

The Quarterly Survey of New York Practice Table of Contents

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IV

THE QUARTERLY SURVEY OF
NEW YORK PRACTICE

TABLE OF CONTENTS

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 538

CPLR 302(a)(3)(ii): National manufacturer automatically satisfies general foreseeability criterion 539

CPLR 316: Notice effected by advertisements and handbills in condemnation proceedings deemed adequate in view of the circumstances 541

ARTICLE 10 — PARTIES GENERALLY

CPLR 1007: Impleader permitted in summary proceeding 542

ARTICLE 12 — INFANTS AND INCOMPETENTS

CPLR 1201: Court vacates default judgment against party incapable of adequately protecting his rights 542

ARTICLE 30 — REMEDIES AND PLEADING

CPLR 3018: Affirmative defense of illegality is not waived if plaintiff is not surprised by its assertion at trial 543

ARTICLE 31 — DISCLOSURE

CPLR 3102(d): Disclosure will not be permitted during trial where the movant had an opportunity to obtain the information by normal pretrial proceedings ... 544

CPLR 3126: Action dismissed with prejudice where preclusion order encompasses entire claim 545

ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5015(a)(1): Busy schedule does not constitute ground for "excusable default" 546

ARTICLE 55 — APPEALS GENERALLY

CPLR 5528(a)(5): Bar advised to reproduce testimony in logical sequence when utilizing the appendix method 547

ARTICLE 75 — ARBITRATION

CPLR 7502(b): Referral of "threshold" question to arbitrator ruled improper ... 547

CPLR 7503 (c): Court of Appeals sanctions service — not receipt — as sufficient to satisfy statute of limitations, First Department decries "trick" service of notice of intention to arbitrate 549

CPLR 7511 (b)(1): Court establishes criteria for review of award rendered at compulsory arbitration 552

ARTICLE 80 — FEES

CPLR 8012(b)(2): Sheriff must commence plenary action against attorney in order to fix liability for poundage fees 555

NEW YORK CITY CIVIL COURT ACT

CCA 202: Civil court reduces verdict in excess of jurisdictional limitation upon plaintiff's consent 555

FORUM NON CONVENIENS

Forum non conveniens: Case illustrates arbitrariness of doctrine 556

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

* 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
<i>The Biannual Survey of New York Practice</i>	<i>The Biannual Survey</i>
<i>The Quarterly Survey of New York Practice</i>	<i>The Quarterly Survey</i>
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).