

**CPLR 211(b): Support Order Qualifies as Money Judgment  
Subject to Conclusive Presumption of Payment After Twenty  
Years**

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*CPLR 208: Insanity which extends statute of limitations includes temporary mental incapacity to protect one's rights arising from physical injury.*

CPLR 208 extends the statute of limitations if a person entitled to bring an action is insane when it accrues.<sup>13</sup> The first definition of insanity under CPLR 208 was recently presented in *Hurd v. County of Allegany*,<sup>14</sup> the Appellate Division, Fourth Department, construing the term to include "a temporary mental incapacity to protect one's rights resulting from a physical injury . . . ."<sup>15</sup>

The plaintiff was injured on August 30, 1969, in an automobile accident on a county road, allegedly as a result of the county's negligence. She suffered brain damage and had significant problems with memory and concentration through early 1970. On July 10, 1971, the plaintiff commenced an action against the defendant. Noting that the one year and ninety-day limitation period provided by the General Municipal Law<sup>16</sup> for tort claims against a municipality is subject to tolling under CPLR 208,<sup>17</sup> the court looked to the generic manner in which other states have construed their counterparts of CPLR 208 and unanimously held that the plaintiff's temporary mental incapacity arising from the accident constituted insanity within the meaning of CPLR 208.<sup>18</sup> The court concluded that a fact-finding hearing should be ordered to determine when the plaintiff's mental disability ceased.<sup>19</sup>

*CPLR 211(b): Support order qualifies as money judgment subject to conclusive presumption of payment after twenty years.*

CPLR 211(b) creates a conclusive presumption of payment "after the expiration of twenty years from the time when the party recovering [a money judgment] was first entitled to enforce it."<sup>20</sup> In *In re Estate*

<sup>13</sup> If the statute of limitations is three years or more and has expired, the disabled person has three years from the end of the disability in which to sue. If the statute of limitations is less than three years, it is extended by the period of the disability. An extension exceeding ten years is allowed only for infancy. See 7B MCKINNEY'S CPLR 208, commentary at 261-62 (1972).

<sup>14</sup> 39 App. Div. 2d 499, 336 N.Y.S.2d 952 (4th Dep't 1972).

<sup>15</sup> *Id.* at 502, 336 N.Y.S.2d at 956.

<sup>16</sup> GML 50-i(1)(c).

<sup>17</sup> 39 App. Div. 2d at 502, 336 N.Y.S.2d at 956, citing *Corbett v. Fayetteville-Manlius Cent. School Dist.*, 34 App. Div. 2d 379, 311 N.Y.S.2d 540 (4th Dep't 1970). *Accord*, *Abbatemarco v. Town of Brookhaven*, 26 App. Div. 2d 664, 272 N.Y.S.2d 450 (2d Dep't 1966) (mem.); *LaFave v. Town of Franklin*, 20 App. Div. 2d 738, 247 N.Y.S.2d 72 (3d Dep't 1964) (mem.).

<sup>18</sup> *Id.* at 502-03, 336 N.Y.S.2d at 956-57, citing, e.g., *Gottesman v. Simon*, 169 Cal. App. 2d 494, 337 P.2d 906 (4th Ct. App. 1959); *Browne v. Smith*, 119 Colo. 469, 205 P.2d 239 (1949); *Sobin v. M. Frisch & Sons*, 108 N.J. Super. 99, 260 A.2d 228 (App. Div. 1969).

<sup>19</sup> 39 App. Div. 2d at 503-04, 336 N.Y.S.2d at 957.

<sup>20</sup> See generally *Brinkman v. Cram*, 175 App. Div. 372, 161 N.Y.S. 965 (1st Dep't 1916), *aff'd*, 225 N.Y. 720, 122 N.E. 877 (1919); 1 WK&M ¶ 211.03.

of *Haggart*,<sup>21</sup> the Surrogate's Court, Chautauqua County, determined whether the decedent's former wife was entitled to apply the twenty-year period to her claim against his estate arising out of support payments, rather than the six-year residuary statute of limitations prescribed in CPLR 213(1).<sup>22</sup>

The plaintiff had obtained a number of court orders requiring the decedent to pay varying amounts for the support of herself and her children. The court distinguished between a claim based on a separation agreement and one due under a final decree of a court. The former, being contractual, is governed by the six-year statute of limitations;<sup>23</sup> the latter is considered a money judgment,<sup>24</sup> imposing a liability on one spouse to pay a sum certain to the other,<sup>25</sup> and thus subject to the twenty-year time limit.

This sound decision clarifies that court-ordered support payments are judgment debts, and thus gives greater protection to a spouse entitled to such monies.

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

*CPLR 301: Parent corporation found to be doing business in New York on agency theory.*

Jurisdiction may be exercised over a nondomiciliary parent corporation on the basis of its subsidiary's activities within the state if the subsidiary is deemed for jurisdictional purposes either (1) a mere department of the parent, or (2) the parent's agent performing "all the business which [the parent] could do were it here by its own officials."<sup>26</sup> *Sunrise Toyota, Ltd. v. Toyota Motor Co.*<sup>27</sup> illustrates the prerequisites to a finding of the latter relationship.

In *Sunrise Toyota*, the publicly-owned Japanese Toyota manufacturing (Factory) and distributing (Sales) companies jointly and

<sup>21</sup> 71 Misc. 2d 157, 335 N.Y.S.2d 751 (Sur. Ct. Chautauqua County 1972).

<sup>22</sup> CPLR 213(1) establishes a six-year statute of limitations for actions for which no limitation is specifically fixed by law.

<sup>23</sup> See *Haimes v. Schonwit*, 268 App. Div. 652, 52 N.Y.S.2d 272 (2d Dep't), *aff'd*, 295 N.Y. 577, 64 N.E.2d 283 (1945); *Winer v. Ginsburg*, 35 Misc. 2d 1054, 231 N.Y.S.2d 622 (Sup. Ct. N.Y. County 1962); *Estate of Philippe*, 31 Misc. 2d 193, 220 N.Y.S.2d 924 (Sur. Ct. N.Y. County 1961), *aff'd mem.*, 14 N.Y.2d 600, 198 N.E.2d 263, 248 N.Y.S.2d 886 (1964).

<sup>24</sup> CPLR 105(n) defines a money judgment as "a judgment, or any part thereof, for a sum of money or directing the payment of a sum of money."

<sup>25</sup> See *In re Bassford's Will*, 91 N.Y.S.2d 105 (Sur. Ct. Westchester County 1949), *aff'd mem.*, 277 App. Div. 1128, 101 N.Y.S.2d 136 (2d Dep't 1950).

<sup>26</sup> See, e.g., *Sunrise Toyota, Ltd. v. Toyota Motor Co.*, 55 F.R.D. 519 (S.D.N.Y. 1972); *Delagi v. Volkswagenwerk AG*, 29 N.Y.2d 426, 278 N.E.2d 895, 328 N.Y.S.2d 653 (1972), discussed in *The Quarterly Survey*, 46 ST. JOHN'S L. REV. 768, 772 (1972).

<sup>27</sup> 55 F.R.D. 519 (S.D.N.Y. 1972).