

*CPLR 603: Court grants separate trial for severable issues.*

Pursuant to CPLR 603, a trial court may on its own motion sever the issues in an action, and order a separate trial of any claim or of any separate issue for convenience or to avoid prejudice.

In *Hacker v. City of New York*,<sup>94</sup> the appellate division, first department, in interpreting CPLR 603, explained and expanded the procedure of granting separate trials of severable issues. In *Hacker*, an action for personal injuries, the parties stipulated that the issue of liability be tried by the court without a jury, in advance of the issue of damages. Having found for the plaintiff on the issue of liability, the court ordered the trial of damages to be placed on the calendar. The City then appealed and moved for a stay of the trial of damages pending this appeal. The instant court, in a unanimous opinion, held that defendant was entitled to appeal from the judgment on the separate issue of liability, and granted a stay of the trial of damages.

This decision was contrary to *Bliss v. Londner*,<sup>95</sup> wherein the second department held that although separate trials on the issues of liability and damages were proper, a finding on the liability issue was merely a ruling in the course of the trial, and an appeal from such a ruling must await the entry of a judgment. The instant court called the *Bliss* decision irrelevant because "we do not have in this case . . . 'one continuous proceeding' in which the issues of liability and damages proceed to determination together. . . ." <sup>96</sup> The court compared the appeal allowed here with an appeal from an order granting summary judgment and directing an assessment of damages.

#### ARTICLE 10—PARTIES GENERALLY

*Vouching in: Available where party sought to be vouched in is the defendant's indemnitor.*

Vouching in, the common-law ancestor of impleader,<sup>97</sup> is used today in cases where impleader cannot be used.<sup>98</sup> The defendant,

<sup>94</sup> 25 App. Div. 2d 35, 266 N.Y.S.2d 194 (1st Dep't 1966).

<sup>95</sup> 20 App. Div. 2d 640, 246 N.Y.S.2d 296 (2d Dep't 1964).

<sup>96</sup> *Hacker v. City of New York*, 25 App. Div. 2d 35, 37, 266 N.Y.S.2d 194, 196 (1st Dep't 1966).

<sup>97</sup> CPLR 1007.

<sup>98</sup> For example, impleader cannot be used where the third person is not subject to the jurisdiction of the court in which the defendant has been sued.