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THE QUARTERLY SURVEY OF NEW YORK PRACTICE

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*Introduction**

Few causes have won the attention of the *Survey* as decisively as the plight of the practitioner who must apply for a stay of arbitration within ten short days. Consequently, it is with utmost extollment that two cases, which have somewhat alleviated this burden, are reported herein. In *Knickerbocker Insurance Co. v. Gilbert*, the Court of Appeals ratified mailing — rather than actual receipt — of an application to stay arbitration as sufficient to satisfy the statute of limitations. And, in *Empire Mutual Insurance Co. v. Levy* the First Department vitiated a notice of intention to arbitrate which was intentionally served in a deceptive manner. If the preclusionary caveat contained in CPLR 7503(c) is to be construed as a statute of limitations, these cases at least assure the practitioner a *full* ten days in which to act.

Also relevant to the arbitral process are *Blends, Inc. v. Schottland Mills, Inc.* and *Mount St. Mary's Hospital v. Catherwood.* In the former, the First Department restored the issue of timeliness of a demand for arbitration to the status of a threshold question to be decided by the court. In the latter, the Court of Appeals defined the degree to which the courts are permitted to scrutinize an award rendered at compulsory arbitration. Finally, the reader's attention is directed to the cases discussed under CPLR 302. It appears that the

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* The following abbreviations will be used uniformly throughout the *Survey:*

New York Civil Practice Law and Rules ..... CPLR
New York Civil Practice Act ..... CPA
New York Rules of Civil Practice ..... RCP
New York City Civil Court Act ..... CCA
Uniform District Court Act ..... UDCA
Uniform Justice Court Act ..... UJCA
Uniform City Court Act ..... UCCA
Real Property Actions and Proceedings Law ..... RPAPL
Domestic Relations Law ..... DRL
WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE (1969) ..... WK&M
The Biannual Survey of New York Practice ..... *The Biannual Survey*
The Quarterly Survey of New York Practice ..... *The Quarterly Survey*

Extremely valuable in understanding the CPLR are the five reports of the Advisory Committee on practice and Procedure. The are contained in the following legislative documents and will be cited as follows.

1957 N.Y. LEG. DOC. No. 6(b) ..... FIRST REP.
1958 N.Y. LEG. DOC. No. 13 ..... SECOND REP.
1959 N.Y. LEG. DOC. No. 17 ..... THIRD REP.
1960 N.Y. LEG. DOC. No. 80 ..... FOURTH REP.
1961 FINAL REPORT OF THE ADVISORY COMMITTEE ON PRACTICE AND PROCEDURE ..... FINAL REP.

Also valuable are the two joint reports of the Senate Finance and Assembly Ways and Means Committees:

1961 N.Y. LEG. DOC. No. 15 ..... FIFTH REP.
1962 N.Y. LEG. DOC. No. 8 ..... SIXTH REP.

courts are discerning jurisdictional prerequisites with remarkable facility.

The *Survey* sets forth in each installment those cases which are deemed to make the most significant contribution to New York's procedural law. Due to limitations of space, however, many other less important, but, nevertheless, significant cases cannot be included. While few cases are exhaustively discussed, it is hoped that the *Survey* accomplishes its basic purpose, *viz.*, to key the practitioner to significant developments in the procedural law of New York.

The Table of Contents is designed to direct the reader to those specific areas of procedural law which may be of importance to him. The various sections of the CPLR which are specifically treated in the cases are listed under their respective titles.

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

CPLR 302(a)(1): Perfection of security agreement and liquidation of assets in New York deemed a transaction of business.

CPLR 302(a)(1) authorizes the assumption of in personam jurisdiction over any nondomiciliary who, in person or through an agent, "transacts any business" in New York. Inasmuch as the legislature elected not to establish precise guidelines when enacting this subsection,[1] the determination of whether a defendant has transacted business in the state must be made according to the circumstances of each case. *Alan Howard, Inc. v. American Acceptance Corp.*[2] is yet another illustration of the novel factual situations which have arisen under this proviso.[3]

Defendant, a Delaware corporation which neither maintained an office nor conducted business in New York, had advanced money to Hale's Bedding Stores of New York, Inc. (Hale's) and received in return a security interest in the latter's inventory, accounts receivable and contract rights within the state. This agreement was perfected by filing a financing statement with the Secretary of State and the appropriate county clerk. Subsequently, Hale's assets were liquidated and

1 Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 456, 209 N.E.2d 68, 75, 261 N.Y.S.2d 8, 18, *cert. denied*, 382 U.S. 905 (1965); *see also* SECOND REP. 39-40.

2 35 App. Div. 2d 923, 316 N.Y.S.2d 1 (1st Dep't 1970) (per curiam).

3 *E.g.*, Aquascutum of London, Inc. v. S. S. American Champion, 426 F.2d 205 (2d Cir. 1970) *and* Ferrante Equip. Co. v. Lasker-Goldman Corp., 26 N.Y.2d 280, 258 N.E.2d 202, 309 N.Y.S.2d 913 (1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 342, 345 (1970); Parke-Bernet Galleries, Inc. v. Franklyn, 26 N.Y.2d 13, 256 N.E.2d 506, 308 N.Y.S.2d 337 (1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 145, 148 (1970).