

CPLR 3215(h): Amendment

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While this case concerned a counterclaim related to the main cause of action, a situation may arise where the defendant pleads a counterclaim unrelated to the plaintiff's cause of action. This situation may present a problem where, as in the instant case, jurisdiction is obtained over the defendant pursuant to New York's long-arm statute.⁸⁰

Under CPLR 302(b), the defendant's appearance gives the court personal jurisdiction only with respect to causes of action arising under CPLR 302(a). When, as in *Katz*, the defendant pleads a counterclaim related to the main claim, it is clear that he has not jeopardized this protection, since the plaintiff is similarly free to include causes of action related to the main claim. However, when the defendant pleads a counterclaim unrelated to the main claim, the court could reasonably consider this to be a waiver of this protection, and thus permit the plaintiff to amend his complaint to include causes of action similarly unrelated to CPLR 302. Alternatively, the court in such a case could limit the defendant's waiver and only allow the plaintiff to amend his complaint to include causes of action which are related to the defendant's counterclaim.

CPLR 3215(h): Amendment.

This new provision authorizes the court clerk to enter default judgment for failure to comply with a stipulation of settlement. It requires that the stipulation be entered into subsequent to the commencement of the action, and that it provide for entry of judgment without further notice to the other party. The stipulation must also be accompanied by both an affidavit as to the failure to comply with the terms of the stipulation, as well as with either a complaint or a concise statement reiterating the facts on which the claim was based.

CPLR 3219: Amendment.

This provision provides that an amount tendered in satisfaction of an asserted contract claim is to be deposited with the court clerk for safekeeping and that such amount is not to be deemed paid into court. The amendment provides that the clerk shall place such money "in the safe or vault of the court to be provided for the safekeeping thereof" until a disposition is made of it. It further provides that, if the amount is neither withdrawn by claimant nor returned to the depositor within a ten-day period, the amount will be deemed paid into court, and payment thereof will be made by the court clerk to the county treasurer or director

⁸⁰ Either CPLR 302 or its counterpart CCA § 404 might be employed.