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CPLR 3211: Defendant's Assertion of Cross-Claim Against Codefendant Constitutes a Waiver of His Jurisdictional Objection to that Codefendant's Subsequent Cross-Claim

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tent to which an underlying contract will impact upon the limitations period, however, there will continue to be confusion regarding the statute of limitations applicable to such claims.

Edward Kelly

Article 32—Accelerated Judgment

CPLR 3211: Defendant's assertion of cross-claim against codefendant constitutes a waiver of his jurisdictional objection to that codefendant's subsequent cross-claim

Before a state may subject a nondomiciliary to its judicial processes, there must exist a predicate for jurisdiction.²⁹ In New York, a party may attack the adequacy of the predicate by asserting his jurisdictional defense either in a motion to dismiss the cause of action or in the responsive pleading.³⁰ It has been held

which adoption would have resulted in a 3-year period of limitations for malpractice actions based on contract, indicates that a malpractice action arising from a contractual arrangement may be brought within the 6-year statute of limitations.

²⁹ See SIEGEL § 58, at 59; Homburger & Laufer, *Appearance and Jurisdictional Motions in New York*, 14 BUFFALO L. REV. 374, 374 (1964); Lacy, *Personal Jurisdiction and Service of Summons After Shaffer v. Heitner*, 57 OR. L. REV. 505, 509 (1978); Note: *Article III of the New York Civil Practice Law and Rules: Jurisdiction, Services and Appearance*, 37 ST. JOHN'S L. REV. 285, 320-28 (1963). In New York, personal jurisdiction may be obtained over a nondomiciliary defendant if he is served with process somewhere within the state. SIEGEL § 59, at 60; see *Pennoyer v. Neff*, 95 U.S. 714, 722 (1878) (judgment in Oregon state court held void for want of personal service of process on a nondomiciliary), *overruled on other grounds in Shaffer v. Heitner*, 433 U.S. 186 (1977). An independent basis for in personam jurisdiction must be established in instances where a nondomiciled defendant is served with process outside the State of New York. See CPLR 301, 302, 313 (1972). If the summons is served incorrectly upon the defendant within New York, the constitutional predicate for jurisdiction nevertheless may be satisfied by an appearance on the part of the defendant, since such appearance constitutes a waiver of the jurisdictional defense unless the defendant reserves an objection to jurisdiction. See CPLR 320(b) (1972); Homburger & Laufer, *supra*, at 375; SECOND ANN. REP. OF THE JUD. CONFERENCE ON THE CPLR (1964), in TENTH ANN. REP. N.Y. JUD. CONFERENCE 334-35 (1965); see also *Legislation: CPLR—Appearances*, 31 BROOKLYN L. REV. 133, 134 (1964).

³⁰ See *Ranz v. Sposato*, 106 Misc.2d 156, 156, 431 N.Y.S.2d 239, 239 (Sup. Ct. N.Y. County 1980). Section 3211(e) of the CPLR provides that an objection based upon lack of jurisdiction "is waived if a party moves on any of the grounds set forth in subdivision (a) without raising such objection or if, having made no objection under subdivision (a), he does not raise such objection in the responsive pleading." CPLR 3211(e) (1970). Thus, a party who makes a 3211(a) motion, but fails to challenge the court's in personam jurisdiction, appears generally and waives any such objection. *Roseman v. McAvoy*, 92 Misc.2d 1063, 1064, 401 N.Y.S.2d 988, 989; (N.Y.C. Civ. Ct. N.Y. County 1978); *Suriano v. Hosie*, 59 Misc.2d 973, 974, 302 N.Y.S.2d 215, 216 (Dist. Ct. Nassau County 1969). In addition, if no motion under 3211(a) is made, a defendant who neglects to raise a jurisdictional objection in his answer is said to appear, thereby waiving the right to challenge personal jurisdiction.

that a defendant who objects in the responsive pleading, but nevertheless includes a counterclaim in such pleading, does not waive his jurisdictional objection to the plaintiff's action.³¹ Recently, in *Bartley v. Reedman*,³² the Appellate Division, First Department, held that a defendant's assertion of a cross-claim against a codefendant constitutes a waiver of his jurisdictional defense to that codefendant's subsequent cross-claim, notwithstanding the defendant's inclusion of such defense in the answer to the plaintiff's complaint.³³

In *Bartley*, the plaintiff, a passenger in one of the vehicles involved in a three-car collision, commenced an action against all three drivers in the Supreme Court of New York County.³⁴ In his answer to the plaintiff's complaint, the defendant Duplisea, a non-domiciliary of New York, asserted the defense of lack of personal jurisdiction³⁵ and interposed cross-claims against his codefendants.³⁶ A cross-claim thereupon was asserted against Duplisea by one of the other codefendants.³⁷ Duplisea, answering the cross-claim, denied the charges but failed to reallege his jurisdictional defense.³⁸ A number of years after the plaintiff's actions against

Wahrhaftig v. Space Design Group, Inc., 29 App. Div. 2d 699, 699-700, 286 N.Y.S.2d 442, 443-44 (3d Dep't 1968). Indeed, it has been stated that a jurisdictional objection should be made by way of motion so as to avoid a subsequent, inadvertent waiver of such defense. See CPLR 320, commentary at 368-69 (1972); *Italian Colony Restaurant, Inc. v. Wershals*, 45 App. Div. 2d 841, 841, 358 N.Y.S.2d 448, 449 (2d Dep't 1974).

³¹ *E.g.*, *Goodman v. Solow*, 27 App. Div. 2d 920, 920, 279 N.Y.S.2d 377, 378 (1st Dep't 1967), *appeal denied*, 20 N.Y.2d 646, 231 N.E.2d 789, 285 N.Y.S.2d 1026 (1967); *M. Katz & Son Billiard Prods., Inc. v. G. Correale & Sons, Inc.*, 26 App. Div. 2d 52, 54, 270 N.Y.S.2d 672, 674 (1st Dep't 1966), *aff'd*, 20 N.Y.2d 903, 905, 232 N.E.2d 864, 865, 285 N.Y.S.2d 871, 872 (1967); *Buckley & Kisseloff v. Feldcos Realty Corp.*, 64 Misc. 2d 718, 719, 315 N.Y.S.2d 732, 734 (N.Y.C. Civ. Ct. N.Y. County 1970) ("it would be patently unfair and illogical to compel a resident . . . to elect between a defense of want of . . . jurisdiction and a counterclaim").

³² 86 App. Div. 2d 820, 446 N.Y.S.2d 272 (1st Dep't 1982) (*per curiam*).

³³ *Id.* at 821, 447 N.Y.S.2d at 274. The initial cross-claimant, Duplisea, alleged that the court lacked in personam jurisdiction over him on the ground that service of process was not effected properly. *Id.* at 820, 447 N.Y.S.2d at 273.

³⁴ *Id.* The car driven by Duplisea collided with the vehicle driven by Bond, the codefendant against whom Duplisea asserted his cross-claim. *Id.* Bond's automobile, in turn, was propelled into the vehicle driven by Reedman. *Id.* The injured plaintiff was a passenger in Bond's car. *Id.*

³⁵ *Id.*

³⁶ *Id.* Duplisea alleged in his cross-claim that his liability, if any, was "secondary to and derivative of" the liability attributable to Reedman and Bond. *Id.*

³⁷ *Id.* Bond interposed a cross-claim against Duplisea, contending that any liability she may have incurred was secondary to and derivative of Duplisea's. *Id.*

³⁸ *Id.* Prior to 1977, section 3011 of the CPLR required that all affirmative claims be

Duplisea and the other defendants were dismissed,³⁹ Duplisea moved to have his codefendant's cross-claim dismissed on jurisdictional grounds.⁴⁰ The Supreme Court, New York County, however, denied the motion.⁴¹

On appeal, the Appellate Division, First Department affirmed in a per curiam opinion.⁴² The court initially observed that the claim asserted by the defendant Duplisea was interposed against a codefendant who had not yet sought relief from Duplisea, rather than against the plaintiff who brought him into the action.⁴³ Thus, the court distinguished the present situation from one in which the defendant asserts a counterclaim.⁴⁴ Additionally, the court declared, "had Duplisea not originally asserted an affirmative claim,"

accompanied by either an answer or reply. CPLR 3011, commentary at 85-86 (Supp. 1981-1982); see, e.g., *Bides v. Abraham & Strauss Div. of Federated Dep't Stores, Inc.*, 33 App. Div. 2d 569, 305 N.Y.S.2d 336 (2d Dep't 1969). The section 3011 requirement was altered in 1977 by an amendment which was prompted by the decision in *Dole v. Dow Chem. Co.*, 30 N.Y.2d 143, 148-49, 282 N.E.2d 288, 292, 331 N.Y.S.2d 382, 387 (1972) (allowing apportionment of liability among defendants). The holding of that case imposed upon codefendants additional burdens to prepare and serve mandatory answers. FIFTEENTH ANN. REP. OF THE JUD. CONFERENCE ON THE CPLR (1977), in TWENTY-SECOND ANN. REP. N.Y. JUD. CONFERENCE 268-69 (1977). Pursuant to the new section 3011, Duplisea was not required to interpose an answer to Bond's cross-claim unless the cross-claim demanded an answer, since a cross-claim is "deemed denied or avoided" if no demand is made and no answer is provided. CPLR 3011 (Supp. 1981-1982); see *id.*, commentary at 85-86.

³⁹ 86 App. Div. 2d at 820, 447 N.Y.S.2d at 273. The plaintiff's actions against Duplisea and Reedman were dismissed on jurisdictional grounds. *Id.* Bond's motion to dismiss the complaint on jurisdictional grounds, however, was denied because of the doctrine of laches. *Id.*

⁴⁰ *Id.* Duplisea moved to dismiss Bond's cross-claim, which had been served 7 years earlier, upon the ground that the court had no jurisdiction over such claim. *Id.* Duplisea contended that jurisdiction was lacking since the plaintiff's complaint against him was dismissed upon that same ground. *Id.*

⁴¹ *Id.*

⁴² *Id.* Joining in the per curiam order were Justices Lupiano, Bloom and Fein. Justice Silverman wrote a dissenting opinion in which Presiding Justice Sullivan joined.

⁴³ *Id.*, 447 N.Y.S.2d at 274.

⁴⁴ *Id.* at 821, 447 N.Y.S.2d at 274. In New York, a defendant who asserts a counterclaim in his responsive pleading does not thereby waive any jurisdictional challenge that he has made to the plaintiff's complaint. See *supra* note 3 and accompanying text. In *M. Katz & Sons Billiard Prods., Inc. v. G. Correale & Sons, Inc.*, 26 App. Div. 2d 52, 270 N.Y.S.2d 672 (1st Dep't 1966), the first department rejected, as obsolete, a 1907 Supreme Court determination to the contrary. *Id.* at 53, 270 N.Y.S.2d at 673; see *Merchants Heat & Light Co. v. Clow & Sons*, 204 U.S. 286, 289 (1907). The *Bartley* court, however, distinguished the assertion of a cross-claim from the filing of a counterclaim upon the ground that the latter is interposed against a party who initially brought the defendant into the action. 86 App. Div. 2d at 821, 447 N.Y.S.2d at 274. Indeed, the court boldly concluded that "[a]n affirmative assertion of jurisdiction against a party who has not brought one into the action constitutes a waiver of jurisdiction with respect to the claims at issue between them." *Id.*

he could have relied upon his jurisdictional objection to the plaintiff's complaint in order to defeat the cross-claim lodged against him by his codefendant.⁴⁵ Finally, the court noted that Duplisea could not validly replead the jurisdictional defense in his response to the codefendant's cross-claim, since he already had asserted a cross-claim against that codefendant.⁴⁶

Writing for the dissent, Justice Silverman argued that the cross-claim asserted against Duplisea should be dismissed since it was derivative, both substantively and jurisdictionally, from the plaintiff's claim, which itself was dismissed.⁴⁷ Moreover, the dissent urged, since Duplisea's cross-claim was contained in his answer to the plaintiff's complaint, and such answer asserted the lack of jurisdiction defense, the codefendant had notice of Duplisea's jurisdictional challenge.⁴⁸ Finally, Justice Silverman questioned the court's disparate treatment of cross-claims and counterclaims under factually similar circumstances, stating that "no distinction" exists between the two situations.⁴⁹

⁴⁵ 86 App. Div. at 820, 447 N.Y.S.2d at 274. *But see* *Bides v. Abraham & Strauss Div. of Federated Dep't Stores, Inc.*, 33 App. Div. 2d 569, 569, 305 N.Y.S.2d 336, 338 (2d Dep't 1969) (defendant may not rely upon his jurisdictional objection to the plaintiff's complaint, but rather must reassert the jurisdictional defense in his answer to the codefendant's cross-claim).

⁴⁶ 86 App. Div. 2d at 821, 447 N.Y.S.2d at 274.

⁴⁷ *Id.* at 822, 447 N.Y.S.2d at 275 (Silverman, J., dissenting). Justice Silverman contended that the cross-claim interposed against Duplisea was jurisdictionally derivative of the plaintiff's action because jurisdiction over the cross-claim was "obtained by the service of plaintiffs' summons." *Id.* (Silverman, J., dissenting). Indeed, the dissent observed, "[n]o summons was attempted to be served in connection with Bond's cross-claim against Duplisea." *Id.* (Silverman, J., dissenting). Furthermore, Justice Silverman stated that the cross-claim against Duplisea was substantively derivative of the plaintiff's claim insofar as the cross-claim demanded indemnification "if [the] plaintiffs succeeded against [Bond]." *Id.* (Silverman, J., dissenting) (emphasis in original). Addressing the dissent's characterization of Bond's cross-claim against Duplisea as substantively derivative of the plaintiff's complaint, the majority stated that the various cross-claims sought "apportionment of liability depending upon the negligence of each of the vehicles." *Id.* at 821, 447 N.Y.S.2d at 274. Thus, concluded the court, "[d]espite the form of the pleadings, the claim [by Bond] could not be one for indemnification." *Id.*

⁴⁸ *Id.* at 822, 447 N.Y.S.2d at 275 (Silverman, J., dissenting). Justice Silverman objected to the "unnecessarily technical and . . . unfair trap" of punishing Duplisea for failing to allege his jurisdictional objection to Bond's cross-claim, asserting that notice of such defense was given to Bond by virtue of service upon him of Duplisea's answer to the plaintiff's complaint. *Id.* (Silverman, J., dissenting).

⁴⁹ *Id.* (Silverman, J., dissenting). The dissent recognized that the Second Department's decision in *Bides v. Abraham & Strauss Div. of Federated Dep't Stores, Inc.*, 33 App. Div. 2d 569, 569, 305 N.Y.S.2d 336, 338 (2d Dep't 1969); *see infra* text accompanying notes 50-51, fully supported the majority's conclusion. 86 App. Div. 2d at 822, 447 N.Y.S.2d at 275 (Silverman, J., dissenting). Justice Silverman stated, however, that neither *Bides* nor *Bar-*

It appears that the *Bartley* decision is a logical extension of the Second Department's holding in *Bides v. Abraham & Strauss Division of Federated Department Stores, Inc.*,⁵⁰ in which the court determined that a failure to assert a jurisdictional defense in an answer to a cross-claim constitutes a waiver of that defense, notwithstanding the dismissal of the plaintiff's action on jurisdictional grounds.⁵¹ It should be noted, however, that the *Bartley* waiver primarily was predicated upon Duplisea's affirmative assertion of a cross-claim, rather than upon his failure to reallege the jurisdictional defense in his answer to the codefendant's cross-claim.⁵² Notwithstanding this difference between the theoretical underpinnings of *Bides* and *Bartley*, it is submitted that the factual contours of both cases demanded determinations contrary to those rendered. Indeed, it appears that where no additional parties are brought into the action, and the various cross-claims contain demands and allegations arising from the same factual circumstances as those underlying the principal action, no waiver should result either from the failure to replead a jurisdictional defense in an answer to a cross-claim or from the assertion of the cross-claim itself.⁵³ Adoption of this view, it is suggested, would eliminate the

tley is reconcilable with cases holding that the assertion of a counterclaim is not deemed to be a waiver of jurisdictional challenges. See *id.* (Silverman, J., dissenting); *supra* notes 31 & 44 and accompanying text.

⁵⁰ 33 App. Div. 2d 569, 305 N.Y.S.2d 336 (2d Dep't 1969).

⁵¹ *Id.* at 569, 305 N.Y.S.2d at 338. In *Bides*, the plaintiff instituted an action against the defendant-department store to recover damages for injuries sustained as a result of tripping over a loose carpet. *Id.*, 305 N.Y.S.2d at 337. Perlman, a codefendant, served an answer to the plaintiff's complaint, asserting lack of personal jurisdiction as an affirmative defense. *Id.* The defendant-department store served a cross-complaint upon Perlman, who then served an answer to the cross-claim. *Id.* Perlman's answer, however, failed to assert his jurisdictional objection. *Id.* The court held that despite Perlman's inclusion of a jurisdictional challenge in his answer to the plaintiff's complaint, his failure to assert such objection in his answer to the cross-claim constituted a waiver of that defense as against the department store. *Id.*, 305 N.Y.S.2d at 338. For various discussions of the *Bides* decision, see CPLR 320, commentary at 369-70 (1972); 4 WK&M ¶ 3211.04, at 32-36 to 32-37; McLaughlin, *New York Practice, 1970 Survey of New York Law*, 22 SYRACUSE L. REV. 55, 71-72 (1970).

⁵² 86 App. Div. 2d at 821, 447 N.Y.S.2d at 274. Although the *Bides* and *Bartley* courts utilized different rationales, *Bartley* relied almost exclusively upon *Bides* in order to support its conclusion. See *id.*

⁵³ See *Italian Colony Restaurant, Inc. v. Wershals*, 45 App. Div. 2d 841, 841, 358 N.Y.S.2d 448, 449 (2d Dep't 1974) (jurisdictional defense is not waived by assertion of any related counterclaim, cross-claim, or third-party claim); *Majique Fashions Ltd. v. Warwick & Co.*, 96 Misc. 2d 808, 811, 409 N.Y.S.2d 581, 583-84 (Sup. Ct. N.Y. County 1978) (jurisdictional objection is not waived since no additional parties were joined in the action and claims arose from the same facts surrounding the original complaint), *rev'd on other grounds*, 67 App. Div. 2d 321, 414 N.Y.S.2d 916 (1st Dep't 1979). It should be noted that

unnecessary distinction presently existing between cross-claims and counterclaims, both of which often involve claims arising from the same congeries of facts as those underlying the plaintiff's suit, and neither of which requires the joinder of any additional parties.⁵⁴

Significantly, the *Bartley* court suggested that any waiver of a jurisdictional objection by reason of an affirmative assertion of a cross-claim may be avoided if the cross-claimant reserves such defense in the cross-claim itself.⁵⁵ It is apparent, however, that this reservation requirement serves no useful purpose, since the cross-defendant is served with the cross-claimant's answer to the plain-

jurisdictional challenges may be waived in situations which are unrelated to the *Bides* and *Bartley* controversies. See, e.g., *Gurbuzer v. Schulman*, 80 App. Div. 2d 632, 633, 436 N.Y.S.2d 89, 90 (2d Dep't 1981) (defendant executrix's entrance into stipulation of substitution for decedent constituted consent to the court's jurisdiction). *But cf.* *Renewal Prods., Inc. v. Kleen-Stik Prods., Inc.*, 43 Misc. 2d 645, 646, 251 N.Y.S.2d 778, 779-80 (Sup. Ct. Nassau County 1964) (stipulation extending time to answer a complaint is not an appearance). Additionally, it has been held that a defendant's motion for summary judgment on a counterclaim, after the plaintiff's action has been dismissed for lack of jurisdiction, constitutes a waiver of "its previously sustained jurisdictional objection." *Flaks Zaslav & Co. v. Bank Computer Network Corp.*, 66 App. Div. 2d 363, 366-67, 413 N.Y.S.2d 1, 3 (1st Dep't 1979). In *Flaks*, therefore, the plaintiff was permitted to amend its reply to the counterclaim and reassert all of the allegations originally set forth in its complaint. *Id.*; see also *Goodman v. Solow*, 27 App. Div. 2d 920, 920, 279 N.Y.S.2d 377, 378 (1st Dep't 1967). *But cf.* *Hammond v. Hammond*, 9 App. Div. 2d 615, 616, 190 N.Y.S.2d 739, 741 (1st Dep't 1959) (courts should dispense expeditiously with the assertion of a jurisdictional challenge at the beginning of the litigation).

⁵⁴ See *Majique Fashions Ltd. v. Warwick & Co.*, 96 Misc. 2d 808, 811, 409 N.Y.S.2d 581, 583-84 (Sup. Ct. N.Y. County 1978), *rev'd on other grounds*, 67 App. Div. 2d 321, 414 N.Y.S.2d 916 (1st Dep't 1979). In *Majique*, the court stated:

[The defendant] properly raised the defense of lack of jurisdiction as an affirmative defense in its answer. This defense was not waived by interposing counterclaims and cross claims in the answer since no new parties were joined and all such counterclaims and cross claims asserted by this defendant arose out of the same transaction as that sued upon by the plaintiff.

96 Misc. 2d at 811, 409 N.Y.S.2d at 583-84. A counterclaim may assert any cause of action, not necessarily one arising out of the transaction which is the subject of the plaintiff's claim, and may be interposed against one or more plaintiffs. CPLR 3019(a) (1974); CPLR 3019, commentary at 216 (1974). Cross-claims may be asserted by a defendant against "one or more defendants, a person whom a defendant represents or a defendant and other persons alleged to be liable." CPLR 3019(b) (1974). The subject of a cross-claim need not be related to the plaintiff's original allegations and demands. *Id.* 3019, commentary at 225 (1974). *Contra* FED. R. CIV. P. 13(g) (cross-claim must arise out of the same transaction or occurrence as the original action or counterclaim, or must be related to the property which is the subject matter of the original action). For discussions of the nature and function of counterclaims and cross-claims, see SIEGEL § 227, at 273-75; Note, *Parties and Pleadings Under the CPLR*, 31 BROOKLYN L. REV. 98, 110-12 (1964).

⁵⁵ See 86 App. Div. 2d at 821, 447 N.Y.S.2d at 274.

tiff's complaint⁵⁶ and, thus, presumably receives adequate notice that the cross-claimant possesses a jurisdictional defense.⁵⁷ Indeed, it is submitted that the majority, by erecting such a requirement, has created little more than a procedural trap for the unwary practitioner. It is hoped, therefore, that the Court of Appeals will reexamine both *Bartley* and *Bides* in light of the policy favoring joinder of claims,⁵⁸ judicial economy,⁵⁹ and basic fairness in the administration of justice. Until it does so, however, defendants who have a jurisdictional challenge should be aware that the assertion of a cross-claim which does not reserve a jurisdictional defense automatically will subject them to the jurisdiction of the courts of this state.

Susan D. Koester

INSURANCE LAW

Ins. Law § 167(8): Insurer's failure to disclaim liability or deny coverage as soon as is reasonably possible does not result in coverage where the insurance carrier has insured neither the person nor the vehicle involved in an automobile accident

Section 167(8) of the Insurance Law requires a liability insurer to give to a claimant written notice of its disclaimer of liability or

⁵⁶ See CPLR 2103(e) (1976).

⁵⁷ See CPLR 320, commentary at 368-69 (1972). If an answer contains a jurisdictional objection, it nevertheless may include counterclaims and cross-claims. *Id.* 3011 (1974). Assuming that a cross-claim is asserted in an answer which contains a jurisdictional challenge to the plaintiff's complaint, it is clear that the cross-defendant will receive notice of such objection since every party appearing in an action receives copies of all papers served upon the other parties to that suit. See *id.* 2103(e) (1976).

⁵⁸ See CPLR 601 (1976 & Supp. 1981-1982). Under the Civil Practice Act, disputes between codefendants that were independent of the plaintiff's claim could not be asserted in a cross-claim. See *id.* 601, commentary at 164-65 (1976). The CPLR, on the other hand, permits any controversy between codefendants to be the subject of a cross-claim. *Id.* 601 (1976 & Supp. 1981-1982). Notably, if the rights of any party appear to be prejudiced by a joinder of claims, the court may order separate trials. See Note, *supra* note 54, at 110-11; see also *Newburgh v. Clarendon Gardens, Inc.*, 33 Misc. 2d 436, 436, 227 N.Y.S.2d 233, 233-34 (Sup. Ct. Kings County 1962) (severance ordered if joinder will prejudice substantial rights or cause confusion at trial).

⁵⁹ See CPLR 601 (1976) (joinder of claims); *id.* 602 (consolidation of actions); see also *Saunders v. Saunders*, 54 Misc. 2d 1081, 1083, 283 N.Y.S.2d 969, 971 (Sup. Ct. Kings County 1967) (public policy favoring complete relief in one action and avoidance of multiplicity of suits); *Kalmanowitz v. Solomon*, 22 Misc. 2d 988, 989, 198 N.Y.S.2d 928, 931 (N.Y.C. Mun. Ct. N.Y. County 1960) (joinder of action to reduce caseload of the court and its personnel and to avoid waste of time, money and manpower).