

April 2013

CPLR 8303(a)(2): Award of Allowance in a Difficult Case

St. John's Law Review

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Recommended Citation

St. John's Law Review (1966) "CPLR 8303(a)(2): Award of Allowance in a Difficult Case," *St. John's Law Review*. Vol. 40 : No. 2 , Article 51.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol40/iss2/51>

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the discretion given under 8301(a)(12) and could have allowed, as properly taxable, the medical expert's fee.²³⁷

CPLR 8303(a)(2): Award of allowance in a difficult case.

Under Sections 1513 and 1514 of the Civil Practice Act, the court had discretion to grant an additional allowance to a party only where the case was both difficult *and* extraordinary. CPLR 8303(a)(2), however, permits the court to award an additional allowance to a party in a difficult *or* an extraordinary case. The court may use its discretion in order to provide defendants with an incentive for a proper defense²³⁸ and to reimburse plaintiffs for their difficulties in prosecuting, especially when the recovery in the action does not adequately compensate them.²³⁹

In *Italian Publications, Inc. v. Belli*,²⁴⁰ defendants, after plaintiff's complaint was dismissed on the merits, moved for an additional allowance under CPLR 8303(a)(2) alleging difficulties in preparing a proper defense. Defendants, as Italian nationals, had to overcome a language barrier in communicating with their attorneys, and were compelled to travel to the United States to prepare their case. The most significant hardship, however, was the fact that they found it necessary to produce an Italian national whose testimony completely exonerated them. The court, in awarding an additional allowance on the ground that the case was difficult, stressed the fact that the defendants could be reimbursed for travel expense of their star witness only on the basis of CPLR 8303(a)(2).

Prior to this decision, the courts have awarded additional allowances based upon the time and effort demanded in the preparation of a case,²⁴¹ the length and number of trials,²⁴² the time and money spent by the defendant or his attorney in traveling to trial²⁴³ and the use of numerous exhibits.²⁴⁴ Indeed, the courts have broad discretion in this area since there is no clear-cut definition

²³⁷ See 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 8301.24-8301.26 (1965).

²³⁸ 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 8303.01 (1965).

²³⁹ *Faulk v. Aware, Inc.*, 35 Misc. 2d 317, 231 N.Y.S.2d 270 (Sup. Ct. N.Y. County 1962); 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 8303.01 (1965).

²⁴⁰ 47 Misc. 2d 862, 263 N.Y.S.2d 267 (Sup. Ct. N.Y. County 1965).

²⁴¹ *Bank of United States v. National City Bank*, 152 Misc. 562, 563, 273 N.Y. Supp. 826, 828 (Sup. Ct. N.Y. County 1934).

²⁴² 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 8303.14 (1965).

²⁴³ *Proctor v. Soulier*, 8 App. Div. 69, 71, 40 N.Y. Supp. 459, 461 (3d Dep't 1896).

²⁴⁴ *Town of North Hempstead v. Oelsner*, 148 App. Div. 779, 780, 133 N.Y. Supp. 319, 320 (2d Dep't 1912), *aff'd without opinion*, 208 N.Y. 626, 102 N.E. 1115 (1913).

of the term "difficult case"²⁴⁵ and the question must necessarily be determined on a case-by-case basis.²⁴⁶

UDCA § 204: District court has jurisdiction to determine right to possession although issue of title is raised.

*Mohar Realty Co. v. Smith*²⁴⁷ involved a summary proceeding, in the District Court of Suffolk County, to recover possession of realty. Defendant, raising title as an issue, obtained a dismissal on the ground of lack of subject matter jurisdiction. The supreme court unanimously reversed, holding that the district court has jurisdiction to entertain summary proceedings to recover possession of real property and that the defense involving a question of title did not divest the court of jurisdiction.

Of course, the district courts have no jurisdiction over real property actions, including actions to determine title. But the courts do have jurisdiction of *summary proceedings* concerning real property and they are not ousted from their jurisdiction merely because one of the parties raises an issue of title. When questions of title are raised in summary proceedings, the courts only have to determine whether the relationship of landlord and tenant exists, and then they can award possession to the party entitled to the premises.²⁴⁸ In such cases, title is considered only collaterally in issue and the courts may pass upon it to determine which party has the present right to possession. As long as the main issue, therefore, concerns the recovery of possession, the courts also may pass upon the collateral issue of title.²⁴⁹

CCA § 212: Reinstatement of evicted tenant.

Section 212 of the New York City Civil Court Act states: "in the exercise of its jurisdiction the court shall have all of the powers that the supreme court would have in like actions and proceedings." This provision was not intended to increase or diminish the jurisdiction of the court.²⁵⁰ This construction, however,

²⁴⁵ *Addamo v. Scaturro*, 41 Misc. 2d 60, 244 N.Y.S.2d 836 (N.Y. City Civil Ct. 1963).

²⁴⁶ See 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 8303.12 (1965).

²⁴⁷ 46 Misc. 2d 849, 260 N.Y.S.2d 685 (App. Term 2d Dep't 1965).

²⁴⁸ *Drake v. Cunningham*, 127 App. Div. 79, 111 N.Y. Supp. 199 (2d Dep't 1908); *Quinn v. Quinn*, 46 App. Div. 241, 61 N.Y. Supp. 684 (2d Dep't 1899); *Dorsehel v. Burkly*, 41 N.Y. Supp. 389 (App. Term 1st Dep't 1896).

²⁴⁹ *E.g.*, *Blumenauer v. Richelson*, 219 App. Div. 462, 219 N.Y. Supp. 612 (3d Dep't 1927); *Hoffman v. Hoffman*, 212 App. Div. 531, 208 N.Y. Supp. 734 (4th Dep't 1925); *People v. Goldfogle*, 30 N.Y. Supp. 296 (Sup. Ct. N.Y. County 1894).

²⁵⁰ 29A MCKINNEY'S CCA § 212, commentary 68 (1963).