St. John's Law Review

Volume 41, October 1966, Number 2 Article 41

CPLR 6301: Granting of Preliminary Mandatory Injunction

St. John's Law Review

decrease the value to be derived from an appendix by encouraging the inclusion of material unnecessary to the questions sought to be reviewed.

Whichever course is chosen, the court's control over the adequacy of the appendix would be effectively maintained while, at the same time, the appellant would initially avoid the serious sanction of an affirmance without consideration of the merits. Thus, harsher penalties might defeat the purpose of CPLR 5528 by encouraging the careful advocate to submit an unreasonably lengthy appendix in order to avoid the extreme consequence of a mistaken belief that only a lesser portion of the record need be printed.

ARTICLE 63 — INJUNCTION

CPLR 6301: Granting of preliminary mandatory injunctions.

Preliminary mandatory injunctions are rarely granted, especially if the relief given is the same in fact or in effect as that which would result after a trial. However, in *Graham v. Board of Supervisors*,[257] the court found sufficient circumstances to warrant the granting of this "extraordinary" [258] remedy.

Mandatory injunctions are less frequently granted than prohibitory injunctions. The issuance of a mandatory injunction is usually rationalized as a means of preserving the status quo or preventing irreparable injury to the complainant. Compelling action and preserving status quo are not incompatible terms. The classic statement on the compatability of the two was made by Judge Taft of the United States Circuit Court in *Toledo, A. A. & N.M. Ry. v. Pennsylvania Co.*:

> The office of a preliminary injunction is to preserve the status quo until, upon final hearing, the court may grant full relief. Generally this can be accomplished by an injunction prohibitory in form, but it sometimes happens that the status quo is a condition not of rest, but of action, and the condition of rest is exactly what will inflict the irreparable injury upon complainant, which he appeals to a court of equity to protect him from. In such a case courts of equity issue mandatory writs before the case is heard on its merits.[259]

As a general rule, in addition to showing that the status quo is jeopardized by a failure to act and that there is danger of irreparable injury, it must also be shown that the complainant

---

[257] 49 Misc. 2d 459, 267 N.Y.S.2d 383 (Sup. Ct. Erie County 1966).

[258] People *ex rel.* McGoldrick v. Follette, 199 Misc. 492, 98 N.Y.S.2d 893 (Sup. Ct. Ulster County 1950).

[259] 54 Fed. 730, 741 (N.D. Ohio 1893).

has a clear right to the permanent relief demanded.[260] Finally, there is the general precautionary requirement that where the temporary relief sought gives the litigant that which he seeks ultimately, it is "to be granted, if at all, very sparingly and only when urgent necessity is clearly shown." [261]

In *Graham*, the complainant applied for temporary relief pending the trial of an action seeking to declare unconstitutional the present apportionment of members of the Erie County Board of Supervisors. The court found that equity warranted the granting of the temporary injunction. Unless the Board was compelled by a temporary mandatory injunction to prepare a new apportionment plan in preparation for the November 1966 elections, the ultimate relief sought would be frustrated for one additional year. "Such a constitutional deprivation must not be tolerated for one full year if it can reasonably be avoided."[262] Furthermore, in light of recent United States Supreme Court decisions[263] and recent reapportionment cases in New York,[264] the court concluded that the complainant had demonstrated a clear legal right to ultimate relief on the basis of the alleged population disparities.[265] "The limits of that relief will be determined only after trial." [266]

Graham thus typifies the detailed examination utilized by the courts before granting the "extraordinary" remedy of a temporary mandatory injunction.

DOMESTIC RELATIONS LAW

Dom. Rel. Law § 244: CPLR 2222 inapplicable to arrears judgment in matrimonial action.

In *St. Germain v. St. Germain*,[267] the court held that the general authority in CPLR 2222 authorizing a party to docket

---

[260] Begleiter v. Moreland, 33 Misc. 2d 118, 225 N.Y.S.2d 577 (Sup. Ct. N.Y. County 1961). *Accord*, Matthes v. Collyer, 32 Misc. 2d 224, 223 N.Y.S.2d 280 (Sup. Ct. Westchester County 1961); Stebbins v. McNulty, 29 Misc. 2d 351, 220 N.Y.S.2d 975 (Sup. Ct. Albany County 1961).

[261] James v. Lyon, 226 N.Y.S.2d 642 (Sup. Ct. Westchester County 1962).

[262] Graham v. Board of Supervisors, 49 Misc. 2d 459, 468, 267 N.Y.S.2d 383, 393 (Sup. Ct. Erie County 1966).

[263] WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964); Reynolds v. Sims, 377 U.S. 533 (1964); Baker v. Carr, 369 U.S. 186 (1962).

[264] Treiber v. Lanigan, 48 Misc. 2d 434, 264 N.Y.S.2d 797 (Sup. Ct. Oneida County 1965); Augóstini v. Lasky, 46 Misc. 2d 1058, 262 N.Y.S.2d 594 (Sup. Ct. Broome County 1965); Shilbury v. Board of Supervisors, 46 Misc. 2d 837, 260 N.Y.S.2d 931 (Sup. Ct. Sullivan County 1965); Goldstein v. Rockefeller, 45 Misc. 2d 778, 257 N.Y.S.2d 994 (Sup. Ct. Monroe County 1965).

[265] Graham v. Board of Supervisors, *supra* note 262, at 467, 267 N.Y.S.2d at 392.

[266] *Ibid.*

[267] 25 App. Div. 2d 568, 267 N.Y.S.2d 789 (2d Dep't 1966).