St. John's Law Review

Volume 46, March 1972, Number 3 Article 35

CPLR 213: Mendel Rule Applied in Impleader Context

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation

St. John's Law Review (1972) "CPLR 213: Mendel Rule Applied in Impleader Context," *St. John's Law Review*: Vol. 46 : No. 3 , Article 35.
Available at: https://scholarship.law.stjohns.edu/lawreview/vol46/iss3/35

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

underscores the overly broad reading given CPLR 203(e) in the *Berlin* decision. However, where the facts of the case permit the reasonable conclusion that notice of the wrongful death claim was given by the original pleadings, justice is disserved by denying the assertion of such claim upon a technical construction of the provision. It is true that the new cause of action is supplemental in nature, since it did not exist when the original action was commenced, but in light of the liberal construction mandate, CPLR 203(e) should not be restrictively interpreted to exclude supplementary causes of action from the operation of the relation back doctrine. The best approach lies in a balancing of the equities; the resultant hardship to the plaintiff if the claim is denied as opposed to the prejudice to the defendant if insufficient notice were given by the original pleadings. Under these standards, *Palmer* clearly achieves a just result.

CPLR 213: Mendel *rule applied in impleader context.*

In *Mendel v. Pittsburgh Plate Glass Co.*[11] the Court of Appeals held, 4 to 3, that the statute of limitations for a cause of action in breach of warranty ran from the time of sale rather than from the time of injury. The anomalous result — that the action was barred before the injury was incurred — was justified as necessary "to prevent the many unfounded suits that would be brought and sustained against manufacturers ad infinitum."[12] While *Mendel* involved only one sale, it was read as "stand[ing] for the proposition that when a defendant is sued in warranty the period of limitations against him is measured from the time he sold the item. . . ."[13] Thus, it is not surprising that the *Mendel* rationale has been extended to the impleader situation.[14]

The foundation for this application was laid in *C. K. S., Inc. v. Helen Borgenicht Sportswear, Inc.*,[15] which clearly held that the statute of limitations on a warranty claim commences to run at the time that the third-party defendant sells the item to the third-party plaintiff. This reasoning was adopted in *Perez v. Chutick & Sudakoff*,[16] wherein a federal district court refused to allow amendment of a complaint by

11 25 N.Y.2d 340, 252 N.E.2d 207, 305 N.Y.S.2d 490 (1969). For a symposium on *Mendel*, see 45 ST. JOHN'S L. REV. 62 (1970). *See also* 1 WK&M ¶ 214.14a.

12 25 N.Y.2d at 346, 253 N.E.2d at 210, 305 N.Y.S.2d at 495.

13 Siegel, *Procedure Catches Up-And Makes Trouble*, 45 ST. JOHN'S L. REV. 63, 69 (1970).

14 *See* Note, *An Appraisal of Judicial Reluctance to Imply an Indemnity Contract in Time-Barred Breach of Warranty Suits*, 39 ST. JOHN'S L. REV. 361 (1965).

15 22 App. Div. 2d 650, 253 N.Y.S.2d 56 (1st Dep't 1964) (per curiam).

16 50 F.R.D. 1 (S.D.N.Y. 1970). The court cited C.K.S., Inc. v. Helen Borgenicht Sportswear, Inc., 22 App. Div. 2d 650, 253 N.Y.S.2d 56 (1st Dep't 1964) and City & Country Sav. Bank v. Kramer & Sons, 43 Misc. 2d 731, 252 N.Y.S.2d 224 (Sup. Ct. Albany County 1964).

adding a claim for breach of warranty, on the ground that the defendant would be prejudiced in that his action to recover over would be barred by the statute of limitations.

This interpretation has now been approved by the Second Circuit, in *Caruloff v. Emerson Radio & Phonograph Corp.*[17] A television repairman had lost an eye when he was struck by a retainer wire spring on a tuner. He sued the manufacturer of the television, who impleaded, on grounds of negligence and breach of implied warranty, the manufacturer of the defective part. The district court held that the manufacturer was actively negligent in not warning repairmen of the danger involved in servicing the tuner and upheld the defense of the statute of limitations. It held that the cause of action for breach implied warranty accrued at the time of sale and not at the time of injury. The Court of Appeals for the Second Circuit affirmed.[18]

The fact that the defendant was guilty of active negligence makes this decision somewhat palatable. Nevertheless, a rule which bars a cause of action before it accrues is subject to strong criticism.[19] One can readily imagine a situation in which an innocent intermediary is without recourse under this rule; this raises constitutional questions about deprivation of property without due process of law. On balance, it appears that a claim-over based on warranty, like a claim-over in active negligence, should be deemed an action for indemnification.[20]

ARTICLE 10 — PARTIES GENERALLY

CPLR 1007: Broad indemnification clause held not to cover active negligence of lessor causing injury to lessee.

Redding v. Gulf Oil Corp.,[21] the first New York case concerning indemnification contracts to be reported since the Court of Appeals decided *Levine v. Shell Oil Co.*,[22] has narrowly construed the latter decision. The *Levine* Court had held that the *Thompson-Starrett* doctrine,[23] under which an indemnification contract would be recognized as encompassing active negligence only if it expressly stated that it should be so interpreted, was "no longer a viable statement of the

17 445 F.2d 873 (2d Cir. 1971), *aff'g* 314 F. Supp. 631 (S.D.N.Y. 1970).

18 *Id.* at 875.

19 *See, e.g.*, 7B McKINNEY'S CPLR 214, commentary at 430 (1972). "It would be far simpler if it were simply said that there is strict liability in tort, declared outright, without an illusory contract mask. W. PROSSER, TORTS 681 (3d ed. 1964)."

20 *Accord*, Siegel, *supra* note 13, at 69-70.

21 67 Misc. 2d 464, 324 N.Y.S.2d 490 (Sup. Ct. Nassau County 1971).

22 28 N.Y.2d 205, 269 N.E.2d 799, 321 N.Y.S.2d 81 (1971), *discussed in The Quarterly Survey*, 46 ST. JOHN'S L. REV. 355, 367 (1971).

23 Thompson-Starrett Co. v. Otis Elevator Co., 271 N.Y. 86, 2 N.E.2d 35 (1936).