

CPLR 3212(g): Effective Means of Striking Denials

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The court in *Koreska* (though the opinion in this regard is far from exhaustive) apparently balanced the above considerations and concluded that the position of the third-party defendant on the facts should not be permitted to prevent the summary judgment motion of the plaintiff. It is clear, however, that even if all those factors in favor of the third-party defendant's claim were passed upon by the court, the result might well have been the same, for the court has the power to dismiss a third-party claim even on the simple ground that its mere presence would unduly delay or prejudice the main claim.²¹⁴

CPLR 3212(g): Effective means of striking denials.

In *Cicci v. Lincoln Nat'l Bank*,²¹⁵ although plaintiff's motion for summary judgment was denied, the court granted his request to strike certain denials of the defendant pursuant to CPLR 3212(g).

The *Survey* reports this case only for a suggestion implicit within it which may serve a purpose akin to that served by the prior law motion to strike denials. If a summary judgment motion is denied or granted only in part, the court is empowered under 3212(g) to incorporate into its order whatever facts it deems uncontroverted (from a perusal of the summary judgment motion papers), to the end that those facts will be deemed established for all further purposes of the litigation.²¹⁶

Thus if a plaintiff feels that only certain denials in the answer are without merit, he need not be without remedy because he no longer has available the motion to strike denials.²¹⁷ He may move for summary judgment, perhaps even with the knowledge that he cannot prevail, with the aim of having the court, in its order denying the motion, list as established those denied facts which, on the summary judgment motion, the plaintiff can show to be without merit.

Therefore, although a motion to strike denials does not exist per se under the CPLR, the attorney is advised that the same effect may be achieved by the utilization of CPLR 3212(g) upon denial of a motion for summary judgment.²¹⁸

²¹⁴ CPLR 1010.

²¹⁵ 46 Misc. 2d 465, 260 N.Y.S.2d 100 (Syracuse City Ct. 1965).

²¹⁶ Compare 4 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3212.11 (1964), with 2 MOORE, FEDERAL PRACTICE ¶ 5620 (1964).

²¹⁷ *Chicago Dressed Beef Co. v. Gold Medal Packing Corp.*, 22 App. Div. 2d 1010, 254 N.Y.S.2d 717 (4th Dep't 1964); 3 WEINSTEIN, KORN & MILLER, *op. cit. supra* note 216, ¶ 3024.10.

²¹⁸ 4 WEINSTEIN, KORN & MILLER, *op. cit. supra* note 216, ¶ 3212.12.