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# CIVIL PROCEDURE-JOINDER OF CAUSES OF ACTION IN MICHIGAN

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# RECENT DECISIONS

CIVIL PROCEDURE—JOINDER OF CAUSES OF ACTION IN MICHIGAN—Plaintiffs were the owners of several lots, and used their respective properties as residences. Defendants, manufacturers of cement and concrete products, operated several large trucks in their business. Plaintiffs filed a declaration to recover damages for injuries to their properties sustained as a result of the loud noises, vibrations, and cement dust caused by the defendants' trucks when using an alley leading to defendants' place of business. The defendants' motion for dismissal on grounds of misjoinder of parties and causes of action was overruled. On appeal, *held*, reversed. Owners of property are not entitled to be joined in one action to recover damages for injuries to their respective properties resulting from the same wrongful conduct of the defendant. *Bajorek v. Kurtz*, (Mich. 1952) 55 N.W. (2d) 727.

The statutory provision in Michigan relating to the joinder of causes of action provides that where there is one plaintiff, he "may join . . . as many causes of action as he may have against the defendant but legal and equitable causes of action shall not be joined. . . . "[1] The provision is broad, and except for the restriction on the joinder of legal and equitable causes of action, it is as liberal as the Federal Rules of Civil Procedure.[2] When there is more than one plaintiff, "the causes of action joined must be joint . . . or sufficient grounds must appear for uniting the causes of action in order to promote the convenient administration of justice. . . ."[3] This provision, while nominally dealing with joinder of causes of action, in effect controls also the joinder of parties. Thus, where two plaintiffs wish to join in one action, they must meet the requirement of having joint causes of action, or sufficient grounds must appear for the joinder in order to promote convenience.[4] And this requirement must be met whether the causes are legal or equitable.[5] Prior to the passage of the statute in 1915, only parties with joint causes of action could join in one action at law.[6] In equity, joinder of parties was allowed where there was a "community of interest" and the relief asked for was the same for each plaintiff.[7] The Michigan court has been slow to allow the joinder of parties and causes of action on the ground of promoting convenience, but two fairly recent cases seemed to indicate a more liberal policy.[8] In *Goodrich v. Waller*,[9] two plaintiffs were asking for

[1] Mich. Comp. Laws (1948) §608.1.

[2] Rule 18(a), Federal Rules of Civil Procedure, 28 U.S.C. (1946): "Joinder of Claims. The plaintiff . . . may join . . . as many claims either legal or equitable or both as he may have against an opposing party."

[3] Mich. Comp. Laws (1948) §608.1.

[4] Goodrich v. Waller, 314 Mich. 456, 22 N.W. (2d) 862 (1946).

[5] Gilmer v. Miller, 319 Mich. 136, 29 N.W. (2d) 269 (1947).

[6] Rogers v. Raynor, 102 Mich. 473, 60 N.W. 980 (1894).

[7] Hamilton v. American Hulled Bean Co., 143 Mich. 277, 106 N.W. 731 (1906).

[8] See King, "Recent Michigan Decisions," 14 DETROIT LAWYER 228 (1946).

[9] Note 4 supra.

cancellation of assignments of their individual interests in an estate, which they had executed to the same defendant, relying on defendant's false representation of the value of the estate. The court said, "the representations to them were substantially identical; and they both sought the same relief. The causes of action could properly be joined under the above statute 'in order to promote the convenient administration of justice.' "[10] In *Gilmer v. Miller*,[11] an action at law to recover damages for fraud, the court again indicated a willingness to allow joinder of parties on the basis of promoting convenience. In determining that there were sufficient grounds for the joinder, the court did not lay down any concrete rule of law, but looked to several factors bearing on trial convenience, such as possible prejudice to the defendants, the complexity of the factual issues, and the similarity of the several claims. These two cases indicate that the court is willing to allow joinder of parties in both legal and equitable actions when sufficient grounds appear that the joinder will "promote the convenient administration of justice." In the *Gilmer* case, the court went far in construing the statute liberally, looking to the criterion of actual trial convenience rather than whether the relief sought was the same, or the interests of the plaintiffs identical. This tendency is in line with the progressive liberalization of civil procedure taking place in Anglo-American law.[12] Unfortunately, in the principal case, the court has refused to continue the trend. By holding that individual property owners could not join in one action at law for damages from the same wrongful conduct of the defendants, the court has, in effect, said that each plaintiff in such a situation must institute a separate action against the same defendants.[13] Thus, there must be several separate trials in which different juries will be presented with evidence of the same wrongful conduct of the same defendants, and of similar types of injuries to real property.[14] The court points out that the parties in the principal case are not seeking the same items of damages, that each plaintiff is interested only in the recovery of damages for injury to his own property, and that there is no certainty that the same issues will arise in each instance. But the mere fact the parties are seeking different amounts of damages

[10] 314 Mich. 456 at 461, 22 N.W. (2d) 862 (1946).

[11] Note 5 supra.

[12] For a brief survey of this widespread reform, see Blume, "Free Joinder of Parties, Claims and Counterclaims," A.B.A. JUD. ADMIN. MONOGRAPHS, Series A, No. 11, p. 41.

[13] The court did not expressly say that the several suits could not be consolidated by the trial court, but instead referred to Card v. Nemecek, 331 Mich. 614, 50 N.W. (2d) 176 (1951). In that case, the court had held that the trial court did not have to consolidate actions which could not have been joined in the first instance.

[14] It is interesting to note that the court held in Szostak v. Chevrolet Motor Co., 279 Mich. 603, 273 N.W. 284 (1937), that one owner of separate lots injured by one wrongful act must sue for damages in one action to avoid splitting his cause of action. If one person had owned all the property involved in the principal case, all of his rights would have to be settled in one action. In such a case, the same questions of law and fact, and the same task of determining damages as are present in the principal case would be presented to one jury. It seems inconsistent to say that in the one case the plaintiff must bring one action, and in the other case that since there is more than one owner, it would not promote convenience to settle the disputes at one trial.

does not indicate that one trial would be less convenient than several. And while there may be no certainty that all the issues raised will be the same, it seems clear that a great many will be. A more rational test of convenience would be one which looks to whether the causes of action of the plaintiffs arose out of the same transaction or occurrence, and will involve similar questions of law and fact.[15] It is to be hoped that in the future the court will lay down a clearer and more realistic criterion for determining whether sufficient grounds for joinder of parties and causes of action appear in order to "promote the convenient administration of justice."

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[15] Such is the test for joinder under the Federal Rules. Rule 20(a), Federal Rules of Civil Procedure, 28 U.S.C. (1946).