

Four-Month Statute of Limitations Applicable to Declaratory Judgment Actions Challenging Individualized Administrative Ratemaking

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defendant's motion to dismiss. Also discussed in this issue of *The Survey* is the Court of Appeals decision in *Solnick v. Whalen*. The *Solnick* Court, following the lead of several lower courts, held that the statute of limitations applicable to a declaratory judgment action is that period which would have governed had the action been brought for coercive relief. Notably, the Court in *Solnick* declined to apply the 6-year limitations period prescribed in CPLR 213 for actions with respect to which no statute of limitations is otherwise specified. It is hoped that *The Survey's* discussion of these and other developments will help the practitioner to keep abreast of the trends in New York practice.

ARTICLE 2—LIMITATIONS OF TIME

Four-month statute of limitations applicable to declaratory judgment actions challenging individualized administrative rate-making

The 6-year "residue" provision of CPLR 213 applies to those actions for which no statute of limitations is otherwise specified.¹ Since neither article 2 of the CPLR, nor any other statute provides a time limitation for a declaratory judgment action,² such actions

¹ CPLR 213(1) provides that "an action for which no limitation is specifically prescribed by law" must be brought within six years. CPLR 213(1) (1972). This "residual" limitation period often is applied to actions seeking equitable relief. See, e.g., *Savage v. Savage*, 63 App. Div. 2d 808, 405 N.Y.S.2d 329 (3d Dep't), *appeal dismissed*, 46 N.Y.2d 771 (1978); *Mencher v. Richards*, 256 App. Div. 280, 9 N.Y.S.2d 990 (2d Dep't 1939).

Statutes of limitation reflect a strong public policy against assertion of stale claims. Act, Recommendation and Study relating to Agreements Extending the Statute of Limitations, [1947] N.Y. LAW REV. COMM'N REP. 133, 145; see *Guaranty Trust Co. v. United States*, 304 U.S. 126, 136 (1938); *Caffaro v. Trayna*, 35 N.Y.2d 245, 254, 319 N.E.2d 174, 179, 360 N.Y.S.2d 847, 854 (1974) (Breitel, C.J., dissenting) (citing 1 WK&M ¶ 201.01). In addition, the imposition of a limitations period promotes the accurate determination of disputes. See 1 WK&M ¶ 202.01, at 2-7. Notably, the expiration of the statute of limitation bars only the remedy associated with a theory of liability and does not affect the underlying substantive rights. *Dentists' Supply Co. v. Corneliem*, 281 App. Div. 306, 308, 119 N.Y.S.2d 570, 572 (1st Dep't), *aff'd mem.*, 306 N.Y. 624, 116 N.E.2d 238 (1953); *In re Harlem River Drive*, 278 App. Div. 122, 123, 103 N.Y.S.2d 695, 697 (1st Dep't 1951) (per curiam), *aff'd mem.*, 303 N.Y. 828, 104 N.E.2d 373 (1952).

² CPLR 3001 (1974) provides in pertinent part:

The Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.

The primary purpose of a declaratory judgment action is "the complete and final settlement of the rights and legal relations of the parties with respect to the matters in controversy." *Barry v. Ready Reference Publishing Co.*, 25 App. Div. 2d 827, 827, 269 N.Y.S.2d 665, 666 (1st Dep't 1966) (per curiam); see *James v. Alderton Dock Yards, Ltd.*, 256 N.Y. 298, 305,

would seem to fall within the 6-year catchall provision.³ Some lower courts, however, have applied the statute of limitations that would have applied had the action been brought as one for coercive relief.⁴ Recently, in *Solnick v. Whalen*,⁵ the Court of Appeals endorsed this approach, holding that the 4-month statute of limitations period for article 78 proceedings,⁶ rather than the 6-year resi-

176 N.E. 401, 404 (1931); CPLR 3001, commentary at 355 (1974). A declaratory judgment action differs from other types of actions in that its object is a declaration of the rights of the parties, while other actions seek some form of coercive relief. SIEGEL § 436, at 578; see CPLR 3001, commentary at 355 (1974). A party bringing an action for a declaratory judgment, however, is not precluded from seeking or obtaining coercive relief. See CPLR 3017(b) (1974); SIEGEL § 436, at 579. Declaratory relief is available to settle a wide variety of disputes. For example, declaratory actions have been used to determine the validity of marriages, e.g., *Sorrentino v. Mierzwa*, 25 N.Y.2d 59, 250 N.E.2d 58, 302 N.Y.S.2d 565 (1969), the rights under a partnership agreement, e.g., *Leon v. Glaser*, 26 App. Div. 2d 166, 271 N.Y.S.2d 828 (1st Dep't 1966), the coverage under an insurance policy, e.g., *Great Am. Ins. Co. v. Cochrane*, 16 App. Div. 2d 151, 226 N.Y.S.2d 241 (1st Dep't 1962) (per curiam), the constitutionality of a statute, e.g., *City of Rye v. Metropolitan Transp. Auth.*, 24 N.Y.2d 627, 249 N.E.2d 429, 301 N.Y.S.2d 569 (1969), and the construction of a contract, e.g., *Malkinson v. Journal-News Corp.*, 296 N.Y. 10, 68 N.E.2d 853 (1946) (per curiam).

³ See *Sorrentino v. Mierzwa*, 25 N.Y.2d 59, 250 N.E.2d 58, 302 N.Y.S.2d 565 (1969); *Troy Towers Redev. Co. v. City of Troy*, 51 App. Div. 2d 173, 380 N.Y.S.2d 89 (3d Dep't 1976), *aff'd mem.*, 41 N.Y.2d 816, 361 N.E.2d 1045, 393 N.Y.S.2d 397 (1977); *Simeti v. Commissioner of Welfare*, 212 N.Y.S.2d 785 (Sup. Ct. Kings County 1961); *Pollack v. Josephy*, 162 Misc. 238, 294 N.Y.S. 219 (Sup. Ct. Kings County 1937).

⁴ See, e.g., *Berkshire Fine Spinning Assocs. v. City of New York*, 6 App. Div. 2d 252, 259-60, 176 N.Y.S.2d 77, 84 (1st Dep't 1958), *aff'd*, 5 N.Y.2d 347, 157 N.E.2d 614, 184 N.Y.S.2d 623, *appeal dismissed per curiam*, 361 U.S. 3 (1959); *Moore v. Board of Regents*, 89 Misc. 2d 23, 24, 390 N.Y.S.2d 582, 584 (Sup. Ct. Albany County 1977); *Calder v. Teachers' Retirement Bd.*, 4 Misc. 2d 166, 168, 156 N.Y.S.2d 494, 497 (Sup. Ct. N.Y. County 1956); *Schuman v. Schuman*, 137 N.Y.S.2d 485, 489-90 (Sup. Ct. Kings County 1954).

⁵ 49 N.Y.2d 224, 401 N.E.2d 190, 425 N.Y.S.2d 68 (1980), *rev'g*, 63 App. Div. 2d 1062, 1064, 405 N.Y.S.2d 1003, 1005 (3d Dep't 1978).

⁶ See CPLR 217 (1972). CPLR 217 provides in pertinent part:

Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner . . . or after the respondent's refusal, upon the demand . . . to perform its duty

Id. Article 78 of the CPLR provides the statutory framework for bringing a special proceeding against a judicial, quasi-judicial, or administrative officer. See CPLR 7801-7802 (1963); *Sacharoff v. Murphy*, 182 Misc. 235, 44 N.Y.S.2d 117 (Sup. Ct. N.Y. County 1943), *aff'd*, 268 App. Div. 765, 50 N.Y.S.2d 168 (1st Dep't 1944), *rev'd on other grounds, sub nom. Sacharoff v. Cursi*, 294 N.Y. 305, 62 N.E.2d 81, *cert. denied*, 326 U.S. 744 (1945). The provision encompasses remedies formerly available through the common-law writs of certiorari, mandamus, and prohibition. See CPLR 7801, 7803 (1963). Although the procedural distinctions among these common-law writs were discarded, article 78 does not eliminate the substantive distinctions. *Newbrand v. City of Yonkers*, 285 N.Y. 164, 33 N.E.2d 75 (1941) (CPA § 1296); *Baily v. Gerosa*, 26 Misc. 2d 558, 208 N.Y.S.2d 477 (Sup. Ct. N.Y. County 1960). Thus, for example, the common-law nature of the proceeding—certiorari, mandamus, or

due provision, governs a declaratory judgment action brought to challenge individual ratemaking by an administrative agency.⁷

The plaintiffs in *Solnick* owned and operated a nursing home which received Medicaid reimbursement for expenses at a rate determined by the Commissioner of Health.⁸ As a result of a 1975 Department of Health audit of the plaintiffs' records for the year 1969, expenses of approximately \$18,000 were disallowed.⁹ The plaintiffs appealed the disallowance to the department's rate review board.¹⁰ In June 1976, the auditor's judgment was upheld and the plaintiffs were notified that in accordance with that determination, their reimbursement rates for 1970 and 1971 were being decreased as well.¹¹ Seven months later, the plaintiffs commenced an action in Supreme Court, Albany County, seeking a declaration that the attempted recoupment was illegal for lack of a due process hearing.¹² The defendants interposed the defense of the statute of limitations.¹³ Special Term held that the action was not time-barred, and the Appellate Division, Third Department, agreed.¹⁴

prohibition—will determine the scope of review and the accrual of the cause of action. See 8 WK&M ¶ 7801.04-.05, at 78-14 to -19. For a discussion of article 78 proceedings, see SIEGEL §§ 557-570, at 774-801; 8 WK&M ¶ 7801.01-.06, at 78-14 to -24; Gabrielli & Nonna, *Judicial Review of Administrative Action in New York: An Overview and Survey*, 52 ST. JOHN'S L. REV. 361 (1978).

⁷ 49 N.Y.2d at 228, 401 N.E.2d at 193, 425 N.Y.S.2d at 70.

⁸ *Id.* at 227, 401 N.E.2d at 192, 425 N.Y.S.2d at 70.

⁹ *Id.* The Department of Health conducts periodic audits of all nursing homes receiving Medicaid funds in order to facilitate the determination of the rate of reimbursement. *Id.*; see N.Y. PUB. HEALTH LAW § 2803 (McKinney 1977).

¹⁰ 49 N.Y.2d at 227, 401 N.E.2d at 192, 425 N.Y.S.2d at 70. The plaintiffs challenged the disallowance of approximately \$9,000 and also sought additional reimbursement for rent tax paid. *Id.* Appeal to the rate review board is permitted under N.Y. PUB. HEALTH LAW § 2807(2-b) (McKinney 1977).

¹¹ 49 N.Y.2d at 228, 401 N.E.2d at 192, 425 N.Y.S.2d at 70. The commissioner ordered a reduction in the reimbursement rates for 1970 and 1971 because these rates were predicated, in part, upon the costs reported by the home for 1969. *Id.* at 227-28, 401 N.E.2d at 192, 425 N.Y.S.2d at 70.

¹² *Id.* at 228, 401 N.E.2d at 192, 425 N.Y.S.2d at 70.

¹³ *Id.*

¹⁴ 63 App. Div. 2d at 1064, 405 N.Y.S.2d at 1005. The third department rejected the defendant's contention that the action was time-barred because the proper vehicle for challenging the reimbursement rate was an article 78 proceeding. *Id.* The court relied on previous third department cases where article 78 proceedings brought to challenge Medicaid reimbursement rates had been converted into actions for declaratory judgments. *Id.*; see, e.g., *White Plains Nursing Home v. Whalen*, 53 App. Div. 2d 926, 385 N.Y.S.2d 392 (3d Dep't 1976), *aff'd*, 42 N.Y.2d 838, 366 N.E.2d 79, 397 N.Y.S.2d 378 (1977), *cert. denied*, 434 U.S. 1066 (1978). In converting these actions, the third department had relied on *Lakeland Water Dist. v. Onondaga County Water Auth.*, 24 N.Y.2d 400, 248 N.E.2d 855, 301 N.Y.S.2d 1 (1969), wherein the Court of Appeals stated that:

On appeal, the Court of Appeals reversed, holding that the shorter statute of limitations for article 78 proceedings and not the residue provision of CPLR 213 governed the action.¹⁵ In reaching this result, Judge Jones, writing for a unanimous Court, relied on the "essence" or "gravamen" test¹⁶ and the "next nearest context" standard.¹⁷ In applying the "essence" test, the Court examined the action and concluded that, because it was in substance an article 78 proceeding, the 4-month limitation period in CPLR 217 was applicable.¹⁸ Applying the "next nearest context" standard, the Court reached the same result, finding that the change in the plaintiffs' reimbursement rate could have been challenged in an article 78 proceeding because the prohibition against using such proceedings to challenge general legislative acts does not apply to individual rate determinations.¹⁹ Therefore, since the action had not been

An article 78 proceeding, it is settled, may not be utilized to review legislative action . . . and an order of an administrative agency fixing rates is deemed a legislative act, at least where no provision has been made for notice and a hearing. Where, however, notice and a hearing are prescribed by statute, . . . rate-making orders . . . are 'judicial' in the sense that they are reviewable by certiorari . . .

Id. at 407, 248 N.E.2d at 858, 301 N.Y.S.2d 5 (citations omitted). The Court of Appeals in *Solnick*, however, held that this reliance upon *Lakeland* was misplaced. See 49 N.Y.2d at 231, 401 N.E.2d at 194, 425 N.Y.S.2d at 72; note 19 and accompanying text *infra*.

¹⁵ 49 N.Y.2d at 229-30, 401 N.E.2d at 193-94, 425 N.Y.S.2d at 71-72.

¹⁶ Although the essence test evolved in the context of personal injury suits, see, e.g., *Martin v. Julius Dierck Equip. Co.*, 43 N.Y.2d 583, 374 N.E.2d 97, 403 N.Y.S.2d 185 (1978); *Webber v. Herkimer & Mohawk St. R.R.*, 109 N.Y. 311, 16 N.E. 358 (1888); *Gautieri v. New Rochelle Hosp. Ass'n*, 4 App. Div. 2d 874, 166 N.Y.S.2d 934 (2d Dep't 1957), *aff'd mem.*, 5 N.Y.2d 952, 157 N.E.2d 172, 183 N.Y.S.2d 803 (1959); *Loehr v. East Side Omnibus Corp.*, 259 App. Div. 200, 18 N.Y.S.2d 529 (1st Dep't 1940), *aff'd mem.*, 287 N.Y. 670, 39 N.E.2d 290 (1941), it also has been applied to actions for property damage, see, e.g., *Atlas Assurance Co. v. Bary Tire & Serv. Co.*, 3 App. Div. 2d 787, 787, 160 N.Y.S.2d 547, 548-49 (3d Dep't 1957), and actions involving a duty of care founded on a contract, see, e.g., *Sears, Roebuck & Co. v. Enco Assoc.*, 43 N.Y.2d 389, 394-96, 372 N.E.2d 555, 558, 401 N.Y.S.2d 767, 770-71 (1977).

¹⁷ The application of the "next nearest context" standard has been described as follows:

Inquire into the kind of action that would have been most likely to raise the same substantive issues had there been no declaratory action available, and determine what the statute of limitations would have been on such next-nearest action. Then just apply that statute of limitations to the declaratory action, not only as to what the basic period is, but as to other relevant matters . . .

CPLR 3001, commentary at 369 (1974).

¹⁸ 49 N.Y.2d at 229-30, 401 N.E.2d at 193-94, 425 N.Y.S.2d at 71.

¹⁹ *Id.* at 229-30, 401 N.E.2d at 193-94, 425 N.Y.S.2d at 71-72. The *Solnick* Court rejected the contention that the holding in *Lakeland Water Dist. v. Onondaga County Water Auth.*, 24 N.Y.2d 400, 248 N.E.2d 855, 301 N.Y.S.2d 1 (1969), precluded the use of an article 78 proceeding to challenge administrative ratemaking. The plaintiffs in *Lakeland* brought an article 78 proceeding challenging an across-the-board increase in the water rates charged by the County Water Authority. *Id.* at 405, 248 N.E.2d at 856-57, 301 N.Y.S.2d at 4. The

commenced within four months after accrual of the claim, Judge Jones held that it was time-barred.²⁰

By mandating that courts inquire into the claim underlying a request for declaratory relief, the *Solnick* Court did not foreclose the use of a declaratory judgment action where an adequate alternative legal remedy exists.²¹ Rather, the Court affirmed the traditional precept that a plaintiff may not circumvent a short period of limitations by merely changing the form of the action.²² Indeed, by

Court of Appeals held that an article 78 proceeding was improper because the plaintiffs were, in effect, challenging legislative actions and, therefore, the Court treated the action as one for declaratory relief. *Id.* at 407-09, 248 N.E.2d at 858-59, 301 N.Y.S.2d at 5-7. The *Solnick* Court distinguished *Lakeland*, stating that *Lakeland* was a challenge to a rate of general applicability, while *Solnick* was an attack on the "ad hoc determination of an individual party's rights of reimbursement . . ." 49 N.Y.2d at 231-32, 401 N.E.2d at 195, 425 N.Y.S.2d at 72-73. According to the Court, when an agency's action has general applicability it is "legislative" and, therefore, properly challenged in a declaratory judgment action. In an action affecting only an individual, however, it is an administrative act subject to review in an article 78 proceeding. *Id.* Courts have utilized this distinction in the past to determine whether the proper form of action is a declaratory judgment or an article 78 proceeding. *See, e.g.,* *Greenwald v. Frank*, 70 Misc. 2d 632, 334 N.Y.S.2d 680 (Sup. Ct. Nassau County), *modified on other grounds*, 40 App. Div. 2d 717, 337 N.Y.S.2d 225 (2d Dep't 1972), *aff'd mem.*, 32 N.Y.2d 862, 299 N.E.2d 895, 346 N.Y.S.2d 529 (1973). *See generally* *Lutheran Church v. City of New York*, 27 App. Div. 2d 237, 238, 278 N.Y.S.2d 1, 3 (1st Dep't 1967) (*per curiam*).

²⁰ 49 N.Y.2d at 233, 401 N.E.2d at 195-96, 425 N.Y.S.2d at 73. The Court stated that it was unnecessary to determine whether the limitation period began to run on June 1, 1976, when the plaintiffs received notice that the auditor's decision was upheld, or on June 25, 1976, when they received notice of the rate adjustment, since the action was commenced more than 4 months from either date. *Id.*

²¹ Nowhere in its decision does the *Solnick* Court infer that the plaintiffs were precluded from bringing an action for declaratory relief because an article 78 proceeding was available to them. Rather, the Court merely looked into another form of action that might have been brought in order to determine the applicable statute of limitations. The courts have often held that the availability of another form of action does not preclude the right to seek a declaratory judgment. *See, e.g.,* *Delaware Lackawanna & W.R.R. v. Slocum*, 269 App. Div. 467, 57 N.Y.S.2d 65 (3d Dep't 1945); *Commission of Pub. Charities v. Wortman*, 255 App. Div. 241, 7 N.Y.S.2d 631 (3d Dep't), *aff'd mem.*, 279 N.Y. 711, 18 N.E.2d 325 (1938); *Berkule v. Feldman*, 39 Misc. 2d 250, 240 N.Y.S.2d 462 (Sup. Ct. N.Y. County 1963), *aff'd mem.*, 20 App. Div. 2d 761, 247 N.Y.S.2d 550 (1st Dep't 1964). *But see* *Elkort v. 490 W. End Ave. Co.*, 38 App. Div. 2d 1, 326 N.Y.S.2d 406 (1st Dep't 1971); *Przyborowski v. O'Connell*, 272 App. Div. 1096, 74 N.Y.S.2d 774 (3d Dep't 1947), *aff'd mem.*, 297 N.Y. 940, 80 N.E.2d 343 (1948); *Arzee Supply Corp. v. Silverman*, 31 Misc. 2d 168, 220 N.Y.S.2d 3 (Sup. Ct. Nassau County 1961).

²² 49 N.Y.2d at 230, 401 N.E.2d at 194, 425 N.Y.S.2d at 71; *see* *State v. Cortelle Corp.*, 38 N.Y.2d 83, 341 N.E.2d 223, 378 N.Y.S.2d 654 (1975); *Brick v. Cohn-Hall-Marx Co.*, 276 N.Y. 259, 11 N.E.2d 902 (1937). Plaintiffs often try to circumvent the statute of limitations by phrasing their claim as one for equitable relief. The courts have held, however, that if a party has a choice between a legal and an equitable remedy, the statute of limitations for the legal remedy is applicable if the legal remedy is adequate. *See* *Hanover Fire Ins. Co. v.*

employing either the "next nearest context" standard or the "essence" test, a court may remedy an abuse of the declaratory action without requiring a disallowance of the claim or its conversion to another form of action.²³

In addition to determining the applicable statute of limitations, it is submitted that the *Solnick* tests may also be used to ascertain the point at which the limitation period begins to run.²⁴ Thus, for example, if the "essence" of a declaratory action is fraud, it is only logical that fraud principles should also govern the accrual of the claim.²⁵ The inquiry mandated by the *Solnick* Court may be further extended to determine whether the litigants in a declaratory action are entitled to a trial by jury,²⁶ as well as the applicability of the doctrine of laches.²⁷ Indeed, such extensions of the *Solnick* rationale appear to be consistent with the underlying purpose of both the "gravamen" and "next nearest context" tests—specifically, that the substance of an action should take precedence over its form.

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Morse Dry Dock & Repair Co., 270 N.Y. 86, 200 N.E. 589 (1936). See also *Chance v. Guaranty Trust Co.*, 164 Misc. 346, 298 N.Y.S. 17 (Sup. Ct. Kings County), *aff'd*, 251 App. Div. 855, 297 N.Y.S. 293 (2d Dep't 1937).

²³ CPLR 3001, commentary at 364-65 (1974).

²⁴ It is suggested that when the limitation period for article 78 proceedings is applied to the cause of action, the date on which the action accrues should also be determined under the standards utilized in article 78 proceedings. See CPLR 3001, commentary at 369 (1974). Thus, the conclusion of when the action accrues will depend on whether the action is in the nature of certiorari, mandamus, or prohibition. See SIEGEL § 566, at 791-94; 8 WK&M ¶ 7804.02, at 78-104 to 78-108.

²⁵ CPLR 213(9) provides that in an action based on fraud "the time within which the action must be commenced shall be computed from the time the plaintiff . . . discovered the fraud, or could with reasonable diligence have discovered it." CPLR 213(9) (1972).

²⁶ See CPLR 3001, commentary at 367-68 (1974); *cf.* *Simler v. Conner*, 372 U.S. 221 (1963) (per curiam) (declaratory action to determine attorney's fee essentially an action at law and thus triable by jury).

²⁷ See CPLR 3001, commentary at 370 (1974). The defense of laches is available only in an action at equity. SIEGEL § 4, at 4. Although a declaratory judgment action sounds both in law and in equity, *First Nat'l Stores, Inc. v. Yellowstone Shopping Center, Inc.*, 21 N.Y.2d 630, 237 N.E.2d 868, 290 N.Y.S.2d 721 (1968), it is suggested that if a particular declaratory action is, in essence, an action at law, then the defense of laches is inapplicable.