St. John's Law Review

Volume 39
Number 2 *Volume 39, May 1965, Number 2*

Article 32

May 2013

CPLR 1006: Use of Interpleader Does Not Preclude Jury Trial

St. John's Law Review

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Article 5 — Venue

Federal venue statute regarding national banking associations deemed controlling.

Do the general venue provisions of the CPLR apply to national banking associations? A recent New York supreme court case[79] has indicated that in an action against a national banking association, venue *must* be laid in the county where the bank is established. Hence, the general venue provision of the CPLR[80] which allows a plaintiff to commence an action in the county where he or the defendant resides is inapplicable. The New York court deemed itself bound by a recent decision of the United States Supreme Court[81] which construed the federal venue statute governing actions against national banks as being mandatory.[82] Thus, it was held that the defendant bank could compel a change of venue from Sullivan County, where it had neither an office nor a branch, to Nassau County, the location of its established office. In giving the federal venue statute a mandatory reading, the court settled the prior division of authority[83] on the question in New York.

Article 10 — Parties Generally

CPLR 1006: Use of interpleader does not preclude jury trial.

When an individual is faced with two or more related claims, he may have recourse to interpleader,[84] an equitable procedure

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[79] Blank v. Meadow Brook Nat'l Bank, 44 Misc. 2d 448, 254 N.Y.S.2d 56 (Sup. Ct. 1964).

[80] CPLR 503(a).

[81] Mercantile Nat'l Bank v. Langdeau, 371 U.S. 555 (1963).

[82] "Venue of suits. Actions and proceedings against any association under this chapter may be had . . . in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases." 13 Stat. 108 (1864), as amended, 18 Stat. 320 (1875), 12 U.S.C. § 94 (1958).

[83] *Compare* Talmadge v. Third Nat'l Bank, 91 N.Y. 531 (1883) (statute held permissive), *and* Chaffee v. Glens Falls Nat'l Bank & Trust Co., 204 Misc. 181, 123 N.Y.S.2d 635 (Sup. Ct. 1953), *aff'd mem.*, 283 App. Div. 694, 128 N.Y.S.2d 539 (1st Dep't 1954) (statute held permissive), *with* Rabinowitz v. Kaiser-Frazer Corp., 198 Misc. 312, 96 N.Y.S.2d 638 (Sup. Ct. 1950) (statute held mandatory), *and* Crofoot v. Giannini, 196 Misc. 213, 92 N.Y.S.2d 191 (Sup. Ct. 1949) (statute held mandatory), *and* Raiola v. Los Angeles First Nat'l Trust & Sav. Bank, 133 Misc. 630, 233 N.Y. Supp. 301 (N.Y. City Ct. 1929) (statute held mandatory).

[84] CPLR 1006. See generally Frumer, *On Revising the New York Interpleader Statutes*, 25 N.Y.U.L. Rev. 737 (1950); Comment, 39 Texas L. Rev. 632 (1961).

designed to avoid dual liability,[85] and multiplicity of litigation.[86] In the typical instance, the party concedes liability but is uncertain to whom payment should be made. He may commence an action against all prospective claimants[87] or, having himself been named a defendant, he may join other claimants by service of all prior pleadings in the action.[88]

An example of true interpleader is where two or more parties claim the proceeds of an insurance policy. The insurance company, the stakeholder, may be hesitant to pay any one of the claimants, fearing that at a later date it may be determined that it had acted wrongly and thus remain liable under the policy. The stakeholder may deposit the proceeds of the policy, the fund, with the court which would adjudicate the conflicting rights to the fund.

It has been held that such proceedings are purely equitable since the adversary claimants would have had no legal remedy as against each other, and therefore no right to a jury trial.[89]

The problem arose in *Geddes v. Rosen*[90] whether the use of interpleader by the original defendant in and of itself precluded both him and the interpleaded defendant from demanding a jury trial. Plaintiff had entered into a contract with one McEvoy whereby plaintiff was to be paid one-third the purchase price of certain corporate assets. The agreement provided that Rosen would hold the money in escrow and make payments to plaintiff up to a specified maximum. Geddes, claiming he had not been fully paid, brought an action against Rosen who interpleaded McEvoy. McEvoy set up as defenses to the contract, full payment, estoppel and accord and satisfaction. Plaintiff then filed a note of issue designating the action as an "accounting . . . for funds held in trust." The appellate division, in granting defendants' motion to place the action on the general jury calendar, held that the use of interpleader alone is insufficient to convert a legal cause of action into an equitable one and thus negate defendants' right to a jury trial.[91] Also, mere designation of the action by the plaintiff as an accounting does not change its basic nature from legal to equitable.

The majority distinguished this situation from true interpleader in that here no unconditional liability for a fixed sum existed. The action was basically founded upon a contract, the

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[85] Isacowitz v. Isacowitz, 17 Misc. 2d 29, 185 N.Y.S.2d 58 (Sup. Ct. 1959).

[86] Gulf Oil Corp. v. Helmus Constr. Corp., 23 Misc. 2d 816, 198 N.Y.S. 2d 855 (Sup. Ct. 1960).

[87] CPLR 1006(a).

[88] CPLR 1006(b). Such a procedure is termed "defensive" interpleader.

[89] Clark v. Mosher, 107 N.Y. 118, 14 N.E. 96 (1887).

[90] 22 App. Div. 2d 394, 255 N.Y.S.2d 585 (1st Dep't 1965).

[91] See Keating v. Astor Theatre Corp., 277 App. Div. 52, 97 N.Y.S.2d 843 (1st Dep't 1950).

construction of which was necessary for the determination of the rights and liabilities of the parties. The court stated that it was the nature of the cause of action, rather than the form of the pleadings or the use of interpleader procedure, which determines whether a cause is legal or equitable, and correspondingly, whether a jury trial is available.[92]

In a vigorous dissent, Mr. Justice Breitel concluded that "proceedings in the nature of interpleader, because of their origin in equity, do not permit of a right to a jury trial. . . ."[93] Also, the statutory provision for trial by jury[94] applies, in his opinion, only to cases where execution may be obtained against the assets of the judgment debtor. He indicated that this case involved a definite fund and that general execution thus would not issue against the escrowee.

The majority opinion appears consonant with the modern theory of practice and pleadings in a merged system. The basic reason remaining for distinguishing between legal and equitable causes of action is to determine whether a trial by jury is available. In the *Geddes* decision, a complete contractual default by the interpleaded defendant would have provided plaintiff with a strictly legal remedy, *i.e.*, damages for breach of contract. Neither a mere demand for equitable relief[95] nor the use of a purely equitable procedural device such as interpleader, should serve to deny a defendant, where otherwise available, the fundamental right to a jury trial.[96]

Indemnification between tort-feasors.

It is well established that there can be no indemnification between active joint tort-feasors, and that where a plaintiff chooses to sue fewer than all tort-feasors, the defendant against whom judgment is rendered has no right to recover against the others unless his negligence was such as will be labeled passive by the

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[92] See Matter of Garfield, 14 N.Y.2d 251, 200 N.E.2d 196, 251 N.Y.S.2d 7 (1964) discussed in 39 ST. JOHN'S L. REV. 150 (1964); Pass v. Kramer, 160 N.Y.S.2d 414 (Sup. Ct. 1954). *But see, e.g.,* Spiro v. Einzinger, 182 Misc. 120, 50 N.Y.S.2d 85 (Sup. Ct. 1944); Levy v. Niklad, 259 App. Div. 54, 18 N.Y.S.2d 105 (2d Dep't 1940); Clearview Gardens First Corp. v. Weisman, 206 Misc. 526, 134 N.Y.S.2d 288 (Sup. Ct. 1954).

[93] Geddes v. Rosen, 22 App. Div. 2d 394, 401, 255 N.Y.S.2d 585, 592 (1st Dep't 1965) (dissenting opinion).

[94] CPLR 4101(1).

[95] See Syracuse v. Hogan, 234 N.Y. 457, 138 N.E. 406 (1923).

[96] "The fact that the genesis . . . was in equity does not affect the right to a trial by jury when . . . used in actions that involve claims that are legal." 4 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 4101.02 (1964).