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# Insurance–Section 167(3) of Insurance Law–Held Applicable to Accidents in Other Jurisdictions (New Amsterdam Cas. Co. v. Stecker, 1 A.D.2d 629 (1st Dep't 1956))

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the company would not be liable for any damage sustained by the driver's spouse on a direct action.[43] The authorities would also seem to cover the case of indirect suit through the spouse's son.[44]

Although the principal case is a novel and interesting one, it seems that its effect on the law will not be lasting. By the simple expedient of amending the co-operation clause to include co-operation in third-party practice, insurers can remedy the problem raised by this case. There is little doubt that they will do just that.

INSURANCE — SECTION 167(3) OF INSURANCE LAW — HELD APPLICABLE TO ACCIDENTS IN OTHER JURISDICTIONS. — Plaintiff-insurer issued, in New York, a liability policy to defendant's wife on her automobile. Defendant is suing his wife in Connecticut for injuries received from the wife's negligent operation of the vehicle. Plaintiff seeks a declaratory judgment denying liability on the ground that the policy did not expressly insure the wife against the husband's suit as required by Section 167(3) of the New York Insurance Law. The appellate division in reversing the judgment for the defendant *held* that the requirements of Section 167(3) also applied to accidents occurring outside the jurisdiction, thereby relieving the plaintiff of all liability. *New Amsterdam Cas. Co. v. Stecker*, 1 A.D.2d 629, 152 N.Y.S.2d 879 (1st Dep't 1956).*

At common law, New York courts did not recognize a personal injury action by one spouse against the other,[1] even though the injury occurred in a jurisdiction which granted the right to maintain such action.[2] The tort was recognized; but the married parties were con-

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[43] "No policy or contract shall be deemed to insure against any liability of an insured because of death of or injuries to his or her spouse or because of injury to, or destruction of property of his or her spouse unless express provision relating specifically thereto is included in the policy." N.Y. INS. LAW § 167(3). See Feinman v. Bernard Rice Sons, Inc., 133 N.Y.S.2d 639, *aff'd*, 285 App. Div. 926, 139 N.Y.S.2d 884 (1st Dep't 1955); Katz v. Wessel, 207 Misc. 456, 139 N.Y.S.2d 564 (Sup. Ct. 1955).

[44] This would follow from the strict construction given the statute by the courts. See, *e.g.*, Fuchs v. London & Lancashire Indemnity Co., 258 App. Div. 603, 605, 17 N.Y.S.2d 338 (2d Dep't 1940); Peka, Inc. v. Kaye, 208 Misc. 1003, 145 N.Y.S.2d 156 (Sup. Ct. 1955), *rev'd on other grounds*, 1 A.D.2d 879, 150 N.Y.S.2d 774 (1st Dep't 1956); Standard Acc. Ins. Co. v. Newman, 47 N.Y.S.2d 804 (Sup. Ct.), *aff'd*, 268 App. Div. 967, 51 N.Y.S.2d 767 (1st Dep't 1944).

* On appeal to the New York Court of Appeals.

[1] See, *e.g.*, Caplan v. Caplan, 268 N.Y. 445, 198 N.E. 23 (1935); Allen v. Allen, 246 N.Y. 571, 159 N.E. 656 (1927) (mem. opinion); Perlman v. Brooklyn City R.R., 117 Misc. 353, 191 N.Y. Supp. 891 (Sup. Ct. 1921), *aff'd mem.*, 202 App. Div. 822, 194 N.Y. Supp. 971 (2d Dep't 1922).

[2] Mertz v. Mertz, 271 N.Y. 466, 3 N.E.2d 597 (1936).

sidered one identity and thus the spouse was exempt from liability.[3] In 1937, New York, by an amendment to Section 57 of the Domestic Relations Law, recognized the right of one spouse to maintain a personal injury action against the other.[4] The Legislature, by Section 167(3) of the Insurance Law, also provided: "No policy or contract shall be deemed to insure against any liability of an insured because of death of or injuries to his or her spouse . . . unless express provision relating specifically thereto is included in the policy." [5] The purpose of this provision was to protect the insurance company from possible fraud and collusion in suits against one spouse by the other.[6] Case law extended the application of Section 167(3) of the Insurance Law to suits between spouses who married subsequent to the tort, since the opportunity for collusion remained the same.[7]

Still unsolved was the construction of Section 167(3) as applied to torts occurring in other jurisdictions. In *Lamb v. Liberty Mutual Insurance Company*,[8] the New York Supreme Court held that the statute was applicable where the accident occurred in other jurisdictions provided that the policy was "issued or delivered in this state," [9] since the statute becomes part of all New York policies.[10] However, the Connecticut court in *Williamson v. Massachusetts Bonding & Insurance Company* [11] construed Section 167(3) as applying only to accidents occurring in New York. The court reasoned that since the statute was enacted in connection with Section 57 of the Domestic Relations Law, it should be construed as a limitation only upon the right created by that section.[12] The court determined that any other construction would enlarge upon the protection afforded insurers, a protection not contemplated by the Legislature.[13] It should be noted that Connecticut is bound to the interpretation New York places upon its statutes,[14] but the *Lamb* case had not been brought to the court's

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[3] Schubert v. Schubert Wagon Co., 249 N.Y. 253, 255-56, 164 N.E. 42, 43 (1928) (dictum); Abbe v. Abbe, 22 App. Div. 483, 484-85, 48 N.Y. Supp. 25, 26 (2d Dep't 1897) (dictum).

[4] Laws of New York 1937, c. 669.

[5] Laws of New York 1937, c. 669, as amended, Laws of New York 1945, c. 409.

[6] See General Acc. Fire & Life Assur. Corp. v. Morgan, 33 F. Supp. 190 (W.D.N.Y. 1940); Fuchs v. London & Lancashire Indemnity Co., 258 App. Div. 603, 17 N.Y.S.2d 338 (2d Dep't 1940).

[7] Fuchs v. London & Lancashire Indemnity Co., *supra* note 6.

[8] 105 N.Y.L.J. 894, col. 2 (Sup. Ct. Feb. 27, 1941), *aff'd mem.*, 263 App. Div. 859, 32 N.Y.S.2d 788 (1st Dep't 1942).

[9] N.Y. INS. LAW § 167(1).

[10] See Lamb v. Liberty Mut. Ins. Co., 105 N.Y.L.J. 894, col. 2 (Sup. Ct. Feb. 27, 1941), *aff'd mem.*, 263 App. Div. 859, 32 N.Y.S.2d 788 (1st Dep't 1942).

[11] 142 Conn. 573, 116 A.2d 169 (1955).

[12] Williamson v. Massachusetts Bonding & Ins. Co., 142 Conn. 573, 116 A.2d 169 (1955).

[13] See Williamson v. Massachusetts Bonding & Ins. Co., *supra* note 12.

[14] See Daury v. Ferraro, 108 Conn. 386, 143 Atl. 630 (1928).

attention, so it appeared that there was no New York court construction of the statute.[15]

*General Accident Life & Fire Assurance Corporation v. Ganser*,[16] its facts similar to those of the instant case, relied upon the construction given Section 167(3) by the prior *Lamb* decision. The court decided that since the action was based on a contract, it should be interpreted by the laws of the jurisdiction where it is written.[17] Furthermore, it stated that because "the contract is ambulatory and contemplates performance within many jurisdictions,"[18] the rule of *lex loci contractus* must be applied. Moreover, the court concluded that neither the purpose nor the wording of the section required a construction limiting its application to accidents within the jurisdiction.[19]

The appellate division in the instant case rejected the reasoning of the *Williamson* case by a three-two decision, and held that Section 167(3) was applicable to New York policies of insurance even though the accident occurred in a different jurisdiction.[20] In words paralleling the *Ganser* case, the Court decided that the contract should be construed according to the place of issue.[21] The Court looked to the statute in determining the intent, and concluded that the words, being clear and unequivocal, left nothing to be implied.[22]

The argument can be made that Section 57 was enacted to permit suits between spouses in New York courts. Since Section 167(3) was enacted with Section 57, it should therefore apply only to suits between spouses brought in New York courts.[23] It is submitted, however, that if the Legislature intended such a limitation, it would have expressed it.

Sound reasoning compels that a contract of insurance be construed by the laws where the contract was made,[24] and not the law where the contract is performed, since the latter would subject the agreement to many varied constructions. Added certainty results in that contracting parties are better able to determine the extent and

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[15] General Acc. Fire & Life Assur. Corp. v. Ganser, 2 Misc. 2d 18, 25, 150 N.Y.S.2d 705, 711 (Sup. Ct. 1956) (dictum).

[16] 2 Misc. 2d 18, 150 N.Y.S.2d 705 (Sup. Ct. 1956).

[17] See General Acc. Fire & Life Assur. Corp. v. Ganser, *supra* note 15, at 22, 150 N.Y.S.2d at 709.

[18] *Id.* at 21-22, 150 N.Y.S.2d at 708.

[19] See General Acc. Fire & Life Assur. Corp. v. Ganser, 2 Misc. 2d 18, 150 N.Y.S.2d 705 (Sup. Ct. 1956).

[20] New Amsterdam Cas. Co. v. Stecker, 1 A.D.2d 629, 152 N.Y.S.2d 879 (1st Dep't 1956).

[21] *Id.* at 631, 152 N.Y.S.2d at 881.

[22] See note 20 *supra*.

[23] See Fagan, *Insurance*, 1956 *Survey of N.Y. Law*, 31 N.Y.U.L. Rev. 1436, 1442 (1956).

[24] See General Acc. Fire & Life Assur. Corp. v. Ganser, 2 Misc. 2d 18, 150 N.Y.S.2d 705 (Sup. Ct. 1956); *accord*, Conklin v. Canadian-Colonial Airways, Inc., 266 N.Y. 244, 194 N.E. 692 (1935).

limits of their own contract. The evil sought to be prevented, that of fraud and collusion, by Section 167(3) of the Insurance Law is equally present whether or not the accident occurs in other jurisdictions.[25] The Court of Appeals has stated: "It is not allowable, to interpret what has no need of interpretation, and when the words have a definite and precise meaning, to go elsewhere in search of conjecture, in order to restrict or extend the meaning." [26]

PROPERTY — CONDEMNATION — COVENANT OF QUIET ENJOYMENT.—Plaintiff-lessee brought an action for breach of covenant of quiet enjoyment. The lease contained a provision that, in the event of condemnation, the term would end and the lessee would not participate in the award. Prior to the execution of the lease, defendant-lessor had some inconclusive negotiations with the City of New York looking to a sale of the property. Subsequent to the execution of the lease, the defendant-lessor gave the City an option to purchase any award resulting from condemnation proceedings. Thereafter, the property was condemned and the City exercised its option. Plaintiff alleged that the defendant's co-operation in giving the option constituted a breach of covenant. The Court of Appeals *held* that the defendant's action did not constitute interference with the plaintiff's possessory rights, and that the eviction was the direct result of the sovereign's exercise of the right of eminent domain. *Dolman v. United States Trust Co.*, 2 N.Y.2d 110, 138 N.E.2d 784 (1956).

A grantee of leased real property acquires title subject to the lease, and the possessory rights of the lessee are not divested by a sale to the City or a private individual.[1] The landlord has the duty to protect the tenant's possessory rights, and any interference by the landlord resulting in an actual or constructive eviction is a breach of covenant of quiet enjoyment.[2] However, when a tenant is evicted by the sovereign's exercise of its power of eminent domain, no action arises against the landlord.[3] Protection is afforded to the landlord

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[25] General Acc. Fire & Life Assur. Corp. v. Ganser, 2 Misc. 2d 18, 23, 150 N.Y.S.2d 705, 710 (Sup. Ct. 1956) (dictum).

[26] McCluskey v. Cromwell, 11 N.Y. *593, *601 (1854), cited with approval in Meltzer v. Koenigsberg, 302 N.Y. 523, 525, 99 N.E.2d 679, 680 (1951) (per curiam).

[1] N.Y. REAL PROP. LAW § 223.

[2] See Sears, Roebuck & Co. v. 9 Ave.-31 St. Corp., 274 N.Y. 388, 9 N.E.2d 20 (1937); Fifth Ave. Bldg. Co. v. Kernochan, 178 App. Div. 19, 165 N.Y. Supp. 122 (1st Dep't), *aff'd*, 221 N.Y. 370, 117 N.E. 579 (1917); Times Square Improvement Co. v. Fleischmann's Vienna Model Bakery Co., 173 App. Div. 633, 160 N.Y. Supp. 346 (1st Dep't 1916).

[3] N.Y.C. ADMIN. CODE § B15-37.0; Gallup v. Albany R. Co., 7 Lans. 471