Michigan Law Review

Volume 55 | Issue 6

1957

Civil Procedure - Joinder of Statutory Causes of Action with Common Law Negligence Where There Are Different Parties Defendant

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CIVIL PROCEDURE—JOINDER OF STATUTORY CAUSES OF ACTION WITH COMMON LAW NEGLIGENCE WHERE THERE ARE DIFFERENT PARTIES DEFENDANT—Plaintiff brought an action against defendant for injuries received in an automobile accident caused by defendant's negligence in driving while intoxicated. She sought to join with this claim actions against several bar owners under a statute providing for liability of bar owners for injuries caused by one to whom they had unlawfully sold alcoholic beverages.[1] One of the defendant bar owners moved to dismiss for misjoinder or to compel an election of causes on the ground that since only compensatory damages could be recovered against the defendant-consumer upon common law negligence, and both exemplary and compensatory damages could be recovered against the bar owners under the statutory cause, it would be impossible for the court properly to instruct the jury without confusing them as to the issues, with resulting prejudice to the bar owners. *Held,* joinder allowed. The Michigan joinder provision provides for joinder of causes and multiple defendants when the liability is one asserted against all of the defendants or sufficient grounds shall appear for uniting the causes of action ". . . in order to promote the convenient administration of justice."[2] It would be unjust to force a plaintiff under these circumstances to choose her target from among the defendants, all of whom in violation of the law contributed to her injuries. Since the court could direct the jury to bring in separate verdicts on the different causes, this joinder would not prejudice the defendant.[3] *Ruediger v. Klink,* (Mich. 1956) 78 N.W. (2d) 248.

The twentieth century trend in joinder has emphasized free joinder guided by principles of trial convenience.[4] The wording of the Michigan joinder provision is probably the broadest in use at this time.[5] It places no limit upon joinder except that of trial convenience. Because of this

1 Mich. Comp. Laws (1948; Mason's Supp. 1954) §436.22.

2 Mich. Comp. Laws (1948) §608.1.

3 Michigan Court Rule 37, §7, originally rule 70, adopted in Lewis v. Bricker, 232 Mich. 388, 205 N.W. 98 (1925). The court stated that the joinder statute necessarily carried with it authority to direct separate verdicts and to enter separate judgments, and the purpose of this rule was merely to clarify and make certain the practice under the statute.

4 See 37 COL. L. REV. 462 (1937); 3 MOORE, FEDERAL PRACTICE, 2d ed., 1803-1807 (1948).

5 Fla. Stat. (1943) §46.08, is very similar to the Michigan provision.

broadness, however, there is no concrete test which can be applied in each case. Each case must be decided on its own merits so that the final test is a weighing of the convenience of the party seeking the joinder and that of the party seeking dismissal or an election.[6] The first cases under the Michigan joinder statute seemed either to ignore it or to hold that it was meant only to allow joinder where it would have been allowed at common law.[7] Application of the rules set forth in most of these early cases to the principal case probably would have resulted in a holding of misjoinder.[8] Since these decisions, however, the federal joinder provisions have been adopted for federal courts and many states have adopted provisions with substantially similar wording.[9] The federal rules place no limitation on joinder of causes so long as the requisites for joinder of parties are met.[10] The rule for permissive joinder of defendants provides that they may be joined where the right to relief arises out of the "same transaction, occurrence, or series of transactions or occurrences" and if any common question of law or fact is involved.[11] Here the right to relief would in each case arise out of the accident[12] and several common questions of fact would have to be proved in each case.[13] It is very possible, as the court stated in *Otto v. Village of Highland Park*,[14] that at the time the Michigan joinder provision was

6 "The propriety of consolidation [allowed by statute whenever joinder would be possible] is to be determined entirely by the state of facts existing prior to the consolidation." Higdon v. Kelley, 339 Mich. 209 at 222, 63 N.W. (2d) 592 (1954).

7 See McDonald v. Hall, 193 Mich. 50, 159 N.W. 358 (1916); Albrecht v. Benevolent Society, 205 Mich. 395, 171 N.W. 461 (1919); Thomson v. Kent Circuit Judge, 230 Mich. 354, 203 N.W. 108 (1925); Brewster Loud Lumber Co. v. General Builders' Supply Co., 233 Mich. 633, 208 N.W. 28 (1926). For many years the leading case on the Michigan statute was Otto v. Village of Highland Park, 204 Mich. 74 at 81, 169 N.W. 904 (1918), in which the court held, "While its [the Michigan joinder statute's] provisions as to joinder of actions and parties are broad in terms . . . , it was not the legislative intent to ignore the fundamental principles of procedure to the extent proposed in this declaration where, as plaintiffs sound their counts, it is sought to join in a single action and have determined the liability of alleged independent tort-feasors for different and distinct torts charged to each, without concert of action or community of responsibility, inevitably amounting to both a joinder of parties severally liable and a joinder of different causes of action, each against a different defendant."

8 See quoted section of decision in Otto v. Village of Highland Park, note 7 supra.

9 See Ill. Rev. Stat. (1955) c. 110, §§24 and 44; Cahill-Parsons New York Civil Practice, 2d ed., §§212 and 258 (1955); 2 NEW JERSEY PRACTICE, rev. ed., (Waltzinger, 1954) §§4:31-1 and 4:33-1.

10 Fed. R. Civ. Proc., Rule 18 (a).

11 Fed. R. Civ. Proc., Rule 20.

12 Baker v. Healy, 302 Ill. App. 634, 24 N.E. (2d) 228 (1939), quoting (at 644-645) Van Meter v. Goldfarb, 317 Ill. 620 at 623-624: "A 'transaction' is something which has taken place, whereby a cause of action has arisen. It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered."

13 For a comparison of the formerly narrow application of the Michigan joinder provision with application of rule 20 of the federal rules to very similar facts, see Roberts v. Fox, 306 Mich. 279, 10 N.W. (2d) 857 (1943) and Olan Mills of Tennessee v. Enterprise Pub. Co., (5th Cir. 1954) 210 F. (2d) 895.

14 Note 7 supra.

first passed (1915) the legislature did not intend it to be as broad as its terms. However, the court in the principal case has stated that since "the rule [section 7 of rule 37] and . . . statutes are unitedly designed to promote the convenient administration of justice . . . we see no reason for tightening their broad and wholesome purposes in this or like case."[15] If this can be taken to mean that now the statute is to be broadly interpreted in favor of joinder, it is probable that joinder will be allowed at least as often under Michigan's broad but ambiguous test as it is under rule 20 of the federal rules. It is certainly clear that the court has now rejected the prejudice against liberal joinder which was evident in the earlier cases.

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[15] Principal case at 253.