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

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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. Bell,*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

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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).
242 8 *WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE* ¶ 8303.14 (1965).
of the term "difficult case" and the question must necessarily be determined on a case-by-case basis.

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

Mohar Realty Co. v. Smith 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. 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.

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. This construction, however,

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