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Practitioner's Guide to Small Claims Part

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THE SMALL Claims Part of the New York City Civil Court is among the busiest courts in the world. Some 40,000 cases are adjudicated there each year. Thousands of lawyers appear in the part annually. This article is directed to those practitioners.

The existence of a Small Claims Part is a triumph of simplicity. It is an expression of the right of all people to justice, despite what small sum may be in issue. Stating a claim in general terms and paying a small fee — waivable for indigency under CPLR Article 11 — is all that is required to commence an action. The claimant is given a date to appear, and the court serves the defendant by mail.

On the scheduled date, six weeks after a claim is filed, the claimant tries to prove the case to a judge or arbitrator by a preponderance of the evidence. A defense may be interposed, but only rarely will a judge entertain an application that would interfere with coming to a speedy, decision on the merits.

The legal standard is "substantial justice between the parties according to substantive law." The parties receive a judgment by mail within days of the inquest or trial. No further docketing is necessary. Few things in the law are more simple or elegant. Counsel should keep that in mind whenever they represent clients in the Small Claims Part.

The procedures governing Small Claims actions are set out in Article 18 (Small Claims) and 18-A (Commercial Claims) of the New York City Civil

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Court Act (CCA), which is found in the Judiciary Law, Part 3, and at §§208.41 (Small Claims) and 208.41-a (Commercial Claims) of the Uniform Rules for the New York State Trial Courts (NYCRR).

The Civil Court Act is similar to the Uniform District Court Act and the Uniform City Court Act, which apply outside New York City.

The jurisdiction of Small Claims Part is $3,000, exclusive of interest and disbursements. Costs are unavailable. The only relief available is a monetary award; equitable relief cannot be granted. *Scott v. Dale Carpet Cleaning, Inc.*, 465 NYS2d 680, 681 (Civ. Ct., N.Y. County, 1983). Should counsel seek another kind of relief, such as the return of property, the Small Claims Part may still be effective. A judgment may be rendered on the condition that money is awarded if, by a specific date, the condition is unfulfilled. See, e.g., *Mongelli v. Cabral, NYLJ*, Oct. 3, 1995, at 30 (Yonkers City Ct.).

The parties also may agree to a "stipulation of settlement" that contains various conditions. The stipulation form permits two options: that the case be returned to the active calendar upon breach or that a failure to honor may result in a monetary judgment for the full amount of the initial claim. The parties determine which option to follow when they agree to the stipulation. Stipulations are not appealable when reduced to a judgment or order. *Westport Aviation Corp. v. Kuntz*, 644 NYS2d 840, 840 (3d Dept. 1996).

The Small Claims Part is designed to be the People's Court. No party needs to be represented by counsel and judges and arbitrators are encouraged to assist pro se litigants. See, e.g., *Webster v. Farmer*, 514 NYS2d 165, 166 (City Ct., Oswego County, 1987). If both sides are represented by an attorney, the Small Claims Part loses jurisdiction, and the matter must be referred to the county division of the Civil Court.

Non-lawyers may also represent some litigants. According to CCA §1815, a relative or friend of an individual may, with a judge's permission and without remuneration, appear for someone whose age or disability is such that the interests of justice would be served by non-attorney representation.

Moreover, a corporation may be represented by an officer, director or employee who has the authority to bind the corporation in a settlement or trial.

Attorneys' fees in the Small Claims Part are available only in exceptional circumstances, when fees are provided for by contract or statute. David Siegel, *New York Practice* §600, at 968 (2d ed. 1991). The Small Claims Part does not want to favor those represented by counsel over pro se litigants.

Two Branches

The part has two distinct branches: the Commercial Claims Part and the standard Small Claims Part.

Commercial claims may be brought by corporations, partnerships or business associations whose principal office is in New York State. The filing fee for a commercial claim is $22.84. If the claim arises out of a consumer transaction, the claimant must sign and have notarized a certification that a demand letter was sent by first class mail to the defendant no less than 10 days and no more than 180 days before making the claim.

Demand letters are available from the Small Claims Part clerk's office. Only a defendant who resides, works, or has an office in New York City may be sued. Commercial claimants are limited to instituting no more than five actions a month.

To initiate a small claim, a claimant must pay a filing fee of $10 for relief up to $1,000 and $15 for relief from $1,001 to $3,000. The claimant, or the attorney, files a form with the clerk's office that states a general claim. The claimant should set forth the defendant's correct name to aid in executing a possible judgment.

Although the failure to list a defendant's correct name does not affect the right to bring an action, notices of judgment that misname a defendant are difficult to enforce without post-judgment delays. An attorney who discovers a defendant's true name only during a Small Claims proceeding should ask the clerk to change the defendant's name on the court records.

The Small Claims clerk's office may refuse to commence an action if the address for the defendant is a post-office box. There is no jurisdictional requirement that a defendant have an address in the county where the action is brought.

However, the clerks' offices often refer the claimant to the county where the claimant or the defendant has a business or residence. A defendant must reside, work or have an office in New York City for the Small Claims Part to have jurisdiction. *Wessel v. Porter*, 438 NYS2d 57, 59 (Buffalo City Ct. 1981); *Ratner v. Hudson Transit Lines, Inc.*, 234 NYS2d 311, 312 (Civ. Ct., Queens County, 1962).

A counterclaim of up to $3,000 may be filed within five days of a Notice of Claim for a $3.32 fee. A counterclaim

may also be interposed by application to the court on the day of trial, but the claimant is then entitled to an adjournment.

Whether or not a defendant appears to answer an action, the claimant must establish a prima facie case of liability and damages. A litigant is therefore not automatically guaranteed a judgment if the defendant does not appear.

Additionally, the court almost always grants an initial motion to vacate a default judgment if brought within a reasonable time of the default. Winning an inquest is no guarantee that the action is over. The claimant may be required to return with proof once again, this time for a full trial.

Trials

The Small Claims trial procedure is a simplified one. The litigants and all witnesses are sworn, whether the proceeding is on the record before a judge or is an arbitration. All litigants have the opportunity to be heard and to present documentary evidence and witnesses. Counsel are entitled to examine their own parties and witnesses, as well as cross-examine the opposing party, *Falker v. Chrysler Corp.*, 463 NYS2d 357, 360 (Civ Ct., N.Y. County, 1983).

Because the mandate of the Small Claims Part is to do "substantial justice between the parties according to the rules of substantive law," there is no absolute right to open or close, and in their discretion judges and arbitrators may interject questions or even lead the examination. *McLaughlin v. Municipal Ct.*, 32 N.E.2d 266, 271 (Mass. 1941).

By filing a Small Claims action a claimant waives trial by jury, although a defendant may request one under CCA §§1806, 1806-A.

Pursuant to CCA §§1804 and 1804-A, the only evidentiary rules a judge or arbitrator must follow concern privileged communications and evidence barred under the rules that pertain to decedents and the mentally ill. Sections 1804 and 1804-A also provide that a paid bill or two estimates are prima facie proof of the "value and necessity of such work or repairs." Expert testimony also will establish value.

Other than that, an attorney will find that almost all evidence will be admitted "for what it is worth." Most judges and arbitrators will save objections until the end of the entire proceeding.

Hearsay is admissible. Nevertheless, an award may not be predicated on hearsay alone. *Levins v. Bucholtz*, 155 NYS2d 770, 770 (1st Dept. 1956).

The most important rule for an attorney in the Small Claims Part is to tailor the representation to the forum. Overly aggressive or lengthy cross-examination does not comport with the spirit of the court. Strategies designed to "turn the tables" on an opponent or impeachment to elicit minor inconsistencies are notable only for being out of place. A straightforward, calm, concise and brief setting-forth of the case, along with evidence to support the client's position, is more efficacious.

The attorney should know how much "give" there is in a client's position. Sometimes the key to small claims success is compromise. An attorney should obtain the authority to settle a case. It is often in the client's interest to settle.

When a client's position is rightly unyielding, the attorney should offer case law or other authority to show that the adversary's position is untenable. Judges and arbitrators must follow all the rules of substantive law. See, e.g., *Bierman v. Consolidated Edison Co.*, 320 NYS2d 331, 332 (App. T., 1st Dept., 1970); *Swarth v. Barney's Clothes Inc.*, 242 NYS2d 922, 924 (App. T., 1st Dept. 1963); *Woodson v. Frankart Kings Inc.*, 415 NYS2d 587, 589 (Civ. Ct., Kings County, 1979). This means that statutes and precedents must be adhered to and applied, if the judge or arbitrator knows they exist.

For example, if a commercial claim is brought by a check-cashing agency against the maker of a note dishonored by the bank for an improper signature, the attorney should show the judge or arbitrator §3-404 of the U.C.C., and perhaps a case as well, to establish that forgery is a defense against a holder in due course.

Every substantive issue that arises, such as bailment, carriage of goods, and indemnification by a collateral source, must be decided not on whim but according to substantive law. Moreover, judges and arbitrators may

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not speculate or compromise. *Bernstein v. City of New York*, 69 NY2d 1020, 1021-22, (1987); *Patrick v. New York Bus Serv., Inc.*, 592 NYS2d 311, 312 (1st Dept. 1993).

Judges and arbitrators must also dismiss stale claims because statutes of limitations are substantive, not procedural. *Cerio v. Charles Plumbing & Heating*, 87 A.D.2d 972, 972, 450 NYS2d 90, 91 (4th Dept. 1982).

The concept of "substantial justice" directs judges and arbitrators to subordinate to a right sense of justice the occasional harshness and complexity of procedural hurdles.

Under the doctrine of substantial justice, pretrial motions to dismiss for failure to state a cause of action will rarely be entertained or granted. *Friedman v. Seward Park Housing Auth.*, 639 NYS2d 648, 649 (App. T., 1st Dept., 1995). Discovery is unavailable except on a detailed showing of need to the court. Bills of particulars are similarly unavailable. *Selman v. Appel's Garage & Service Station Inc.*, 342 NYS2d 385, 386 (City Ct. of Long Beach 1973).

Interlocutory appeals may not be heard. *Jaysons Interiors, Inc. v. Leopold*, 607 NYS2d 533, 534 (App. T., 2d Dept., 1993). And summary-judgment motions may not be granted, *Weiner v. Tel-Aviv Car & Limo. Serv., Ltd.*, 533 NYS2d 372, 375 (Civ. Ct., N.Y. County, 1988), except on such issues as res judicata and lack of subject-matter jurisdiction. E.g., *Dunrite Auto Body & Motors, Inc. v. Liberty Mutual Ins. Co.*, 607 NYS2d 1005, 1006 (Dist. Ct., Suffolk County, 1993).

In handling a small claim, an attorney must be cognizant that the Small Claims Part, for all its simplified procedures, is a real court of law. Under CCA §1808, an adjudication in the Small Claims Part is res judicata as to the amount involved in the particular action.

The statutory language recently has been interpreted to bar further lawsuits based on the same transactions as the initial one, regardless of the amount involved.

In *Omara v. Polise*, 625 NYS2d 403, 404 (App. T., 2d Dept., 1995), the court held that a claimant who is unsuccessful in a Small Claims action is barred from suing again in Civil Court for the same cause of action, even for a greater amount.

The court found that the limited effect of res judicata in CCA §1808 constitutes mere "technical language" and that res judicata bars an entirely new action regardless of the amount. Counsel should be wary of initiating a small claim if doing so may prejudice the future rights of a client to sue elsewhere should the small claim be lost.

Appeals

A hearing before an arbitrator is not transcribed, and an arbitrator's decision cannot be appealed, even for a mistake of law. *Bernstein v. County of Westchester*, 380 NYS2d 62, 63 (2d Dept. 1976). All parties, except at an inquest, when an arbitrator acts as a referee who reports and recommends, must sign the "Consent to Arbitration" section of the Small Claims Case Record Card.

This consent formally provides that the parties understand that they are waiving any right to appeal. An arbitrator's award may be vacated or modified under CPLR 7511, but only on the narrowest grounds, such as fraud or an arbitrator's blood relationship with a party.

Because a Small Claims arbitrator's award in not appealable, some attorneys prefer to have their cases heard by a judge. Trials before judges are appealable, and minutes are taken.

However, the right to appeal a Small Claims judge's decision is often illusory. An appeal will lie only if the judge did not render substantial justice under substantive law. But there will be no reversal unless the error "is 'clearly erroneous' and the deviation from substantive law is 'readily apparent.'" *Lockwood v. Niagra Mohawk Power Corp.*, 491 NYS2d 211, 213 (3d Dept. 1985). If the error concerns procedure, pleading, or evidence, moreover, the judgment will be reversed only if the judge's error is "shocking." *Blair v. Five Points Shopping Plaza Inc.*, 379 NYS2d 532, 535 (3d Dept. 1976).

Given the limited appellate review, counsel should consider having their case heard by one of New York City's 1,500 volunteer arbitrators. Like a judge, an arbitrator will follow the rules of substantive law, but the arbitrator will try the case almost immediately after the calendar call, which begins promptly at 6:30 Monday through Thursday evenings. (In The Bronx, there is no calendar on Thursdays, and in Staten Island, the Small Claims Part is open only on Thursdays.)

A judge trial, on the other hand, often requires an adjournment. To choose an arbitrator, counsel should simply announce "Ready." To choose a judge, announce "Ready by the Court." To make a motion, announce "Application."

The Small Claims Part is user friendly. It is not designed to compete on the information superhighway. But for getting from here to there, it is probably the most effective system of practical justice ever devised. Although the Small Claims Part is designed to work well without practitioners, those who appear lend integrity to the process and can make effective contributions on behalf of their clients.