

**CPLR 203(e): Court Refuses to Allow Amendment of Pleading in  
Declaratory Judgment Action To Include a Cause of Action in  
Negligence**

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Understandably, the Fourth Department endeavored to obviate the severity of the statute of limitations problem in malpractice actions. The Court of Appeals should look with favor upon the result.

*CPLR 203(e): Court refuses to allow amendment of pleading in declaratory judgment action to include a cause of action in negligence.*

In *Raggins v. Hartford Accident & Indemnity Co.*,<sup>20</sup> the plaintiffs were injured in an automobile accident and gave notice of the accident to the defendant insurance company, which disclaimed liability on the ground that the policy had been terminated. The plaintiffs sought a declaratory judgment that the disclaimer was invalid, and the Supreme Court, Erie County, ordered that the policyholder be joined as a defendant. This was done, but no negligence action was ever instituted. After the three-year statute of limitations period,<sup>21</sup> the defendant insurance company moved for a summary dismissal of the action, arguing that since the policyholder had a complete defense to any negligence claim by virtue of the expiration of the statutory period, the question of his insurance coverage was purely academic. The plaintiffs cross-moved to amend their pleadings to include a cause of action for damages for personal injuries.

The court distinguished the issues of law in a negligence suit from those in a declaratory judgment action, and concluded that the differences were irreconcilable.<sup>22</sup> While acknowledging the liberal approach to amended pleadings sanctioned by CPLR 3025 and CPLR 3026,<sup>23</sup> the court insisted that these sections "were not intended to be used for purposes of resurrecting an action outlawed by the statute of limitations"<sup>24</sup> and consequently denied the motion to amend.

The *Raggins* decision raises an interesting question as to the possible applicability of CPLR 203(e) to this kind of situation. This section, not mentioned by the court, provides that, for purposes of the statute of limitations, a claim in an amended pleading is considered to have been interposed at the time the claims in the original pleading

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<sup>20</sup> 68 Misc. 2d 1063, 328 N.Y.S.2d 802 (Sup. Ct. Erie County 1972) (mem.).

<sup>21</sup> CPLR 214.

<sup>22</sup> See *General Acc. Fire & Life Assur. Corp. v. Jarmouth*, 149 N.Y.S.2d 523, 524 (Sup. Ct. N.Y. County 1956), in which the court noted:

The issues in the equity action for a declaratory judgment and the tort action for personal injuries are completely independent of each other. . . . In the action for a declaratory judgment the court is required to interpret the terms of an insurance policy. The issues in the personal injury action are that of negligence, contributory negligence and damages.

<sup>23</sup> CPLR 3025(b) provides that "leave [to amend] shall be freely given upon such terms as may be just. . . ." CPLR 3026 states that "[p]leadings shall be liberally construed."

<sup>24</sup> 68 Misc. 2d at 1065, 328 N.Y.S.2d at 804.

were interposed, provided the original pleading gives notice of the transactions or occurrences to be proved pursuant to the amended pleading. The crucial issue is notice, since the purpose of the statute is to prevent surprise. If the complaint in the declaratory judgment action gives notice of the accident and pertinent facts relating thereto, it can be argued that sufficient notice is given to sustain any cause of action arising out of the accident. Consequently, the *Raggins* court could have found that the statute of limitations was satisfied when the original complaint was issued, and that the amended pleading relating to personal injuries was proper, even though a negligence action was never commenced. It would be ingenuous to argue that in a case such as *Raggins* the policyholder and the insurance company would be surprised, and thereby prejudiced, by a subsequent pleading of personal injuries, since the complaint in the initial action, even though for a declaratory judgment, gives sufficient notice of a probable suit for negligence.

*Raggins* follows precedent insofar as it upholds the distinction between a negligence action and a declaratory judgment action. Under CPLR 203(e), however, the court could have allowed amendment of the complaint to include a cause of action in negligence, without prejudice to the defendant.

### ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

*CPLR 302(a)(1): Placement of children with an adoption agency deemed "transaction of business."*

*In re Guardianship of Ellick*<sup>25</sup> is a recent family court decision which applied CPLR 302 to an adoption proceeding. The petitioner adoption agency sought guardianship and custody<sup>26</sup> of three brothers who had been abandoned by the respondent, their mother, a non-domiciliary of New York who had been personally served pursuant to CPLR 313.

Rejecting her jurisdictional objections, the court found that the respondent's placement of her children under the care and support of the New York agency constituted a "transaction" which subjected her to personal jurisdiction in the proceeding. CPLR 302 was cited to support this holding, and it is obvious that the "transacting business" sub-

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<sup>25</sup> 69 Misc. 2d 175, 328 N.Y.S.2d 587 (Fam. Ct. N.Y. County 1972).

<sup>26</sup> The action was brought pursuant to Section 384(5) of the New York Social Services Law, which deals with the power of the family court judge in matters of guardianship and custody of abandoned children.