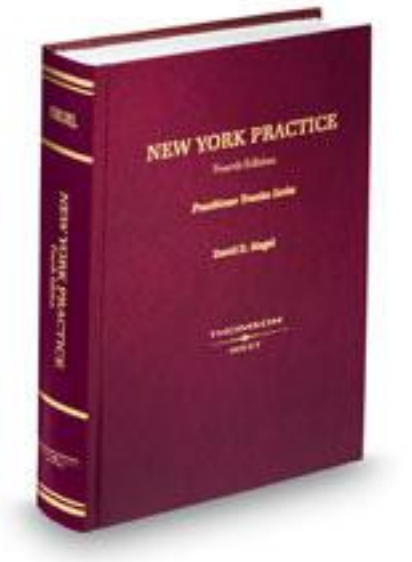
Dov Treiman Cited to in Major Text on Court Procedure



Recognized as the leading authority in New York court procedure, David Siegel has, since 1963, gone through several revisions of his famous work, "New York Practice," known to lawyers simply as "Siegel." In each of the last two editions of that work, Mr. Siegel has twice cited to Adam Leitman Bailey, P.C. partner, Dov Treiman, as the authority for the significance of the methods of serving process in New York landlord-tenant proceedings.

server "could reasonably expect someone to be at home", which is not the case when the single service is attempted during hours "when most people are at work".[9] A service attempt outside the usual 9 a.m. to 5 p.m. working hours, Monday through Friday, has a better chance of being sustained.[10]

Issues of fact about service frequently generate a "traverse"—the preliminary trial of the service issue before the summary proceeding is allowed to go forward. Even in situations in which the respondent admits finding the papers affixed to her apartment door, her contention that the service was not technically proper can shelve the summary proceeding while the technical issue is tried.[11]

Although any of the service methods, properly effected, will suffice for a judgment of dispossession, there is a problem when the petitioner is seeking a rent judgment as well. It has been held by some courts that in order for rent to be included in the judgment the service must also be shown to satisfy the service requirements applicable to an ordinary money action.[12] Personal delivery to the respondent satisfies that requirement,[13] and hence of course supports a rent judgment. Other service methods that would satisfy for in personam jurisdiction in a money action, such as service on a corporate respondent by means of serving the secretary of state, have also been held to support a rent judgment.[14] But other methods, although sufficient to support a money judgment in an ordinary money action under CPLR 308, may be held insufficient for a rent judgment by this line of cases.[15]

11. See, e.g., Equity Inc. v. Kahn, N.Y. Law Journal, Sept. 4, 2003, p.18, col.6 (Civ.Ct., Housing Part, N.Y. County; Lebovits, J.), noted in SPR 150:4.

12. See, e.g., 1405 Realty v. Corp. v. Napier, 68 Misc.2d 793, 328 N.Y.S.2d 44 (N.Y.C.Civ.Ct., Bronx County, 1971).

13. See CPLR 308(1).

14. See Leven v. Browne's Business School, Inc., 71 Misc.2d 842, 337 N.Y.S.2d 307 (Distr.Ct., Nassau County, 1972).

15. See Treiman and Feder, Default Money Judgments in Summary Proceedings, N.Y. Law Journal, July 30, 1981, page 1.

Without such service, they see the judgment as resting on only an in rem foundation, not an in personam one.

The RPAPL § 735 alternative of deliver-and-mail is today analogous to the deliver-and-mail method of CPLR 308(2), which gives personal jurisdiction in an action without any need to show a prior effort at personal delivery under CPLR 308(1). Insofar as mechanics alone are involved, therefore, a deliver-plus-mail service under RPAPL § 735 should also support a rent judgment.[16] But CPLR 308(2) requires a filing of proof of service and delays "completion" of service—which starts the responding time running—until 20 days after that. Applying that aspect of CPLR 308(2) would usually show that the return day set in the summary proceeding is too early, i.e., that the notice time is insufficient. Some courts have cited that factor as a reason for denying a rent judgment in non-personal delivery cases.[17]

It can be argued that these distinctions are unwarranted.[18] Nothing prevents the legislature from stipulating a shorter notice period for rent in a summary proceeding than it requires for a money claim in an action, as long as each procedure satisfies due process. The legislature has expressly authorized a rent judgment in a summary proceeding,[19] as well as the awarding of repossession, and has drawn the service requirements in RPAPL § 735 without distinctions based on method of service.

16. The affix-and-mail service under RPAPL § 735—in contrast to the deliver-and-mail method—apparently would not support a rent judgment under this view, unless it is demonstrated that the other methods proved unavailing despite diligent effort. It would be the analogue of CPLR 308(4), which does not offer personal jurisdiction unless diligence is shown in attempting previously listed methods.

17. See, e.g., Fairhaven Apts. No. 6, Inc. v. Dolan, 72 Misc.2d 590, 339 N.Y.S.2d 787 (Dist.Ct., Suffolk County, 1972).

18. See the Treiman and Feder article, note 14 above.

19. RPAPL § 741(5).

20. See, e.g., Oppenheim v. Spike, 107 Misc.2d 55, 437 N.Y.S.2d 826 (App.T., 1st Dep't, 1980).

21. 16 Lincoln Square Assocs. v. Amrep Corp., 129 Misc.2d 697, 493 N.Y.S.2d 692 (N.Y.C.Civ.Ct., N.Y. County, 1985).