Small Claims Courts: Getting More Bang for Fewer Bucks

by Steven Rinehart

As the number of cases on district court dockets swell, so too does the temptation of the legislature and the judiciary to vest increasing amounts of power in small claims judges, who are usually judges *pro tempore* (judges serving temporarily in lower courts). With the jurisdictional limit on damage awards recently increased to $10,000, exclusive of court costs and interest, Utah small claims courts have the fifth highest small claims jurisdictional limit in the United States. *See* FreeAdvice.com, *Small Claims Court Information and Links*, http://law.freeadvice.com/resources/smallclaimscourts.htm (last visited Aug. 19, 2010). The overloaded district court docket, however, is only the most obvious of many reasons for attorneys to consider using small claims courts, even in cases involving controversies much higher than $10,000.

Because small claims judges adjudicate only civil cases, and do in minutes what may take district court judges months or years to do under the Utah Rules of Civil Procedure (URCP), the dollar sum of the cumulative civil judgments entered on a per hour basis by small claims judges exceeds the dollar sum of the cumulative civil judgments issued on a per hour basis by district court judges. *See* Western IP Law, *Complete 2009 Utah District Court Judgment Statistics, Judgments Entered*, http://www.uspatentlaw.us/content/?page=49 (last visited Aug. 19, 2010). And claimants securing judgments in small claims courts have better odds of collecting those judgments than judgments from district courts. *See id.* Small claims judges can accomplish in an evening what it usually takes district court judges months to sort through under the URCP.

Effective September 1, 2010, pursuant to Utah Rule of Judicial Administration 4-801 (as amended), all new small claims actions must be filed in justice court rather than in district court, unless there is no justice court with jurisdiction. Small claims proceedings are governed by the Utah Rules of Small Claims Procedure. Utah Rule of Small Claims Procedure 7(d) provides that small claims judges "may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their business affairs. *The rules of evidence shall not be applied strictly. The judge may allow hearsay that is probative, trustworthy and credible.* Irrelevant or unduly repetitious evidence shall be excluded." Utah R. Small Claims P. 7(d) (emphasis added). Small claims courts thus provide an opportunity in which attorneys can introduce evidence that would otherwise be inadmissible in district courts, including hearsay, testimony from lay witnesses in areas generally reserved for experts, and unsworn written statements.

Either the winner or loser in small claims court may appeal the decision of the small claims court to the local district court for a trial de novo within thirty days. Interestingly, Utah Rule of Small Claims Procedure 1(b) provides that the Utah Rules of Small Claims Procedure "apply to the initial trial *and any appeal* under Rule 12 of all actions pursued as a small claims action." *Id.* R. 1(b) (emphasis added). Even more interestingly, law from other jurisdictions suggests that in *de novo* appeals of small claims decisions, the district courts may not be bound by the jurisdictional limit of $10,000 imposed upon the original small claims court. *See Gilbert v. Moore*, 697 P.2d 1179, 1182 (Idaho 1985) (holding that jurisdictional amount limitations did not apply to district court in a trial *de novo* of a small claims action); *see also Hardy v. Tabor*, 369 So.2d 559, 560 (Ala. Civ. App. 1978) (providing that in *de novo* appeals of small claims judgments the appellant is entitled to "recover an amount in excess of the jurisdiction of the lower court" (internal quotation marks omitted)).

Thus, a clever plaintiff's attorney preparing to litigate a large case heavily reliant on inadmissible hearsay evidence might well avoid the exclusionary effect of the Utah Rules of Evidence on that evidence by first trying the case in small claims court, then appealing the case to the district court for a de novo trial in which the jurisdictional limit does not bind the plaintiff and the Utah Rules of Evidence are abrogated by the Utah Rules of Small Claims Procedure. Following

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this proceeding, even more convenient for the plaintiff, the legislature has seen fit to strip defendants of the right to seek appellate review unless the district court "rules on the constitutionality of a statute or ordinance." Utah Code Ann. § 78A-8-106 (2009).

Additionally, Utah Code section 78A-8-102(3), unlike the law in some other jurisdictions, provides that

> [c]ounter claims may be maintained in small claims actions if the counter claim arises out of the transaction or occurrence which is the subject matter of the plaintiff's claim. *A counter claim may not be raised for the first time in the trial* de novo *of the small claims action.*

Id. § 78A-8-102(3) (emphasis added). Small claims courts present an opportunity for plaintiffs to assert claims against defendants in an environment in which defendants are less likely to interpose counterclaims because they are less likely to seek advice of counsel. Utah small claims courts could arguably be used preemptively to eliminate a troublesome counterclaim under the doctrine of *res judicata* before filing a second action in another jurisdiction to which that counterclaim would be compulsory. *Compare Thirion v. Tutoki*, 703 N.E.2d 378 (Ohio Mun. Ct. 1998) (dismissing suit as a compulsory counterclaim to a prior small claims suit between the same parties); *see also Freeman v. Sears, Roebuck, & Co.*, 180 P.3d 697 (Okla. Civ. App. 2008) (determining that failure of the defendant in a small claims action to assert a compulsory counterclaim precluded assertion of the claim in later proceedings in higher court); *Osman v. Gagnon*, 876 A.2d 193, 195 (N.H. 2005) (same); *see also* David E. West, *Claim Preclusion from the Small Claims Court*, Utah Trial Journal, Fall 2005, at 32, *available at* http://www.utcourts.gov/scjudges/Claim%20Preclusion.West.pdf.

While *res judicata* appears to bar claims brought in district court that could or should have been brought originally as counterclaims in an earlier small claims action, it is common practice for small claims judges to advise litigants securing $10,000 judgments capped only by the jurisdictional limit that *res judicata* does not prevent litigants from seeking the damages exceeding the jurisdictional

limit in subsequent actions in district court where the claim was properly raised in small claims upon its filing. Consequently, small claims courts can provide attorneys with a forum to "test run" a case, and a glimpse of a defendant's litigation strategy, before moving on to either *de novo* review or additional proceedings in the district courts. Furthermore, in practice if not in law, the decisions of small claims judges are persuasive in *de novo* proceedings and/or additional proceedings on the same claims in district court. In my experience, small claims judges are less likely to be reversed in *de novo* proceedings before the district court than district court judges are to be reversed in the appellate courts.

Furthermore, there are no discovery or disclosure requirements in small claims courts. Unlike the URCP, the Utah Rules of Small Claims Procedure contain no prohibition on "surprise" lines of argument. Parties can be ambushed, unexpected witnesses can be called, hearsay testimony can be introduced, hours spent on cases can be drastically reduced, and failures of other parties to prepare can be exploited on the fly. The filing fees in small claims courts are much lower than the district courts, and most small claims courts provide free mediators on demand who are competent and eager to help. Additionally, the fact that a case brought in district court could have been brought in small claims court is a factor that may be considered by district court judges in reducing attorney fees awards. "'When the party could have brought the action in the small claims division but did not do so, the court may, in its discretion, allow or deny costs to the prevailing party, or may allow costs in part in any amount as it deems proper.'" *Adams v. CIR Law Offices, LLP*, 2007 WL 2481550, at *4 (S.D. Cal. Aug. 29, 2007) (quoting Cal. Civ. Proc. Code § 1033(b)); *see also 985 Assocs., Ltd. v. Chiarello*, 2004 WL 5582914, at *1 (Vt. Feb. Term 2004) (upholding trial court's reduction in attorney fees awarded because the case could have been brought in small claims); *Smith v. Afflack*, 2004 WL 1888989, at *4 (Cal. Ct. App. Aug. 25, 2004) (exercising discretion not to award attorney fees because the action could have been brought in small claims); *Silva v. Stockton Further Processing, Inc.*, 2003 WL 550152, at *3 (Cal. Ct. App. Feb. 27, 2003), *rev'd in part on other grounds*, 2004 WL 2457831 (Cal. Ct. App. Nov. 3, 2004); *Essex Cnty. Corr. Officers Ass'n v. Shoreman*, 2005 Mass. App. Div. 30 (Mass. Dist. Ct. 2005) (recognizing statute providing that courts may preclude attorney fee awards in cases that could have been brought in small claims).

Attorneys who consider themselves too distinguished to appear before small claims courts betray a proper understanding of the power of small claims courts and their growing role in Utah's system of jurisprudence. In fact, the reasons to consider using small claims courts before commencing litigation are so compelling that clients in other jurisdictions have successfully maintained legal malpractice actions against attorneys for not advising them of the availability and benefits of small claims proceedings, and judges have sanctioned litigants for unnecessarily skirting small claims courts. *See, e.g.*, *Triestman v. Soranno*, 2006 WL 3359416, at *6 (N.J. Super. Ct. App. Div. Nov. 21, 2006) (reviewing, but ultimately overturning, sanctions imposed on a litigant for bringing a small claim unnecessarily in a court of superior jurisdiction).

Small claim judges focus entirely on civil matters, while district court judges spend as much as three-fourths of their time dealing with criminal matters. Although small claims judges are unable to grant equitable/injunctive relief, they are free to use equitable discretion in admitting hearsay evidence, hearing testimony from lay witnesses in areas generally reserved for experts, ordering mediation or arbitration, setting the case aside, and weighing evidence that would otherwise be inadmissible in district court. In this sense, small claims judges arguably have greater equitable power than district court judges in many matters.

The jurisdictional limit of small claims courts likely will continue to increase as dockets overflow at the district courts, potentially implicating new defenses to small claims judgments. Because small claims judges are not vetted by the legislative branch like higher judges, it is worth considering whether a rapid escalation in the jurisdictional limits of judges *pro tempore* might eventually cross a state constitutional line. In my experience, however, I have never had a desire to attack a small claims award on that basis, nor have I ever appeared before a judge *pro tempore* who seemed unfit to adjudicate cases.

My experience is that judges *pro tempore* endeavor with dignity to issue logical, well-reasoned decisions, to treat litigants fairly, and to bring honor to the judiciary. For this reason, we address small claims judges acting in their official capacities by the same title that we do the higher judges: *Your Honor.*

Don't be fooled by the lack of the full-bottom wig behind the bench or other informalities in small claims courts. There is opportunity in the Small Claims Division, and it is available to smart attorneys who know how to avail themselves of it when circumstances so necessitate. No litigator is too good to write small claims out of his or her strategic tool box.