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Memorandum 69-33

Subject: Study 41 - Small Claims Court Law

Resolution Chapter 202 of the Statutes of 1957 directed the Law Revision Commission to make a study to determine whether the Small Claims Court Law should be revised. At the January meeting, the staff reported its opinion that the small claims court law is under continuing study by the Legislature (especially such matters as the dollar jurisdictional limit on small claims court jurisdiction) and that it did not appear desirable for the Commission to make a study of this body of the law except for one problem--the availability of appeal in small claims court.

Professor Friedenthal of the Stanford Law School has written an article for the next volume of the Golden Gate Law Review in which he discusses the availability of appeal in small claims court and suggests legislative revisions. A preliminary draft of his article is attached as Exhibit I. He suggests that the small claims court provisions should be revised to state that any party who seeks affirmative relief, either by way of claim or counterclaim, gives the court jurisdiction for the purpose of such claim (whether a claim or counterclaim) within the $300 limit, and accepts the decision as final on such claim. The compulsory counterclaim statute should be revised to make it inapplicable in small claims courts.

Respectfully submitted,

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Executive Secretary

EXHIBIT I

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AVAILABILITY OF APPEAL IN SMALL CLAIMS COURT

Section 117 (J) of the Code of Civil Procedure* provides that the defendant may appeal from a small claims court judgment. Such an appeal is to the Superior Court and results in a trial de novo in that court. In Skaff v. Small Claims Court for the Los Angeles Judicial District,[1] the California Supreme Court faced the question whether or not Section 117 (J) applies to a plaintiff with respect to a counterclaim filed against him in his small claims action.

Plaintiff in Skaff brought suit to collect $250, the amount of a deposit made on a rented automobile. Defendant counterclaimed for $175, which was allegedly due from the plaintiff on an entirely different transaction. The court held for defendant on both the claim and counterclaim. The plaintiff attempted to appeal the judgment on the counterclaim to the Superior Court of Los Angeles County, which refused to hear the case. The Supreme Court held that the plaintiff should be treated as a defendant with regard to the counterclaim and was thus entitled to appeal.

The court was required to base its holding solely on considerations of policy since it recognized that the language of Section 117 (J) itself is ambiguous. The opinion listed four reasons for the decision. First, "since decisions of this court characterize a counterclaim as a separate,

simultaneous action, the plaintiff in the original action becomes a defendant in the cross-action and acquires the appellate remedies of a defendant."[2] The court supported this statement merely by citing two otherwise unrelated cases, ostensibly for the proposition that, regardless of context, any cross-action should necessarily be treated as separate and distinct from the original claim. Obviously, such a broad view is unjustified. One must look to the underlying nature and purpose of the matter in question to determine the extent to which such a separation is justified. Indeed, neither of the two cases cited in any way supports the broad position taken by the court.[4]

The second ground of the court's decision in Skaff was that the underlying reasons supporting the denial of an appeal to a plaintiff in his original action do not apply to the counterclaim. The court points out that on his own claim plaintiff could have chosen either to go to municipal or small claims court, and that by electing the latter, with its inexpensive, informal procedure, he voluntarily agreed to be bound by the decision without further recourse. On the other hand, the court argues that, on the counterclaim, plaintiff is not voluntarily in small claims court but is there involuntarily, just as if he were a defendant; thus he should not be held to have waived any of the rights to which a defendant in entitled. This argument is also weak, since it ignores the basic purpose of permitting defendants to demand a de novo trial.

The small claims procedure is a highly desirable method of solving minor disputes, and no ordinary type of appeal is warranted. The costs of such appeals to the litigants and the court is too great a price to pay given the magnitude of the disputes involved. But since a defendant

in small claims court is denied his rights to counsel and trial by jury, the entire small claims procedure would be unconstitutional unless defendant has the power to request a separable trial where those rights can be exercised. However, there is no justification for extending such reasoning to plaintiff who has voluntarily entered small claims court under a statute which provides that a counterclaim may be filed against him. Once he selects the small claims forum, it is not unreasonable to say that by so doing he agrees to accept its decision on any valid counterclaim against him as well as his own claim. This is particularly so because to be tried in small claims court, the counterclaim must itself fall within that court's jurisdictional limitations.[5] Since plaintiff has waived his constitutional rights to counsel and trial by jury by entering small claims court, he should not be given the right to demand a trial de novo.

The third reason for the court's decision in the present case is that denial of an appeal by plaintiff for the counterclaim would tend to discourage the use of the small claims court. The court says, "Nonappealability to the counterclaim would expose the moving party to the possibility of the conversion of his claim into a quite unexpected adverse judgment which he could neither discharge, because he lacks the funds, nor challenge on appeal."[6] This argument ignores the realities of small claims litigation. Most poor plaintiffs, already in court, would probably rather have defendants' counterclaim brought against them in small claims court than face the possibility of a separate action in a municipal court at another time.

Also, to a poor plaintiff, the right to a trial de novo is hardly appealing. Such a trial is held in Superior Court, in which the rules of evidence apply. Witnesses must be formally called and cross-examined; a full range of trial and post-trial motions are available; and a jury may be demanded. Representation by counsel is a practical necessity. Yet the $15 statutory costs which a winning litigant is permitted to recover for fees of counsel will hardly be sufficient to cover his actual outlay. From a practical point of view it seems most unlikely that the Skaff decision will encourage poor plaintiffs, heretofore reluctant to press their cases, to file in small claims courts. The number of situations would seem few indeed where persons have decided to forgo suit altogether, or to select a municipal court, merely because a counterclaim might be filed against them, which counterclaim might be lost under circumstances where an appeal might prove worthwhile.

On the other hand, the Skaff decision will tend to strengthen the hand of the wealthy, powerful litigant who utilizes the small claims court against poor defendants. An affluent plaintiff will welcome a counterclaim by such a defendant; for it will provide him the additional advantage of threatening an expensive and lengthy trial de novo unless a favorable settlement is made, or unless the counterclaim is dropped.

In a note on the California Small Claims Court in 52 Cal. Law Review 876 (1964), the authors did an empirical study of some 386 cases in the Oakland-Piedmont-Emeryville Judicial District. Their study

revealed that while individuals were defendants in more than 85% of the cases, business and government interests initiated 60% of all actions; only slightly more than 30% were brought by individuals, and undoubtedly many of them were landlords. Thus, the ultimate effect of the current decision tends to be that those individuals who counterclaim against a corporation or governmental agency suing them for goods and services, basing their counterclaim on defective quality of the goods or services rendered, can be expected, in a large percentage of cases, to be subjected to de novo trials should they prevail. Corporate or governmental agencies rarely have to worry about the cost and inconvenience of such trials; but most individual plaintiffs do not have the money, energy, or advice to pursue them.

The Court's fourth reason for its decision is that the recognition of plaintiff's right of appeal on a counterclaim avoids a ruling which would pivot that right upon the fortuity of the manner in which the claim was presented. In other words, if the defendant had brought his claim as a separate action, plaintiff could appeal; thus, the court reasons, plaintiff should be allowed to appeal when defendant's claim

is asserted in a counterclaim. In taking this position the court once again ignores the substantial advantages of the small claims procedure and the underlying justifications for allowing defendant an appeal. The de novo trial by the Superior Court is a time-consuming and wasteful maneuver, requiring a Superior Court judge to sit on a matter of trivial moment, and is justified only when the Constitution so demands.

There is one further issue touched upon by the Court which should be discussed. The Court seemed to assume that if a claim and counterclaim were not treated as entirely separate for purposes of appeal, then defendant could not be treated as a plaintiff with regard to his own counterclaim. This would mean that defendant would presumably be allowed to appeal from an adverse decision on the counterclaim as well as on the decision on the claim. Obviously this is not a sound result. If a defendant does file a counterclaim he should be bound by the result as much as if he were the plaintiff. Thus Section 117 (J) should be read within the policy and meaning of the statute as follows: when a party brings an action affirmatively, whether it be a claim or a counterclaim, he should be treated as a plaintiff and barred from appealing either an adverse decision on the claim or counterclaim. Having subjected himself to the tribunal voluntarily, he should be required to abide by the decision of that tribunal without a costly appeal which clearly subverts the policy of that act and which is established in the statutes primarily to prevent it from being an unconstitutional restriction on defendants in cases where only a claim is filed.

This analysis breaks down, however, where defendant's counterclaim is compulsory under Section 549.[8] Section 117 (h) states that the

normal counterclaim rules apply in small claims court when the counterclaims fall within small claims. This would seem to mean that, as to such counterclaims, the provisions of Section 439 are applicable.[9]

It makes little sense, of course, to make counterclaims mandatory in small claims court. If the party bringing such a counterclaim does not approve of the small claims court decision on it, it seems clear that he must be free to appeal to the Superior Court and obtain a trial de novo. Otherwise denial to him of an attorney and right to trial by jury would be unconstitutional. Clearly, the bringing of his compulsory counterclaim can in no way be considered a waiver. Since on appeal from an adverse decision on defendants' counterclaim he will receive a trial de novo, (precisely what would occur if he brought the claim separately) in effect, no counterclaim in small claims court is mandatory. If, under the small claims statute, it were made clear that no counterclaim was compulsory and need not be filed, then a defendant who did so voluntarily file could be held to have waived his right to appeal.

CONCLUSION

In the light of the Skaff decision and the general compulsory counterclaim problem in the small claims court, it would be wise for the legislature, once again, to revise the small claims court provisions. It should do so simply by stating that any party who seeks affirmative relief, either by way of claim or counterclaim, establishes that jurisdiction of the court for purposes of both claims and counterclaims within that jurisdiction, and accepts the decision as final on both claims and counterclaims. The compulsory counterclaim statute should be deemed inapplicable.