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Article 12

Pleading: Adding Parties by Intervention

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by the instant case will arise under the Uniform Commercial Code in the area of retaken consumer goods. Sec. 19 of the Uniform Conditional Sales Act provides for resale within thirty days, "After the seller has retaken possession." Sec. 9-505(1) of the Uniform Commercial Code provides for liability for failure to dispose of the goods within ninety days, "After he takes possession." Unless the word possession in the latter phrase be interpreted to mean judicial as well as peaceful possession, it would appear that the Uniform Commercial Code has not completely eliminated the problem of resale after retaking by legal process.

Wisconsin has not passed on the precise issue presented by the instant case, however Wisconsin has adopted the language of the Model Uniform Conditional Sales Act Sec. 19.[19] In considering amendment of the Wisconsin Statute,[20] it is suggested that the Indiana version be adopted. By not requiring an answer to be interposed, it apparently eliminates a troublesome area present in the New York amendment. Under the New York version, it appears incumbent on the conditional vendor to proceed to conduct the resale as soon as the goods are delivered to him by the sheriff, for it is likely that unless he do so, he will fail to resell within the thirty day period should the vendee refuse to contest the action.[21] Construction of the Indiana provision, on the other hand, would quite probably allow the vendor thirty days after entry of judgment in which to conduct the resale, regardless of whether such judgment be obtained on the merits or by default.

ROBERT CHOINSKI

Pleading: Adding Parties by Intervention — Plaintiff, a New York corporation engaged in the business of buying dairy products for purposes of manufacture, brought an action against the attorney general and other state officers for a judgment that a Wisconsin Statute[1] be declared unconstitutional. The Pure Milk Products Cooperative petitioned for intervention on the ground that, by the terms of its marketing agreement with its producing members, it was their collective agent authorized to represent them in selling milk to pur-

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[19] "If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall sell them at public auction in the state where they were at the time of the retaking, such sale to be held not more than thirty days after the retaking . . . ."

[20] WIS. STATS. §122.19 (1955).

[21] This same objecion was presented in the merchants association brief, see note 10 *supra*.

[1] WIS. STATS. §100.22 (1955): "One engaged in buying milk, cream, or butterfat for the purpose of manufacture, who pays a higher rate for such products in one section of the state than in another, shall be guilty of unfair discrimination, unless the price differential be commensurate with quantity, quality, or transportation charges."

chaser plants, including plaintiff's, and that therefore it was interested in the pending action and in the subject matter thereof. The claim of right to intervene was based upon that portion of Wisconsin Statute, sec. 260.19 which provides that: "When . . . persons not parties have such interests in the subject matter of the controversy as require them to be parties for their protection, the court shall order them brought in. . . ."[2] Trial court denied the application. *Held:* that application was properly denied. Petitioner was not a necessary party to the action. In the absence of allegation that the attorney general was failing in his duty properly to defend the statute, it was questionable whether the co-operative were a proper party. Even if petitioner were a proper party, the decision of the lower court could not be reversed without a showing that the denial was an abuse of its discretion. The Court further held that the Declaratory Judgments Act[3] did not require the presence of petitioner, in such action, where public officers represented it in defending the validity of the statute under attack. To hold otherwise would necessitate the presence of everyone who might possibly be affected by the decision, and hence render the act valueless. *White House Milk Co. v. Thomson,* 275 Wis. 243, 81 N.W. 2d 725 (1957).

The court expressly declared *Muscoda Bridge Co. v. Worden Allen Co.*[4] to be determinative of its present decision. The cited case was an action to enjoin defendants from trespassing on plaintiff's property during the building of a bridge which was to connect a relocated state highway between Eagle and Muscoda. Relocation as planned was to by-pass plaintiff's toll bridge. Petitions for intervention were filed by the state, Richland County, and the towns of Eagle and Muscoda, all of whom were liable for part payment of the construction cost.[5] The Court allowed the intervention of the two former applicants by reference to sec. 260.19,[6] but disallowed that of the latter two. The interest of the state was deemed sufficient in that it was also a party to the construction contract and to the relocation of the highway. The additional interest shown by the county was that it was a party to pending proceedings for condemnation of plaintiff's bridge.

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[2] WIS. STATS. §260.19 (1955): "(1) When a complete determination of the controversy in court cannot be had without the presence of other parties, or when persons not parties have such interests in the subject matter of the controversy as require them to be parties for their protection, the court shall order them brought in; and when in an action for the recovery of property a person not a party has an interest therein and makes application to the court to be made a party it may order him brought in."

[3] WIS. STATS. §269.56 (1955): "(11) When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the right of persons not parties to the proceedings . . . ."

[4] 196 Wis. 76, 219 N.W. 428 (1928).

[5] Under WIS. STATS. §§83.07, 83.08 (1955).

[6] See note 2 *supra.*

However, the Court held that although the towns displayed "sufficient interest to make them proper parties,"[7] such interest was amply protected by reason of the fact that the state and county were made parties.

Schatzman v. Town of Greenfield: Milwaukee[8] was an action by a resident to enjoin a referendum in proceedings to incorporate a town. Such proceedings expressly excluded any areas then in various stages of annexation to the city of Milwaukee. The city attempted to intervene, alleging an interest in its "necessary and proper expansion." The Court affirmed denial of the application, on the ground that the city had no direct and immediate interest in the action.[9] In this case, again, we find discussoin of the necssary-or-proper-party test. The Court concludes its opinion by stating, "None of the alleged interests of the city constitute it a necessary party to the controversy. . . . We strongly doubt that it is even a proper party. . . ."[10]

An examination of other Wisconsin decisions shows that where admission of an intervenor has been sustained, decisions have been based on two grounds. In the first class of cases, the Court has found, either expressly or by implication, that the intervenor was an indispensable or a necessary party to the controversy.[11] The second involves intervention by proper parties, where the Court has refused to disturb the discretionary action of the trial court.[12]

From these decisions it becomes apparent, then, that in order to intervene as a matter of right under sec. 260.19, the petitioner for intervention must be either an indispensable or a necessary party to the action;[13] that to intervene as a proper party he must show that his interest would not otherwise be sufficiently protested; and that in the latter situation the matter rests in the sound discretion of the trial court.[14]

As the principal case points out, the Declaratory Judgments Act[15] expressly provides an additional right of intervention. But, as the court indicates, this provision, too, will be narrowly construed.[16]

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[7] 196 Wis. at 98, 219 N.W. at 437.
[8] 273 Wis. 277, 77 N.W.2d 511 (1955).
[9] "There is nothing . . . for the city to defend against, no position for it to maintain, no city interest which is attacked or which requires or justifies city presence in the action." *Id.* at 280, 77 N.W.2d at 513.
[10] *Id.* at 281, 77 N.W.2d at 513.
[11] See, *e.g.*, Hunt v. Rooney: Coleman, 77 Wis. 258, 45 N.W. 1084 (1890).
[12] See, *e.g.*, Weston v. Weston, imp., 46 Wis. 130, 49 N.W. 834 (1879).
[13] This is also in accord with Castle v. City of Madison, 113 Wis. 346, 89 N.W. 156 (1902).
[14] But *cf.* Davis v. Davis: Davis, 259 Wis. 1, 47 N.W. d 338 (1950) (where court decided, on the merits, appeal by intervenor, who was wife of defendant, in suit by former wife against husband to set aside foreign divorce decree) and Combes v. Keyes, Intervenor, 89 Wis. 297, 62 N.W. 89 (1895) (where Court allowed one who had once been secretary of a defunct corporation to intervene in action against the corporation and inform the court of facts which had worked a dissolution of the corporation).
[15] See note 3 *supra.*
[16] See Annot., 169 A.L.R. 851 (1947) on the general topic of the right to inter-

Most jurisdictions which have a code provision of the type relied upon in the principal case to support the right of intervention do not regard it as authorizing intervention at all. Rather, they consider it as providing for the common law practice of bringing in indispensable or necessary parties, plaintiff or defendant, who have not been joined by plaintiff's motion, on the court's own initiation, nor upon application of the necessary or indispensable party himself.[17] Indeed, Wisconsin, in an earlier decision,[18] has taken a like position, which the word *shall* in the statute itself clearly supports. Furthermore, this state has held that where joinder is optional with the plaintiff, new parties cannot be brought in under this section.[19]

As the Court says in the *White House Milk Co.* case, many states have liberal intervention statutes. These provide substantially that:

> "Any person shall be entitled to intervene in an action who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both. An intervention takes place when a third party is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complaint or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant."[20]

So also, Rule 24 of the Rules of Procedure for the District Courts provides for liberal intervention. It is intervention of this type which was unknown at common law but which was derived from civil law, coming particularly from the Louisiana Code.[21]

It would seem that substantial benefit to the Wisconsin procedure would result if the provision relied upon in the *White House Milk Co.* case were confined to the bringing in of necessary and indispensable parties, and either the code intervention provision above-quoted or the provisions of the federal rule were adopted.

MARY ALICE HOHMANN

Property — Joint Tenancy: Special Aspects as to Joint Bank Accounts — The co-owners of joint bank accounts are ordinarily said to hold their interest as joint tenants. Two recent Wisconsin cases

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vene in suit to determine validity or construction of law or governmental regulations.

[17] CLARK, CODE PLEADING §64 (1928).

[18] Husting Co. v. Coca-Cola Co., 192 Wis. 311, 216 N.W. 833 (1927).

[19] Helberg v. Hosmer, 143 Wis. 620, 128 N.W. 439 (1910).

[20] ALASKA, COMP. L. §55-3-18 (1949); CAL. CODE OF CIV. PROC. §387 (1949); IDAHO CODE §5-322 (1948); IOWA RULES OF CIV. PROC., Rules 75, 77 (1950); MINN. STATS. §544.13 (1949); MONT. REV. CODES §93-2826 (1947); NEB. REV. STAT. §25-328 (1943); NEV. COMP. L. §8563 (1929); N. D. REV. CODE §§28-0219, 28-0220 (1943); ORE. COMP. L. §1-316 (1940); S. D. CODE §33.0413 (1939); WASH. REMINGTON'S REV. CODE §202 (1932).

[21] Clark, *op. cit. supra* note 17, at §65.