Touro Law Review

Volume 11 | Number 3 Article 52

1995

Power of Courts

recognized at the time of its adoption."[111] Therefore, section 7(b) gave the supreme court "'original, unlimited, and unqualified jurisdiction.'"[112] The court also noted that the substantive law relating to suppression motions were very similar or the same in both the family court and the supreme court. Moreover, the supreme court had already held a hearing and, thus, was better able to decide certain issues such as credibility.[113]

In conclusion, although it may be the legislature's desire that the family court handle the sensitive matters involved in juvenile delinquency proceedings, such concerns no longer exist where the court is "deciding a suppression motion after a hearing involving the same issue."[114] Consequently, it is evident that the supreme courts of New York will always retain their power of original jurisdiction, expressly granted by the New York State Constitution, where such protections have been waived by a prior disposition of the same issue and the procedural rules pertaining to suppression possess no material differences.

CIVIL COURT

NEW YORK COUNTY

Commissioners of State Insurance Fund v. Duralum Corp.[115]
(printed May 6, 1994)

The Special Term, First Department addressed the issue of whether a party being sued by an agency of the State of New York in a civil court action can institute a counterclaim against that agency in the Civil Court or whether the suit must be

111. *Williams*, 1994 WL 744862, at *3 (citing Kagen v. Kagen, 21 N.Y.2d 532, 537, 236 N.E.2d 475, 478, 289 N.Y.S.2d 195, 200 (1968)).

112. *Id.* at *4 (citing *Kagen*, 21 N.Y.2d at 537, 236 N.E.2d at 478, 289 N.Y.S.2d at 199).

113. *Williams*, 1994 WL 744862, at *3.

114. *Id.* at *4.

115. N.Y. L.J., May 6, 1994, at 31 (Civ. Ct. New York County 1994).

brought in the Court of Claims.[116] After examining article VI, section 9 of the New York State Constitution,[117] which provides in pertinent part that the Court of Claims "shall have jurisdiction to hear and determine claims against the state or by the state against the claimant,"[118] and by considering sections 8[119] and 9[120] of the New York Court of Claims Act, the Civil Court, Special Term decided that because the Court of Claims has exclusive jurisdiction over suits commenced against agencies of

116. *Id.*

117. N.Y. CONST. art. VI, § 9.

118. *Id.* Section 9 states:

> The court of claims is continued. It shall consist of the eight judges now authorized by law, but the legislature may increase such number and may reduce such number to six or seven. The judges shall be appointed by the governor by and with the advice and consent of the senate and their terms of office shall be nine years. The court shall have jurisdiction to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide.

Id.

119. N.Y. COURT OF CLAIMS ACT § 8 (McKinney 1989). This section provides:

> The state hereby waives its immunity from liability and action and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the supreme court against individuals or corporations, provided the claimant complies with the limitations of this article. Nothing herein contained shall be construed to affect, alter or repeal any provision of the workmen's compensation law.

Id.

120. N.Y. COURT OF CLAIMS ACT § 9 (McKinney 1989). This section states in pertinent part:

> The court shall have jurisdiction: . . . . To hear and determine a claim of any person, corporation or municipality against the state for the appropriation of any real or personal property or any interest therein, for breach of contract, express or implied, or for the torts of its officers or employees while acting as such officers or employees, providing the claimant complies with the limitations of this article . . . . To hear and determine any claim in favor of the state against the claimant, or against his assignor at the time of the assignment. . . . . To render judgment in favor of the claimant or the state for such sum as should be paid by or to the state.

Id.

the state, the counterclaim by the defendant Duralum Corp. must be brought in the Court of Claims.[121]

The original claim in *Duralum* was filed by the plaintiff, Commissioners of State Insurance Fund [hereinafter Insurance Fund] against the defendant, Duralum Corp. [hereinafter Duralum].[122] Duralum had not paid the premiums on one of its Workers' Compensation policies between August 1990 and May 1991, and the Insurance Fund was suing to recover the money that was purportedly due.[123] The suit was brought in Civil Court.[124] Duralum in turn counterclaimed for $635.42, claiming that it was overcharged for the premiums by the plaintiff because the payroll estimates that the premiums were based on were incorrect.[125] The Insurance Fund maintained that the counterclaim was unconstitutional as brought in the Civil Court in that any action against the state or an agency of the state must be brought in the Court of Claims.[126] The Insurance Fund asserted that the counterclaim should be dismissed because of lack of jurisdiction on the part of the Civil Court.[127] Duralum contended that the counterclaim should be considered an affirmative defense.[128] However, the Civil Court, Special Term, Part I did not agree with the reasoning of the defendant and dismissed the counterclaim.[129]

The court began by stating that the Court of Claims has exclusive jurisdiction over claims instituted by the state and those against the state.[130] The court relied on the decision of the court of appeals in *Morel v. Balasubramnian*.[131] The issue in *Morel*

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121. *Duralum*, N.Y. L.J., May 6, 1994, at 31.
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.* In coming to this conclusion, the court cited N.Y. CONST. art. VI, § 9 and N.Y. COURT OF CLAIMS ACT §§ 8, 9.
131. 70 N.Y.2d 297, 514 N.E.2d 1101, 520 N.Y.S.2d 530 (1987). This case came about as a result of the death of plaintiff's decedent while she was

was whether an action for negligence against state employees could be maintained in the supreme court.[132] In holding that the supreme court did have jurisdiction, the court stated that "[t]he Court of Claims has limited jurisdiction to hear actions against the State itself, or actions naming State agencies or officials as defendants, where the action is, in reality, one against the State-i.e., where the State is the real party in interest."[133] The court of appeals in *Morel* stated that any claim against the state or a state agency must be brought in the court of claims.[134]

In order for a corporation to be considered an agency of the state, which would grant it immunity from suit in any court other than the court of claims, it must be determined whether the "agency is considered an arm of the state."[135] In coming to the conclusion that the Insurance Fund is undoubtedly an integral part of the state and regarded as an agency of the state, the court

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under the care of the defendants, who were physicians employed by the state. *Id.* at 300, 514 N.E.2d at 1101-02, 520 N.Y.S.2d at 530-31.

132. *Id.* at 300, 514 N.E.2d at 1101, 520 N.Y.S.2d at 530.

133. *Id.* at 300, 514 N.E.2d at 1102, 520 N.Y.S.2d at 531.

134. *Id.* at 300, 514 N.E.2d at 1102, 520 N.Y.S.2d at 531. Even though the court stated that claims against a state agency must be brought in the Court of Claims, it decided that the Supreme Court had jurisdiction in this case because the state was not the real party in interest - the doctors were. *Id.* at 300, 514 N.E.2d at 1101, 520 N.Y.S.2d at 530. *See* Automated Ticket Systems, Ltd. v. Quinn, 90 A.D.2d 738, 455 N.Y.S.2d 799 (1st Dep't 1982) (stating that state departments and officers cannot be sued for damages in the Supreme Court, and the Court of Claims is the only forum in which the suit can be brought), *aff'd*, 58 N.Y.2d 949, 447 N.E.2d 82, 460 N.Y.S.2d 533 (1983); Sinhogar v. Parry, 53 N.Y.2d 424, 431, 425 N.E.2d 826, 828, 442 N.Y.S.2d 438, 440 (1981) ("[C]laims against the State and its officers acting in their official capacity are cognizable only in the Court of Claims."); Easley v. New York State Thruway Auth., 1 N.Y.2d 374, 135 N.E.2d 572, 153 N.Y.S.2d 28 (1956) (stating that the Legislature has the authority to give the power to decide claims against state agencies to the Court of Claims).

135. DAVID D. SIEGEL, NEW YORK PRACTICE § 17, at 20 (2d ed. 1991). The author cites the case of Belscher v. New York State Teachers' Retirement Sys., 45 A.D.2d 206, 357 N.Y.S.2d 241 (4th Dep't 1974). The court in *Belscher* stated that if the Legislature does not specifically provide that the agency can only be sued in the Court of Claims, "the court must determine whether the business of the corporation is so closely linked with State functions as to be essentially the State itself." *Id.* at 207, 357 N.Y.S.2d at 243.

cited to *Methodist Hospital of Brooklyn v. State Insurance Fund.*[136] The court in *Methodist Hospital of Brooklyn* stated, "[i]t is clear, as the courts have consistently held, as the legislature no doubt was well aware, that the State Insurance Fund is a State agency."[137] This supports the *Duralum* court's decision that because the Insurance Fund is a state agency, it can only be sued in the court of claims.[138]

Next, the court stated that even if a state agency initiates a suit in a court other than the court of claims, the agency still cannot be sued in that other court.[139] Any counterclaim against the state or state agency must be brought in the court of claims.[140]

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136. 102 A.D.2d 367, 479 N.Y.S.2d 11 (1st Dep't 1984), *aff'd*, 64 N.Y.2d 365, 476 N.E.2d 304, 486 N.Y.S.2d 905 (1985).

137. *Id.* at 372, 479 N.Y.S.2d at 15.

138. *Duralum*, N.Y. L.J., May 6, 1994, at 31. *See* Commissioners of the State Ins. Fund v. M. Mathews & Sons Co., Inc., 131 A.D.2d 301, 516 N.Y.S.2d 5 (1st Dep't 1987) (stating that the State Insurance Fund is an agency of the state); Commissioners of the State Ins. Fund v. Cosmopolitan Mut. Ins. Co., 26 Misc. 2d 857, 209 N.Y.S.2d 1019 (Sup. Ct. New York County 1960) (holding that a counterclaim in an action by the State Insurance Fund can only be brought in the Court of Claims); State Ins. Fund v. Boyland, 282 A.D. 516, 523, 125 N.Y.S.2d 169, 176 (1st Dep't 1953) ("[T]he inextricable meshing of the Fund into the basic administration of the Workmen's Compensation Law and its control and direction by the State, reflect legislative intent to make the Fund a State agency . . . ."), *aff'd*, 309 N.Y. 1009, 133 N.E.2d 457 (1956); Cardinal v. State, 304 N.Y. 400, 107 N.E.2d 569 (1952) (stating that it was appropriate for an action against the state based on a State Insurance Fund policy to be brought in the Court of Claims), *cert. denied*, 345 U.S. 918 (1953).

139. *Duralum*, N.Y. L.J., May 6, 1994, at 31.

140. *Id.* (citing SIEGEL, *supra* note 135, § 17, at 19-20). "[I]f the state brings suit as a plaintiff in some other court, which it of course may do, the defendant there cannot counterclaim." *Id.* The author in this section cites to *In re* Hicka, 180 Misc. 173, 40 N.Y.S.2d 267 (Sup. Ct. New York County 1943). *In re* Hicka resulted from a suit filed by the Attorney General on behalf of one of the state hospitals against the committee of an incompetent person who had been treated at the hospital for care provided. *Id.* at 174, 40 N.Y.S.2d at 268. The suit was brought in the supreme court. *Id.* at 173, 40 N.Y.S.2d at 267. The committee then filed a claim against the hospital for services that were supposedly rendered by the incompetent. *Id.* at 174, 40 N.Y.S.2d at 268. The court in this case stated that when the state commences an action against someone, the person being sued does not have the same right

Furthermore, in relying on *Department of Mental Hygiene v. Schneps*,[141] the court explained that this rule likewise applies when the counterclaim concerns the same subject matter as the original lawsuit.[142] From this, the court came to the conclusion that even though the counterclaim instituted by Duralum arose out of the action brought against Duralum by the Insurance Fund, the counterclaim could not be brought in the civil court and must be brought, if at all, in the court of claims.[143]

The court relied on the reasoning in *State v. Rospendowski*,[144] in stating that a counterclaim that is deceptively asserted as an affirmative defense will not be allowed in a court other than the court of claims.[145] In *Rospendowski*, after New York State

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to sue the state and cannot file a counterclaim against the state. *Id.* at 175, 40 N.Y.S.2d at 269.

141. 95 Misc. 2d 828, 408 N.Y.S.2d 980 (1st Dep't 1978). In *Schneps*, the New York State Department of Mental Hygiene sued the defendant in the supreme court for care given to the defendant's retarded daughter in a state school. *Id.* at 830, 408 N.Y.S.2d at 981. The defendant filed a counterclaim for damages, claiming that the care his daughter received in the school was entirely deficient. *Id.* at 830-31, 408 N.Y.S.2d at 982. However, the defendant himself on appeal recognized that the supreme court was not the proper forum for the counterclaim. *Id.* at 831, 408 N.Y.S.2d at 982. The defendant conceded this point even though his counterclaim was directly related to the action commenced by the Department of Mental Hygiene.

142. *Duralum*, N.Y. L.J., May 6, 1994, at 31.

143. *Id.* In addition, the court addressed the defendant's contention that the counterclaim should be considered an affirmative defense. *Id.* The court, relying on the reasoning in State v. Creedon, 76 A.D.2d 958, 428 N.Y.S.2d 733 (3d Dep't 1980), conceded that when a party is sued by the state or a state agency outside the court of claims, the party is allowed to assert an affirmative defense. *Duralum*, N.Y. L.J., May 6, 1994, at 31. Nevertheless, the court determined that the claim asserted by Duralum could not be considered an affirmative defense, and was indeed a counterclaim. *Id.* In coming to this conclusion, the court cited to the New York Civil Practice Law and Rules 3018(b), which states that affirmative defenses are only appropriate when a party is seeking to have the claim that has been filed against it dismissed. When the party is seeking damages from the opposing party, a counterclaim should be submitted. N.Y. CIV. PRAC. L. & R. 3018(b) practice commentary (McKinney 1991).

144. 110 A.D.2d 1031, 488 N.Y.S.2d 122 (3d Dep't 1985).

145. *Duralum*, N.Y. L.J., May 6, 1994, at 31.

appropriated the property of the defendants, the defendants refused to move out and pay rent, and the state filed suit to recover the money and the property.[146] One of the affirmative defenses asserted by the defendants stated that the plaintiff failed to help them find alternative housing and did not give them financial assistance to help them move.[147] The court denied the affirmative defenses of the defendants by stating that "since the defendants' statutory obligation to pay rent cannot be circumvented, their 'affirmative defenses' in reality assert counterclaims which are cognizable only in the Court of Claims."[148]

Therefore, the *Duralum* court held that "[b]ecause the counterclaim includes a request for relief in the form of damages, it is impossible to deem the counterclaim an affirmative defense"[149] and dismissed the counterclaim.[150] The court determined that a counterclaim against an agency of the State of New York must be brought in the Court of Claims.[151]

In conclusion, it seems clear that the courts in New York view counterclaims against the state or state agencies as separate claims against the state which can only be brought in the court of claims. Most of the courts agree that bringing a claim or a counterclaim against the state or state agency elsewhere is

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146. *Rospendowski*, 110 A.D.2d at 1031, 488 N.Y.S.2d at 123.

147. *Id.* at 1031, 488 N.Y.S.2d at 123.

148. *Id.* at 1031-32, 488 N.Y.S.2d at 123 (citing People v. Dennison, 84 N.Y. 272 (3d Dep't 1881) and State Univ. of N.Y. v. Syracuse Univ., 285 A.D. 59, 135 N.Y.S.2d 539 (3d Dep't 1954)). In *Dennison*, the court stated a counterclaim cannot be used to procure a money judgment from the state unless the state agrees to be sued. A counterclaim is only allowed to be used to absolve the defendant of liability. *Dennison*, 84 N.Y. at 280-81. In *State Univ. of N.Y. v. Syracuse Univ.*, the court dismissed a counterclaim by Syracuse University against the State University of New York for damages for breach of a contract in an action originally instituted by the State University. *State Univ. of N.Y.*, 285 A.D. at 61, 135 N.Y.S.2d at 542. The court stated that the State University is an agency of the state and, for that reason, the Supreme Court lacked jurisdiction over the counterclaim. *Id.* at 62, 135 N.Y.S.2d at 542.

149. *Duralum*, N.Y. L.J., May 6, 1994, at 31.

150. *Id.*

151. *Id.*

unconstitutional, and these actions will not be heard outside the court of claims.