

SMALL CLAIMS CAN REQUIRE BIG DECISIONS

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A recent opinion from the Appeals Court reminds us that small claims cases can involve surprisingly large dollar amounts and major legal issues. For that reason filing an action as a small claims case, rather than filing an action on the regular civil docket in the Superior Court or District Court, may call for some important decisions.

The case, *Cumberland Farms, Inc. v. Framingham Division of the District Court Department*, 81 Mass. App. Ct. 732, 967 N.E.2d (2012), involved a claim for over \$17,000 for damages to the plaintiff's store caused by the defendant's truck. The plaintiff began the case as a small claims matter in the District Court. Because the suit involved a claim for property damage caused by a motor vehicle, the regular small claims damage limit of \$7,000 did not apply. G.L. c. 218, § 21.

Eleven months after commencing the small claims action, the plaintiff moved to amend the statement of small claims to add claims for unfair or deceptive acts or practices in connection with insurance (G.L. c. 93A and G.L. c. 176D), with damages increased *to over \$58,000*.

The assistant clerk-magistrate presiding over the case denied the motion, and denied another motion by the plaintiff to transfer the case to the regular civil docket. Because the small claims procedure prevented the plaintiff from appealing these rulings, the plaintiff challenged the authority of the District Court assistant clerk-magistrate to rule on the motions through a certiorari petition filed in the Superior Court. Both the Superior Court and the Appeals Court on appeal upheld the authority of the District Court clerk to rule on the motions.

Lessons Learned

The *Cumberland Farms* case resolved an issue critical to all small claims cases. Do clerk-magistrates (and assistant clerk-magistrates), who preside over the trial of small claims cases, have the authority to decide contested motions, including motions to transfer cases to the regular civil docket? They do.

But the case also illustrates some important issues inherent in small claims procedure. These issues are not limited to motor vehicle property damage cases, with their unlimited damage amounts. The 2010 increase in the general small claims limit from \$2,000 to the current

level of \$7,000 dramatically raised the potential stakes--and thus the potential importance--of these issues.

The central question is: Despite its advantages in terms of simplified procedure, speed, and informality, are there reasons for a plaintiff to *avoid* the small claims forum?

Remember that small claims procedure is *an option*. No case *must* be brought as a small claim. If you have a case within the small claims limit of \$7,000 (and that limit applies only to single damages--if multiple damages are available, you can claim up to \$21,000), or if you have a motor vehicle property damage case (where there is no small claim damage limit), you may, but are not required to, bring that action as a small claim. Any action that can be brought as a small claim may, as an alternative, be brought as a “regular” civil case in the District Court. And there is no minimum damage requirement for access to the regular District Court civil docket.

Questions to Consider

Here are some questions for plaintiff’s attorney to consider in deciding whether to choose the small claims forum, and why these questions are important.

1. Should you waive the right to jury trial? A plaintiff who chooses small claims waives the right to a jury trial. Does your client really want to waive the right to a jury? In a case involving many thousands of dollars, this is an important consideration, especially if there are factual issues on which the case could turn, and you have reason to think you will have a better chance to persuade a jury rather than a clerk-magistrate on those issues.

Another major concern is the possible advantage of having a jury rather than a clerk-magistrate deciding damages. In retrospect, the regular civil docket may have been more amenable to the *Cumberland Farms* action, a conclusion that apparently the plaintiff realized after commencing the action in the small claims session (by seeking a transfer to the regular civil docket).

2. Is informality desirable? As attorney for the plaintiff, you may believe that your client will be better served by the more formal Massachusetts Rules of Civil Procedure that apply in regular civil actions...because of their detail and predictability, and perhaps because of your experience and familiarity with the rules.

In contrast, the small claims rules (Uniform Small Claims Rules) emphasize “flexibility.” For example, under the small claims rules, the decision to allow or deny a plaintiff’s motion to transfer to the regular civil docket is left to the clerk-magistrate’s discretion (Rule 4(a), Uniform Small Claims Rules). This was a critical factor in *Cumberland Farms*.

Similarly, discovery in small claims cases is available only as a matter of the clerk-magistrate’s discretion (Rule 5, Uniform Small Claims Rules). In contrast, discovery is available as a matter of right in regular civil actions.

Another consideration involves the defendant's response to the case. Choosing small claims may encourage a defendant who has no real defense nonetheless to appear at trial. If that same case were brought under the regular civil rules, the requirement of an answer, the expense of hiring counsel, and the lack of any serious defense to the case may likely result in a prompt default judgment.

3. A judge or a clerk? If your case involves questions of statutory interpretation, case law analysis, or any "technical" arguments, would you be better off with a judge? While many clerks and assistant clerks have law degrees and are members of the bar, some are not. And they are not required to be.

In the *Cumberland Farms* case, it appears that issues involving liability and damages under "unfair business practices" statutes would have been implicated if the plaintiff's amendment to the complaint had been allowed. (In fact, the very complexity of these issues could have been involved in the assistant clerk-magistrate's decision to deny the plaintiff's motion to amend.)

4. Will small claims procedure actually be quicker? It appears that the *Cumberland Farms* case did not go to trial in the 11 months following its commencement as a small claims matter. This would not be surprising since, in many courts, case flow has suffered due to reductions in administrative personnel. The resulting triage provides priority to criminal cases, with small claims at the bottom of the list among non-criminal cases. A regular civil action, particularly one resulting in a default, may move more quickly to judgment.

5. Will counterclaims pose a danger? Choosing the small claims forum, even for a simple case, does not ensure that the case will *remain* simple.

Defendants are allowed to assert counterclaims in small claims. And such counterclaims can easily exceed the original claim in both complexity and the amount sought (but subject to the small claims damage cap) (Rule 3(c), Uniform Small Claims Rules). Where there is any likelihood of a counterclaim, a plaintiff may prefer the more familiar and structured context of the regular civil docket and the Massachusetts Rules of Civil Procedure, as applied and enforced by a judge.

6. Are you willing to lose all rights to appeal? A plaintiff who commences a small claims action waives all rights to appeal. G.L. c. 218, § 23. That means that the plaintiff will have only one opportunity--before a clerk-magistrate--to present the facts and argue the law (unless the defendant appeals the small claims decision to a judge). Do the safeguards provided by appellate review mean enough that you should stay away from the small claims forum?

Conclusion

The *Cumberland Farms* case provides a cautionary message:

Just because your client's case falls within the recently expanded monetary limit for small claims procedure (or involves a motor vehicle property damage claim), think twice before filing the case under the small claims procedure. After asking the six suggested questions, you may decide that it is preferable to file the case as a regular civil action.

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