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Declaratory Judgment

Judges May Weigh Title if Ancillary to Authorized Relief

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There continues to be a good deal of confusion and controversy about what kinds of things the Civil Court can and cannot hear. Often litigants and sometimes even courts will mistake a call for the Civil Court to make a particular determination on the way to resolving a summary proceeding with an action for declaratory judgment, forbidden to the Civil Court.

There can be no doubt that declaratory judgments as such are reserved to the Supreme Court under CPLR 3001 which states:

> §3001. Declaratory judgment. The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds.

The statute, as worded, allows for the parties to seek a statement from the court as to what their rights are even if no further relief is requested.[1]

This should be distinguished from any ordinary civil action in which the court must ascertain the relationship of the parties, who had done what to or with whom, and what the legal consequences of that are. This describes all lawsuits.

In summary proceedings it is often the function of the court adjudicating the controversy between the parties to ascertain just what relationship they have. Are they landlord-tenant, as called for in RPAPL §711? Do they have one of the other kinds of relationships as called for under RPAPL §713?[2] Does one of the parties claim §711 status while the other party claim a §713 status? In order to answer those questions, it is the routine bread and butter of the court to examine the documents between the parties. And sometimes the examination of these documents will require the court to look further and see if a document is what it claims to be or if it is invalid,[3] feigned,[4] or even forged.[5] This too is the bread and butter of the summary proceeding court.[6]

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CIVIL COURT JURISDICTION

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While the court cannot determine things like the validity of the lease or of title as the issue of the case, in its capacity of determining who has a right of possession, it has the jurisdiction to resolve these things as ancillary issues. As David Siegel writes in his commentary to UDCA §204:

> The summary proceeding tries only the immediate right to possession, not title, and yet a title question will sometimes crop up in the context of a summary proceeding. The judge should proceed to adjudicate possession, making that adjudication with whatever incidental disposition of the title issue seems necessary. Whether the title determination is binding must then be resolved as a question of res judicata. Refusing to entertain the summary proceeding at all merely because a party has interposed a title issue can readily frustrate the "summary" nature of the summary proceeding. There are other remedies to meet the problem.

One of us[7] wrote previously:

> As to the question of whether questions of title are resolved in summary proceedings, the statements of the court are accurate, but misleading: It is well settled... that questions of title or ownership are not litigated in summary proceedings. (*Ferber v. Salon*, 174 Misc2d 945, 668 NYS2d 864 [App. Term 1st Dept. 1997].) Moreover, the courts have adopted a flexible approach regarding the description of a petitioner's interest, and an inflexible approach to issues that may somehow pertain to title or ownership.
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> While it is undoubtedly true that the local courts do not have the jurisdiction to handle a dispute in title framed as a dispute in title, if the question of title is a fundamental question that does have to be resolved in a summary proceeding, the courts will not shy away from the question. When that happens, such as, for example, in proceedings under RPAPL §713, such as vendee in possession proceedings, while strictly speaking the action is not one to determine title, any findings that the court makes with respect to title will collaterally estop a suit brought to contradict that finding, even if in a supreme court action brought specifically for the purpose of determining a question of title.

To determine whether the Civil Court is competent to hear the controversy,[8] the question, then, to ask is not whether the court is being asked if a particular document is valid, but rather is the court being asked to grant the relief that the summary proceeding statute authorizes. So long as the relief is authorized by statute, the court may answer the questions of fact and mixed questions of fact and law necessary to determine the propriety of granting that relief.

The Appellate Division, First Department, wrote in *Cohen v. Goldfein*, 12 HCR 83B, 100 AD2d 795, 474 NYS2d 519, NYLJ 4/19/84, 6:2, HCR Serial #00001528 (AD1):

> The issue is whether the subsequent lease

to Cohen is a valid lease in the face of the prior lease to Goldfein. The Civil Court has ample power to determine that limited issue (see *Mtr. of Robbins v. DeLee*, 34 AD2d 870; RPAPL §701, §713 subds. 3 and 10, NYC Civ. Ct. Act §204). The issue in *Robbins* was whether defendant was a squatter, premised upon the authority under which he was in possession. The issue here is the same. There plainly is no need for a declaratory judgment. If the Civil Court determines, as it has the power to do, that Goldfein is entitled to possession on the ground that his lease is valid and pre-exists the lease to Cohen, this will dispose of the dispute and the litigation. Similarly if the court dismisses Goldfein's action and denies a warrant upon the ground that Cohen is entitled to possession under his lease, there is no need for a declaratory judgment. There is need merely for a determination of which lease is prior. Once that is determined, the relationship between the parties will have been sufficiently established and the legal consequences will automatically follow (*Herwick v. Stiehl*, 68 Misc2d 850, 852). The Civil Court facilities are designed for resolution of such disputes and are preferable. Summary proceedings are not to be stayed or removed and consolidated in such circumstances (*Lun Far Co. v. Aylesbury Associates*, 40 AD2d 794; see *Klausner v. Frank*, 95 AD2d 653).

In *K&S of New York Corp. v. Sushi of Nao International, Inc.*, 33 HCR 258B, NYLJ 4/12/05, 25:1, HCR Serial #00014893 (AT1 Suarez; McCooe, Gangel-Jacob), the Appellate Term looked at the various proofs presented by the parties on a summary judgment motion and found that there was not enough to grant summary judgment. It therefore remanded the matter to the Civil Court for a trial on the issue of whether the lease was in fact valid.

In *Rima 106 L.P. v. Gilbert*, 27 HCR 338A, NYLJ 6/11/99, 30:1 (AT1 Parness; McCooe, Freedman) HCR Serial #00011373, the Appellate Term reversed the Civil Court and remanded for a trial. The Civil Court had recognized the validity of a sweetheart lease and the Appellate Term, finding itself bound by the decision of the Appellate Division in *Rima 106 L.P. v. Alvarez*, 27 HCR 283B, NYLJ 5/17/99, 25:3, 690 NYS2d 40 (AD1 Ellerin; Rosenberger, Wallach, Saxe) HCR Serial #00011331[9] "declared" that the lease was invalid. This was not, however, a declaratory judgment action, but a nonprimary residence proceeding[10] in which the tenant sought to interpose the lease as a defense to the proceeding and the Appellate Term found the sweetheart lease void.

When is a case a forbidden declaratory judgment action? It is such when the only relief the parties are seeking is a declaration of the rights of the respective party. So long as a cause of action is made out under the statute for a summary proceeding or damages for a common law right within the monetary jurisdiction of the Civil Court, the court has jurisdiction to hear the case. If it is a landlord-tenant dispute, Civil Court is the place it belongs.

So long as the relief is authorized by statute, the court may answer the questions of fact and mixed questions of fact and law necessary to determine the propriety of granting that relief.

1. The court may grant additional relief, and in most cases, it is sought. Typical of this in the landlord-tenant practice is the so-called *Yellowstone* injunction, an entirely common law development in which the Supreme Court declares whether or not the tenant is in violation of the lease and enjoins the landlord pendente lite from terminating the lease, permanently, if indeed there is no violation found. See generally, *First National Stores, Inc. v. Yellowstone Shopping Center, Inc.*, 21 NY2d 630, 237 NE2d 868, 290 NYS2d 721, TLC Lease Violations 1, TLC Serial #0003 (Court of Appeals 1968).

2. Debtor in possession; share cropper; squatter; tax debtor; defaulting mortgagor in possession; holder under an expired life tenancy; licensee; vendor in possession; defaulting vendee in possession; forcible intruder; employee.

3. E.g., *Deets Assocs v. Kurchin Rlty Corp.*, 13 HCR 209A, n.o.r., L&T Index # 17967/82, decision dated 9/13/82, HCR Serial #00006443 (Civ Qns Hentel), lease found invalid. In *First Edition Composite, Inc. v. Seymour,* 19 HCR 28A, NYLJ 1/23/91, 24:5, HCR Serial #00003663 (Civ NY Wendt) the court found a lease invalid for lack of authority of the person who signed it to act on behalf of the landlord. *Aaid Transmission, Inc. v. Kerns*, 23 HCR 198A, NYLJ 4/12/95, 31:3 (Civ Queens Greenbaum) HCR Serial #00007502, to the same effect. In *Schembri v. Manes*, 20 HCR 555A, NYLJ 9/23/92, 26:1, HCR Serial #00000061 (AT 9 & 10 DiPaola; Stark, Ingrassia) the Court affirmed the findings of a local court that a particular lease was valid.

4. See, *Woodlaurel, Inc. v. Wittman*, 16 HCR 247A, NYLJ 7/1/88 25:3, HCR Serial #00005421 (A.T. 9&10 DiPaola; Geiler and Stark) where the Appellate Term held the District Court should not have determined the validity of the purported lease, but only because such determination was unnecessary to the adjudication of the parties' rights. In *Shaw v. Hunter*, NYLJ 12/27/90, 26:4, 18 HCR 611A (AT 2 & 11 Kassoff; Williams, Santucci), the Appellate Term noted that the Civil Court would properly have made a determination whether or not the lease was valid had the parties not elected to treat the lease as valid in spite of its formal invalidity.

5. *Leeman v. Spivack*, 14 HCR 414D, NYLJ 12/30/86 16:1, HCR Serial #00002912 (AT 9&10 DiPaola; Slifkin and Widlitz) remanded the case to the Civil Court for it to determine whether a purported lease extension was valid.

6. For example, authenticity of a particular document was tried as part of, Civil Court summary proceeding in *The New School for Social Research Inc. v. Lucio Dl Roma Ltd. and Fashion by Tina Visalli and "Doe,"* 17 HCR 176A, NYLJ 5/19/89; 21:1 (AT 1st; Ostrau, J P.; Sandifer, and McCooe, J.J.) HCR Serial #00006020. Clearly the finding of such document to be inauthentic "declares" it to be unenforceable, in effect.

7. Dov Treiman commenting on *Fame Co. v. Sandberg*, Decision at: 33 HCR 1017B, 9 Misc3d 1115(A), 808 NYS2d 917, HCR Serial #00015382 (Civ NY Capella) Commentary at: 33 HCRComm 166.

8. It is now beyond question that the Civil Court is the preferred forum for landlord-tenant disputes and any questions the Civil Court can answer, it should. *Madison Co. v. Derderian*, NYLJ 10/4/85 11:4, 13 HCR 332B, 130 Misc2d 200, 498 NYS2d 665 (AT 1st Hughes; Riccobono, Sandifer); *210 Assocs. v. Johnson*, NYLJ 1/4/90, 21:2, 18 HCR 4A (AT1 Ostrau; Parness, McCooe); *Conforti v. Goradia*, 25 HCR 4A, NYLJ 1/3/97, 27:1, 651 NYS2d 506 (AD1 Sullivan; Rosenberger, Rubin, Ross) HCR Serial #00008687; *Handwerker v. Ensley*, 27 HCR 287A, NYLJ 5/17/99, 27:1, 690 NYS2d 54 (AD1 Ellerin; Sullivan, Wallach, Rubin) HCR Serial #00011333; *103rd Funding Assocs. v. Salinas Realty Corp.* , 28 HCR 635A, NYLJ 10/19/00, 27:2, HCR Serial #0012160, 714 N.Y.S.2d 47 (AD1 Rosenberger; Mazzarelli, Ellerin, Friedman); *Spain, Jr. v. 325 W. 83rd Owners Corp.*, 31 HCR 93B, 755 N.Y.S.2d 303, NYLJ 3/4/03, 25:1, HCR Serial #00013591 (AD2 Santucci; Krausman, Adams, Crane); *Waterside Plaza, LLC v. Yasinskaya*, 31 HCR 332A, NYLJ 6/19/03, 19:6, HCR Serial #00013770 (AD1 Mazzarelli; Ellerin, Williams, Lerner, Gonzalez); *All 4 Sports & Fitness, Inc. v. Hamilton, Kane, Martin Enterprises, Inc.*, 33 HCR 926A, __AD3d__, __NYS2d__, NYLJ 10/17/05, 33:2, HCR Serial #00015313 (AD2 Adams; Mastro, Lifson, Lunn).

9. The *Alvarez* case was a declaratory judgment action in the Supreme Court. Therefore, the Appellate Term was merely using the *Alvarez* case as a precedent for the invalidity of the sweetheart lease, but not a precedent regarding the power of the Civil Court to make such a finding. However, the Appellate Term reversed the Civil Court precisely because the Civil Court refused to rule the lease invalid and void.

10. It was originally in nonprimary residence litigation that the first confusion arose as to whether the nature of the cause of action was such as to require exclusive jurisdiction in the Supreme Court as a declaratory judgment action. However, in time, it was understood that the case was properly heard in Civil Court in the context of an ordinary summary proceeding brought at the conclusion of a lease. *Ziess v. Semenov*, 13 HCR 26B, 126 Misc2d 917, 487 NYS2d 267 (AT 1st Dudley; Riccobono, Sandifer); *Madison Co. v. Derderian*, 13 HCR 332B, 130 Misc2d 200, 498 NYS2d 665 (AT 1st Hughes; Riccobono, Sandifer); *Kace Realty Co. v. Levy*, 14 HCR 93C, 130 Misc2d 858, 502 NYS2d 121 (AT 1st Hughes; Sandifer, Ostrau).