

# CPLR 603: Court Has Discretion to Allow Severance in Furtherance of Convenience or to Avoid Prejudice

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The plaintiff contended, however, that the transfer was not made pursuant to the CPLR, but instead, was made pursuant to Article 6, Section 19(a) of the New York State Constitution.<sup>64</sup> Plaintiff further contended that, for transfers made pursuant to section 19(a), the court was authorized to render a judgment for \$10,000 under section 19(j) which provides that "each court shall exercise jurisdiction over any action or proceeding transferred to it pursuant to this section."<sup>65</sup>

The court in rejecting plaintiff's contention relied on section 19(k) which states that the legislature *may* provide that the judgment in a transferred action shall not be subject to the monetary limitation of the court to which it is transferred.<sup>66</sup> The obvious inference from section 19(k) is that since the legislature has not exercised this power, the lower courts are still subject to their jurisdictional monetary limitations in actions which are transferred to them.

The instant case illustrates the confusion caused by having provisions for transferring actions in both the constitution and the CPLR.

The practitioner should be extremely wary of the fact that although the great majority of county courts now have a monetary jurisdictional limitation of \$10,000, there are still eighteen counties which are subject to the limitation of \$6,000.

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

*CPLR 603: Court has discretion to allow severance in furtherance of convenience or to avoid prejudice.*

In *Mullett v. Sacco*,<sup>67</sup> plaintiff, a truck driver, sued defendants as joint tort-feasors for personal injuries sustained as a result of two separate collisions occurring within a matter of minutes. The defendants moved pursuant to CPLR 603 for a severance into two separate causes of action. The court granted the defendants' motion on the ground that it would be in the furtherance of convenience since separate charges to the jury would result in a more equitable assessment of damages. The court, by this action, established a joint trial under CPLR 602, and thus preserved the integrity of each

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<sup>64</sup> "The supreme court may transfer any action . . . except one over which it shall have exclusive jurisdiction which does not depend upon the monetary amount sought, to any other court having jurisdiction of the subject matter within the judicial department provided that such other court has jurisdiction over the classes of persons named as parties . . . ." N.Y. CONST. art. VI, § 19(a).

<sup>65</sup> N.Y. CONST. art. VI, § 19(j).

<sup>66</sup> N.Y. CONST. art. VI, § 19(k).

<sup>67</sup> 47 Misc. 2d 441, 262 N.Y.S.2d 796 (Sup. Ct. Onondaga County 1965).

cause of action. Thus, separate judgments may be rendered and each may be separately appealed.<sup>68</sup>

The courts will allow severance when separate issues of fact or law are involved.<sup>69</sup> Some sound judicial discretion, however, requires that a severance should be granted only when failure to sever places some substantial right in jeopardy.<sup>70</sup>

Impairment of such a substantial right is demonstrated in *Young v. Peone*,<sup>71</sup> wherein the plaintiff sued the owner and driver of a truck jointly for personal injuries. Upon the default of the driver, the plaintiff moved for a severance seeking a separate assessment of damages against the driver. Severance was denied because of the possibility that once the plaintiff secured a default judgment against the driver he would be able to sue the owner's insurer directly.<sup>72</sup> The court considered this prejudicial. The insurer was considered an equitable party because it would be obligated to pay the judgment. The prejudice would result from the fact that the insurer, who had appeared in the action on behalf of the owner, would be required to respond monetarily without an opportunity to defend on the merits.

However, a question arises which has not yet been resolved. With a view toward protecting the plaintiff's rights, it should be taken into consideration that a default judgment may greatly exceed the insurance coverage. Under these circumstances, there is no prejudice towards the insurer in allowing severance for the excess amount. If severance is disallowed, the plaintiff would be forced to wait, perhaps several years, until the trial before he could proceed against the defaulting defendant.<sup>73</sup> As a tentative solution, the court might utilize CPLR 5011 wherein it is empowered to "determine the rights of the parties in an action." Thus, the court could allow the default against the driver alone, and disallow any action on this judgment against the appearing insurer until it has had a chance to defend on the merits.

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<sup>68</sup> See *Pigott v. Field*, 10 App. Div. 2d 99, 101, 197 N.Y.S.2d 648, 651 (1st Dep't 1960); *Vidal v. Sheffield Farms Co.*, 208 Misc. 438, 141 N.Y.S.2d 82 (Sup. Ct. Bronx County 1955).

<sup>69</sup> See CPLR 603; 2 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 602.17 (1965).

<sup>70</sup> *C.W. Lauman & Co. v. State*, 2 Misc. 2d 693, 153 N.Y.S.2d 813 (Ct. Cl. 1956).

<sup>71</sup> 47 Misc. 2d 698, 263 N.Y.S.2d 156 (Sup. Ct. Seneca County 1965).

<sup>72</sup> N.Y. INS. LAW § 167(b).

<sup>73</sup> *Frenkel v. Kress Taxi, Inc.*, 208 Misc. 374, 144 N.Y.S.2d 413 (Sup. Ct. N.Y. County 1955).