

Reexamination of the Involuntary Plaintiff Device: An Empirical Analysis*

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Abstract

The 2003 Amendment of the Code of Civil Procedure in Taiwan introduced a new procedural device—the involuntary plaintiff—by means of which the suing plaintiffs can compel other indispensable but unwilling parties to join as co-plaintiffs. Although this device helps to resolve the problems faced by the suing plaintiff when other indispensable plaintiffs refuse to initiate the litigation together, it at the same time raises many difficult questions and causes certain controversies. This article purports to examine the problems surrounding the involuntary plaintiff device from an empirical perspective and then proposes a theoretical framework. Specifically, this article collects all available court decisions regarding the application of this device and summarizes the common features and questions appeared in these cases. Based on the empirical results, this article criticizes that the courts are quite amateur about the device and do not grasp its essence. Therefore, the author establishes a basic theoretical framework to explain how the device should be applied and interpreted to meet the practical needs. The author further provides his own prediction with regard to how the device would continue to evolve in the future.

Keywords: joinder of parties, indispensable parties, involuntary plaintiff, a joint interest in a thing, empirical study

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