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CPLR 203(b): Statute of Limitations Tolled by Service upon the Secretary of State

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tion of this Board, the appellate divisions are granted the responsibility of supervising "the administration and operation of the courts in their respective departments."[2]

In *City of Newburgh v. Rabin*,[3] this broad administrative power of the appellate divisions over their respective jurisdictions was reaffirmed by the Appellate Division, Second Department. At issue was the validity of that court's order directing the transfer of certain terms of the supreme court in Orange County from the courthouse in the City of Newburgh to the Town of Goshen. In dismissing the appellant's article 78 proceeding against the presiding justice,[4] *inter alia*, the court cited the Judiciary Law,[5] which restates the general mandate of the state constitution and specifically empowers the appellate divisions to determine the time and place of all supreme court terms held within their respective departments.

As the court concluded, it clearly possessed "ample power for the making of the challenged order."[6]

ARTICLE 2 — LIMITATIONS OF TIME

CPLR 203(b): Statute of limitations tolled by service upon the Secretary of State.

Where service of process is made upon the Secretary of State pursuant to section 253 of the Vehicle and Traffic Law,[7] the statute of limitations ceases to run in favor of the defendant if "notice of such service and a copy of the summons and complaint are forthwith sent . . . by certified mail or registered mail with return receipt requested."[8]

Sadek v. Stewart[9] held that although the appropriate papers were never received by defendant but were returned to the plaintiff stamped "unknown," service of process upon the Secretary of State was sufficient to toll the statute of limitations. Despite the fact that defendants were non-residents, the statute of limitations ran in their favor since they

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2 N.Y. CONST. art. VI, § 28 (McKinney 1969).

3 37 App. Div. 2d 832, 327 N.Y.S.2d 205 (2d Dep't 1971) (mem.).

4 The court noted that the instant action was brought against the wrong parties since Judiciary Law § 235(2) specifies that such an action should name only the director of administration of the judicial department in his representative capacity as the defendant. *Id.* at 833, 327 N.Y.S.2d at 206.

5 N.Y. JUDICIARY LAW §§ 86, 214, 216 (McKinney 1962).

6 37 App. Div. 2d at 833, 327 N.Y.S.2d at 206, *citing* N.Y. CONST. art. VI, §§ 1, 28; N.Y. JUDICIARY LAW §§ 86, 214, 216 (McKinney 1962).

7 N.Y. VEH. & TRAF. LAW § 253 (McKinney 1970).

8 *Id.*

9 38 App. Div. 2d 655, 327 N.Y.S.2d 271 (3d Dep't 1971).

were amenable to process in New York State.[10] It should be noted that this decision is in accord with the prior law on this point.[11]

CPLR 203(b): In an impleader action by retailer for indemnification from manufacturer, the statute of limitations begins to run in favor of the manufacturer on the day of sale.

In *Ibach v. Donaldson Service, Inc.*,[12] the Appellate Division, Fourth Department, held that the statute of limitations commences to run on the day that a defective product is sold to the retailer and is available as an affirmative defense to an impleaded manufacturer if the statutory period expires before the commencement of the impleader action.[13] This decision was merely a logical extension of the principles enunciated in *Mendel v. Pittsburgh Plate Glass Co.*,[14] where the New York Court of Appeals held that a breach of warranty action against the manufacturer of a defective product accrues on the date of sale. Lamentably, this holding sometimes results in the statute of limitations tolling before the potential plaintiff is injured or the potential third-party plaintiff is sued.[15]

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

CPLR 301: Foreign corporation held not present within the state under either "agency" or "control" predicates.

When is a non-domiciliary parent corporation, for purposes of jurisdiction, "present" within the state by virtue of the acts its subsidiary performed? Clearly, the mere presence of the subsidiary within the state is not in itself a sufficient basis upon which to exercise jurisdiction over the parent corporation.[16] Such jurisdiction has been up-

10 CPLR 207.

11 *See* Dominion of Canada Gen. Ins. Co. v. Pierson, 27 App. Div. 2d 484, 280 N.Y.S.2d 296 (3d Dep't 1967); Glines v. Muszynski, 15 App. Div. 2d 435, 225 N.Y.S.2d 61 (4th Dep't 1962) (per curiam).

12 38 App. Div. 2d 39, 326 N.Y.S.2d 720 (4th Dep't 1971).

13 *Id.* at 45, 326 N.Y.S.2d at 726. *Accord*, Caruloff v. Emerson Radio & Phonograph Corp., 445 F.2d 873 (2d Cir. 1971); Perez v. Chutick & Sudakoff, 50 F.R.D. 1 (S.D.N.Y. 1970); C.K.S., Inc. v. Helen Borgenicht Sportswear, Inc., 22 App. Div. 2d 650, 253 N.Y.S.2d 56 (1st Dep't 1964) (per curiam); City & County Sav. Bank v. M. Kramer & Sons, Inc., 43 Misc. 2d 731, 252 N.Y.S.2d 224 (Sup. Ct. Albany County 1964). *See The Quarterly Survey*, 46 ST. JOHN'S L. REV. —, — (1972).

14 25 N.Y.2d 340, 253 N.E.2d 207, 305 N.Y.S.2d 490 (1969). For an excellent critique of the reasoning in the *Mendel* decision, see *Symposium on* Mendel v. Pittsburgh Plate Glass Company, 45 ST. JOHN'S L. REV. 62 *et seq.* (1970).

15 For further discussion of the impleader problem, see Siegel, *Procedure Catches Up and Makes Trouble*, 45 ST. JOHN'S L. REV. 63, 69 (1970).

16 *See, e.g.*, Cannon Mfg. Co. v. Cudahy Packing Co., 267 U.S. 333 (1925); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 52, comment *b* at 180-81 (1969).