

# Attorney and Client--Settlement Under Insurance Contract--Effect on Insured (Countryman v. Breen, 241 App. Div. 392 (4th Dept. 1934))

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ATTORNEY AND CLIENT—SETTLEMENT UNDER INSURANCE CONTRACT—EFFECT ON INSURED.—Plaintiff seeks an order to enter judgment against defendant based upon a settlement agreement made between the plaintiff's attorney and one of the attorneys furnished to the defendant by a now bankrupt liability insurance company. Plaintiff sued defendant for injuries sustained by plaintiff in a collision with an automobile driven by defendant. The above mentioned settlement was made in open court and the case was withdrawn from the calendar. A release in full settlement was given to defendant's attorney and plaintiff received a check from the insurance company for \$3,500. Subsequently and before the check was cashed the insurance company was adjudicated insolvent. Plaintiff restored the action to the calendar. *Held*, the compromise as made did not reach so far as to permit judgment to be entered on it against defendant. *Countrymen v. Breen*, 241 App. Div. 392, 271 N. Y. Supp. 745 (4th Dept. 1934).

An attorney cannot settle a suit and conclude his client in relation to the subject in litigation without the client's consent.<sup>1</sup> The settlement was made here by the insurer's attorney<sup>2</sup> without defendant's authority<sup>3</sup> and may therefore not be enforced against the defendant.<sup>4</sup>

The defendant's duty was to aid the insurer in the compromising of this action.<sup>5</sup> Since the insurance company has the absolute authority to make settlements in actions against insured<sup>6</sup> the defendant could not complain or protest against the settlement.<sup>7</sup> Thus the passivity of the defendant after notice of the compromise does not act as an estoppel.<sup>8</sup>

<sup>1</sup> *United States v. Beebe*, 180 U. S. 343, 21 Sup. Ct. 371 (1901); *Barrett v. Third Avenue R. R. Co.*, 45 N. Y. 628 (1871); *Mandeville v. Reynolds*, 68 N. Y. 528 (1877); *Bush v. O'Brien*, 164 N. Y. 205, 58 N. E. 106 (1900); *In re Strandburg's Estate*, 138 Misc. 859, 248 N. Y. Supp. 164 (1931); *National Bread Co. v. Bird*, 226 Ala. 40, 145 So. 462 (1933); *Evans v. Pommer County*, 50 Idaho 690, 1 Pac. (2d) 614 (1931); *McMillan v. McMillan*, — Tex. Civ. App. —, 72 S. W. (2d) 611 (May 5, 1934).

<sup>2</sup> *Heller v. Alter*, 143 Misc. 10, 255 N. Y. Supp. 627 (1932) (while as a matter of record the attorney would be attorney for defendant as a matter of fact he would be the servant or agent of casualty company).

<sup>3</sup> *Smith v. Bradhurst*, 31 App. Div. 98, 52 N. Y. Supp. 527 (1st Dept. 1898); *City of Syracuse v. Standard Accident of Detroit*, 210 App. Div. 165, 205 N. Y. Supp. 437 (4th Dept. 1924).

<sup>4</sup> *Lewis v. Duane*, 141 N. Y. 302, 36 N. E. 322 (1894); *Sherman & Sons v. Princess*, 213 App. Div. 140, 210 N. Y. Supp. 100 (1st Dept. 1925); *Schneider v. Abrams*, 228 App. Div. 1, 238 N. Y. Supp. 351 (1st Dept. 1930).

<sup>5</sup> *Ohrback v. Preferred Accident Insurance Co. of N. Y.*, 227 App. Div. 311, 237 N. Y. Supp. 494 (1st Dept. 1929); *Heller v. Alter*, *supra* note 3.

<sup>6</sup> *Best Building Co. v. Employer's Liability Assurance Corp.*, 247 N. Y. 451, 160 N. E. 911 (1928).

<sup>7</sup> See *supra* note 5.

<sup>8</sup> N. Y. CIVIL PRACTICE ACT §476.

The plaintiff is not without remedy—he may file a claim with the liquidator of the insurer or he may restore the action to the calendar.<sup>9</sup>

M. E. W.

FOREIGN CORPORATION—EQUITY JURISDICTION—STOCKHOLDER'S ACTION.—The defendants are the controlling officials and directors of a foreign corporation. They fraudulently carried out a plan by which, in anticipation of the repeal of the Eighteenth Amendment, they caused the corporation to issue to their dummies 25,000 shares of common stock for grossly inadequate considerations. The plaintiff, a minority stockholder and resident of this state, brings an action in equity for a restoration and an accounting. *Held*, the courts of this state have jurisdiction in an action against the directors of a foreign corporation to enjoin a fraudulent conspiracy to dissipate the assets of that corporation and to compel the defendants to account for their fraud or negligence. *Frank v. Amer. Comm. Alcohol Corp., et al.*, 152 Misc. 123, 273 N. Y. Supp. 622 (1934).

The general rule is that the courts of equity will not assume jurisdiction of a case involving the internal affairs and management of a corporation regulated by the statutory law and public policy of a foreign country or of a sister state, and that such issues will be relegated to the local jurisdiction of incorporation.<sup>1</sup> It is consistent with this rule, however, for the courts of another jurisdiction to enjoin a fraudulent conspiracy to dissipate the property of the foreign corporation and to call the directors and officers to account for misconduct or negligence, for this is in aid of the corporation and its creditors.<sup>2</sup> If the illegal acts of the directors or officials of the corporation

<sup>9</sup> *Wecht v. Kornblum*, 147 Misc. 653, 264 N. Y. Supp. 333 (1933).

<sup>1</sup> *Sauerbrunn v. Hartford Life Ins. Co.*, 220 N. Y. 363, 115 N. E. 1001 (1917); *Cohn v. Mishkoff Costello Co.*, 256 N. Y. 102, 175 N. E. 529 (1931); *Hallenborg v. Greene*, 66 App. Div. 590, 73 N. Y. Supp. 403 (1st Dept. 1901); *Butler v. Standard Milk Flour Co.*, 146 App. Div. 735, 131 N. Y. Supp. 451 (1st Dept. 1911); *People ex rel. Ruman v. National Slav. Soc.*, 144 App. Div. 574, 137 N. Y. Supp. 1057 (1st Dept. 1911); *Cuppy v. Ward*, 187 App. Div. 625, 176 N. Y. Supp. 233 (1st Dept. 1919); *Howell v. Chicago & N. W. Ry. Co.*, 51 Barb. 378 (N. Y. 1868); *Berford v. N. Y. Iron Mine Co.*, 4 N. Y. Supp. 836 (1888); *Gregory v. N. Y., L. E. & W. R. R. Co.*, 40 N. J. Eq. 38 (1885); *BALLENTINE, CORPORATIONS* 868; *CLARK, CORPORATIONS* (3d ed.) 800.

<sup>2</sup> *Miller v. Quincy*, 179 N. Y. 294, 72 N. E. 116 (1904); *Fisk v. Chicago, R. I. & P. R. Co.*, 53 Barb. 513 (N. Y. 1868); *Kraft v. Griffon Co.*, 82 App. Div. 29, 81 N. Y. Supp. 438 (1st Dept. 1903); *Jacobs v. Mexican Sugar Refining Co., Ltd.*, 104 App. Div. 242, 98 N. Y. Supp. 541 (1st Dept. 1905); *Acken v. Coughlin*, 103 App. Div. 1, 92 N. Y. Supp. 700 (1st Dept. 1905); *Weber v. Wallenstein*, No. 1, 111 App. Div. 693, 97 N. Y. Supp. 846 (4th Dept. 1906).