

Legislation Report

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

REPORT NO. 9

February 25, 2003

A. 1160

By: M. of A. Kaufman
Assembly Committee: Codes
Effective Date: The first day of September next
succeeding the date on which it
shall have become a law

AN ACT to amend the civil practice law and rules, in relation to when third-party practice is allowed

LAW AND SECTIONS REFERRED TO: Section 1007 of the civil practice law and rules, as amended by chapter 216 of the laws of 1992

REPORT PREPARED BY THE COMMITTEE ON CIVIL PRACTICE LAW & RULES (#6)

THIS BILL IS DISAPPROVED

This proposal would establish a time limit on the bringing of an impleader complaint (utilizing third-party practice) of no later than ninety days after the completion of the examinations before trial of the parties in the original action, unless such impleader is consented to by the parties or, upon written application, the court orders an extension of time. The Committee opposes this legislation because the courts are currently empowered to deal with dilatory third-party practice and because litigation would proliferate on the question of whether “late” third-party practice should be allowed for “good cause.”

Under CPLR §1007, “a defendant may proceed against a person not a party who is or may be liable to that defendant for all or part of the plaintiff’s claim against that defendant” Third-party practice is useful because it enables all parties concerned with the action to present their cases before a single trier of fact and offers the opportunity to have one judgment cover all the issues arising from the events that gave rise to the original action. It thereby avoids multiple suits and reduces the prospect of inconsistent verdicts.

The sponsor's supporting memorandum states that a time limitation on third-party practice is needed because some defendants implead third-parties "on the eve of trial." In many instances, this is perceived as a delaying tactic or, to be charitable, an act of indifference to the needs of the other parties and the court to dispose of the action in a timely manner.

The proposal imposes a blanket prohibition to impleader 90 days after the completion of depositions, unless the impleading party obtains the consent of the original parties or, upon written application, "the court, in its discretion, extends such time for good cause." However, the completion of depositions by the parties often does not mark the end of the discovery within an action. Discovery initiated as a result of information disclosed in the depositions may reveal the need to commence third party practice at some later time.

Although the measure provides the court with the power to extend the time for "good cause," one can anticipate a proliferation of motion practice on this point alone. Further, if the proposed third-party plaintiff does not obtain an extension of the time on consent or by court order allowing the "late" impleader, the impleading party will necessarily have to start an independent action. This may, in turn, spawn additional lawsuits and third-party claims by the proposed "third-party defendant" who wishes to seek relief against the original plaintiff(s) or other defendants. This multiplicity of suits is exactly what third-party practice avoids when it is unrestricted.

Currently, the courts are empowered to judge whether a dilatory impleader poses undue complications for the plaintiff and the other parties. CPLR 1010 authorizes dismissal or separate trial of the impleader claim, and it further permits the court to make "such other order as may be just," such as severance, consolidation, joint trial, etc." The rule requires the court to consider "whether the controversy between the third-party plaintiff and the third-party defendant will unduly delay the determination of the main action or prejudice the substantial rights of any party." See Siegel, *New York Practice*, §161, p. 260 (1999). If the benefits of the third-party practice are outweighed by the negative effect occasioned by delay or some other prejudice, the court may take appropriate action.

Therefore, the Committee believes that the proposal is not appropriate in light of the benefits of third-party practice in its present form and in further consideration of the court's power to temper the prejudicial exercise of third-party practice in the interests of judicial economy and fairness to all litigants.

For the foregoing reasons, this bill is **DISAPPROVED**.

The Person Who Prepared the Report: Steven M. Critelli, Esq..

Chair of the Committee: Sharon Stern Gerstman, Esq.