NYSBA CPLR Committee

This proposal is to amend NY City Civil Court Act §§ 1808 & 1808-A; Uniform District Court Act §§ 1808 & & 1808-A; Uniform City Court Act §§ 1808 & & 1808A; and Uniform Justice Court Act § 1808 – all of which are titled "Judgment obtained to be res judicata in certain cases" and state:

> A judgment obtained under this article shall not be deemed an adjudication of any fact at issue or found therein in any other action or court; except that a subsequent judgment obtained in another action or court involving the same facts, issues and parties shall be reduced by the amount of a judgment awarded under this article.

NY City Civil Court Act § 1808-A, Uniform District Court Act § 1808-A, and Uniform City Court Act § 1808-A have the same language and apply to commercial claims.

Both the majority and dissenting opinions in *Simmons v. Trans Express Inc.,* 37 N.Y.3d 107 (June 3, 2021), made the need to amend these statutes obvious. In that action, the defendant Trans Express fired plaintiff Charlene Simmons after she had worked as a driver for 2.5 years. She alleged in a federal action that she was paid $12.50 per hour for 60-84 hours per week, without overtime pay. She earlier had filed an action in small claims court seeking nonpayment of wages and requesting the small claims limit of $5,000. In that action she received $1,000 in a small claims arbitration. The federal action was later filed after she retained an attorney, who sought for her both backpay since she was terminated, as well as overtime pay for the hours she had worked before she was terminated. Trans Express sought dismissal under the res judicata doctrine, which Simmons opposed. The action reached the New York Court of Appeals by a certification from the Second Circuit.

Both the majority and the dissenting opinions from the New York Court of Appeals agreed that the first clause of section 1808 rejects the collateral estoppel or issue preclusion effect for small claims court actions. *Id.* at 112-113, 120. They disagreed, however, as to the meaning of the second clause. The majority held that the second clause did not abrogate the claim preclusion (res judicata) doctrine applied in other contexts between the same adversaries arising out of the same transaction or series of transactions. *Id.* at 115. The dissenters argued that the second clause recognizes that a subsequent judgment might be obtained in another action or court involving "the same facts, issues and parties," with a setoff of the amount of judgment awarded in the small claims court, and thus means that a small claims action also does not have res judicata effect in any other action or court. *Id.* at 119, 125.

The majority's interpretation creates a trap for pro se litigants who by pursing a claim in small claims courts could forfeit claims for larger and different claims against the same parties arising out of the same transaction or same series of transactions. The legislative history does not indicate that the legislature intended to create such a trap for pro se litigants. Such an

interpretation stands against the framework of the small claims courts, designed to provide an easy and quick resolution of claims involving relatively small amounts of money for pro se claimants, with limited resources and without an attorney. It is often called "the people's court" intended for "quick, simple and inexpensive justice." 37 N.Y.3d at 116. A small claims court provides at least one night session, and "a simple, informal and inexpensive procedures for prompt determination of such claims." NY City Civil Court Act § 1802.

The New York Court of Appeals acknowledged the need for a legislative fix. The majority noted that "there may well be reasonable policy arguments in favor of further limiting the preclusive effect of small claims judgment beyond the express limitations imposed by NY City Civ Ct Act § 1808," but they "are best addressed to the legislature, not the courts." 37 N.Y.3d at 115. The dissenters simply called "for the legislature to take corrective action." *Id.* at 125.

Finally, based on the statutory language and legislative history, the dissenters interpreted section 1808 to have a claim preclusive effect when a claimant sues and *loses* against a defendant in the small claims court, but no claim preclusion when a claimant *prevails* in the small claims court. While the setoff in the second clause makes sense to prevent "double dipping" (37 N.Y.3d at 117, 125), the concern behind not providing preclusive effect to a decision reached quickly and often without counsel does not support a distinction between whether the pro se plaintiff won or lost the small claim proceeding. For example, whether Simmons had lost her small claim for backpay, rather than having received $1,000, should not affect whether she should be entitled to pursue a more informed claim for lack of overtime pay after consulting with an attorney.

In accord with the purpose, intent, and structure of the small claims courts, the following amendment (shown in red italics) is proposed to remove traps for unwary pro se litigants and provide necessary clarity:

> [§ 1808] Judgment obtained ~~to be res judicata~~ in certain cases
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> A judgment obtained under this article shall not be deemed an adjudication of any fact, ~~at~~ issue, or ~~found therein~~ claim in any other action or court; except that a subsequent judgment obtained in another action or court involving the same facts, issues, and parties shall be reduced by the amount of a judgment awarded under this article.

The proposed amendment clarifies that a small claims judgment does not preclude a subsequent claim involving the same transaction, series of transactions, facts, issues, or parties. A small claims action does not have any claim preclusion or res judicata effect. To prevent double recovery, the statute provides for a setoff in the recovery of the subsequent judgment by the amount of judgment awarded and satisfied in the small claims court action.