

NY CLS CPLR § 2213

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>

Civil Practice Law And Rules (Arts. 1 — 100)

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Article 22 Stay, Motions, Orders and Mandates (§§ 2201 — 2223)

§ 2213. Where motion made, in county court action

(a) Ex parte motions. A motion in an action in a county court that may be made without notice may be made before a motion term of the county court or before the county judge out of court in any county in the state.

(b) Motions that may be made before the supreme court or a justice thereof. When no motion term is being held and there is no county judge available within the county, any motion in an action in a county court, whether or not on notice, may be made or noticed to be heard before a motion term of the supreme court or, upon order to show cause granted by a justice of the supreme court, before such justice out of court, in the judicial district where the action is triable or in a county adjoining the county where the action is triable, except a motion under article forty-four or a motion for an order that would dispose of the action, in whole or in part, in any manner other than by settlement under section 1207.

(c) The chief administrator of the courts may by rule exclude motions from the operation of this section within a department, district or county.

History

Add, L 1962, ch 308, § 1; amd, L 1986, ch 355, § 3, eff July 17, 1986.

Annotations

Notes

Prior Law:

Earlier statutes: CPA § 130; CCP § 772; Code Proc §§ 324, 402.

Advisory Committee Notes:

Since the County Court's jurisdiction extends only to the county in which it is situated, unlike the statewide jurisdiction of the Supreme Court, there is no need for a general venue provision analogous to new CPLR § 2212. A motion in an action or proceeding in a particular County Court ordinarily must be made to that court or to the county judge.

The two subdivisions of this section—analogueous to § 2212(b) and 2212(c) governing Supreme Court cases—are designed to provide alternative places for making motions when a county judge of the county is not available.

This section replaces subd 1 of CPA § 130. It differs from that subdivision in that it applies only when the motion cannot be made to the proper County Court or judge, in the types of orders covered and in that the sphere of authority granted a Supreme Court justice under subd (b) is limited to the judicial district in which the County Court case is triable or a county adjoining the county in which the action is triable. The latter limitation was suggested by the Board of Statutory Consolidation. 1 Report of the Board of Statutory Consolidation on the Simplification of the Civil Practice of New York, rule 39 (1915).

The criteria defining the kinds of orders covered by CPA § 130(1) are as vague as those governing § 130(2). It is unclear from the language of the provision whether the order must be one that may be made out of court and without notice, or whether it is sufficient that it may be made out of court. The cases have construed it narrowly, paying little attention to its language. See *Curry v Earll*, 209 App Div 205, 207, 203 NY Supp 750, 752 (4th Dept 1924); *Edwards v Shreve*, 83 App Div 165, 82 NY Supp 514 (2d Dept 1903); cf. *In re National Bank of Oxford*, 16 NYS2d 429, 430 (County Ct 1939). Thus, in *Curry v Earll*, holding that a Supreme Court justice

could not consolidate actions pending in a Justice Court and a County Court, the court stated that § 130(1) did not apply to “matters affecting substantial rights of the parties or interfering with the jurisdiction and authority of the County Court.” Since consolidation is a discretionary matter, the court reasoned, “the exercise of discretion should in any event be left to the court in which the action will be tried.” *Curry v Earll*, supra at 207, 203 NY Supp at 752.

As in new CPLR §§ 2212(b) and 2212(c), the criteria of the former provision have not been used. Instead, subd (a), analogous to new § 2212 (b), allows ex parte motions to be made to the county court of any county. Subd (b) has been drawn to correspond with new § 2212(c). No reason is perceived for otherwise limiting a Supreme Court justice's power to make orders in County Court cases. Cf. 1 Report of the Board of Statutory Consolidation on the Simplification of the Civil Practice of New York, rule 39 (1915).

Notes to Decisions

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I. Under CPLR

1. Generally

Any defects in jurisdiction of county court to grant show cause order in action pending in that court were waived when defendant opposed motion on the merits. *Sutton v Cobb*, 50 A.D.2d 995, 377 N.Y.S.2d 236, 1975 N.Y. App. Div. LEXIS 11967 (N.Y. App. Div. 3d Dep't 1975).

II. Under Former Civil Practice Laws

2. Disqualification of judge

A judge is disqualified from acting upon appeal from a judgment entered upon a referee's report, where he settled the form of such judgment or granted an allowance. *Murdock v International Tile & Trim Co.*, 35 N.Y.S. 668, 14 Misc. 225, 1895 N.Y. Misc. LEXIS 823 (N.Y. City Ct. 1895).

The disqualification of a judge cannot be waived. *Murdock v International Tile & Trim Co.*, 35 N.Y.S. 668, 14 Misc. 225, 1895 N.Y. Misc. LEXIS 823 (N.Y. City Ct. 1895).

3. Actions in supreme court

A special county judge had no power to issue a garnishee execution against a judgment recovered in supreme court. *In re Parkman*, 177 N.Y.S. 589, 108 Misc. 316, 1919 N.Y. Misc. LEXIS 899 (N.Y. Sup. Ct. 1919).

A county judge has no authority to make an order requiring the plaintiff in an action pending in the supreme court to give security for costs. Such an order can only be made by the court or

judge of the court, in which the action is pending. *Longstreet v Sawyer*, 15 N.Y.S. 608, 1891 N.Y. Misc. LEXIS 70 (N.Y. Sup. Ct. 1891).

A county judge had no power to grant an order requiring security for costs in an action pending in the supreme court. *Gates v Gates*, 171 N.Y.S. 1036 (N.Y. Sup. Ct. 1918).

4. Consolidation of actions

Where two parties to an automobile collision each sought to recover damages sustained in the collision by reason of the negligence of the other, one bringing his action in the county court and the other in a Justice Court, held that neither CPA §§ 96 and 97 nor § 130 authorized the Supreme Court to make an order consolidating the two actions. *Curry v Earll*, 209 A.D. 205, 203 N.Y.S. 750, 1924 N.Y. App. Div. LEXIS 8586 (N.Y. App. Div. 1924).

5. Lien proceedings

This section does not authorize proceedings for extension of lien under § 18 of the Lien Law to be brought in any other county than that in which the lien is filed. *Grimmer v Warren, Moore & Co.*, 206 N.Y.S. 63, 123 Misc. 737, 1924 N.Y. Misc. LEXIS 1177 (N.Y. Sup. Ct. 1924).

6. Justification of sureties

Sureties on an undertaking on appeal may justify before county judge where they lived, though action was brought in another county. *Boss v Hutchinson*, 166 N.Y.S. 448, 101 Misc. 1, 1917 N.Y. Misc. LEXIS 491 (N.Y. Sup. Ct. 1917).

7. Order for examination

An order for examination before trial noticed to be heard by a judge in chambers, but heard by him at a special term for motions, could be treated as an order of the court. *Behl v Greenbaum*, 183 A.D. 238, 171 N.Y.S. 129, 1918 N.Y. App. Div. LEXIS 5999 (N.Y. App. Div. 1918).

8. Extending time to answer

An ex parte order of a county court extending the time to answer is valid; an order made upon an order to show cause of a supreme court justice under the caption of the county court is invalid if made at the special term of the supreme court if the order to show cause was returnable at a special term of this court, which was the county court, and was further invalid because the special term of the supreme court had no jurisdiction to make such an order in a county court action. *Edwards v Shreve*, 83 A.D. 165, 82 N.Y.S. 514, 1903 N.Y. App. Div. LEXIS 1454 (N.Y. App. Div. 1903).

9. Injunction

A county judge has no power to grant an injunction under § 10 of the Agricultural Law to restrain the defendant from further violations of that law, as such injunction is within the exception in CPA §§ 817 (§ 6211 herein), 880 (§§ 105, 5518 herein) and must be granted by the supreme court or a justice thereof, and therefore neither CPA § 77 (§ 2212, Judiciary Law 191 herein) relating to the powers of county judges to grant injunctions, nor CPA § 130 specifying who may grant orders when not specifically designated by law applied. *People v Windholz*, 68 A.D. 552, 74 N.Y.S. 241, 1902 N.Y. App. Div. LEXIS 148 (N.Y. App. Div. 1902).

10. Stay of execution

The power of a court to stay execution of its own judgments was recognized by CPA § 130 and former § 551. *Margolies v Ernst*, 69 N.Y.S. 646, 34 Misc. 405, 1901 N.Y. Misc. LEXIS 260 (N.Y. City Ct. 1901).

Research References & Practice Aids

Federal Aspects:

Defenses and objections presented by motions in United States District Courts, Rule 12 of Federal Rules of Civil Procedure, USCS Court Rules.

Motion to terminate or limit oral examination in United States District Courts, Rule 30(d) of Federal Rules of Civil Procedure, USCS Court Rules.

Motion for order compelling discovery in United States District Courts, Rule 37(a) of Federal Rules of Civil Procedure, USCS Court Rules.

Motion for judgment as a matter of law in United States District Courts, Rule 50 of Federal Rules of Civil Procedure, USCS Court Rules.

Motion for summary judgment in United States District Courts, Rule 56(c) of Federal Rules of Civil Procedure, USCS Court Rules.

Motion day in United States District Courts, Rule 78 of Federal Rules of Civil Procedure, USCS Court Rules.

>Motion for change of venue in United States District Courts, 28 USCS § 1404.

Application to United States court for making and hearing of motion relating to arbitration, 9 USCS § 6.

Jurisprudences:

23 NY Jur 2d Conversion, and Action for Recovery of Chattel § 132. .

28 NY Jur 2d Courts and Judges §§ 321., 322. .

67A NY Jur 2d Injunctions § 180. .

Treatises

Matthew Bender's New York Civil Practice:

§ 2213. Where motion made, in county court action

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2213, Where Motion Made, in County Court Action.

6 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶2701.08.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 15.01. Motions and orders — in general.

CPLR Manual § 15.08. Reargument and renewal of motions.

CPLR Manual § 28.04. Attachment — in general.

Matthew Bender's New York Practice Guides:

1 New York Practice Guide: Domestic Relations § 11.02.

Forms:

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 11:101 et seq .(stays, motions, orders and mandates).

Hierarchy Notes:

NY CLS CPLR, Art. 22

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