

The Quarterly Survey of New York Practice Table of Contents

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THE QUARTERLY SURVEY OF NEW YORK PRACTICE

TABLE OF CONTENTS

ARTICLE 2—LIMITATIONS OF TIME

<i>CPLR 203(a): Cause of action for breach of contract accrues when plaintiff is harmed and not when the breach occurs</i>	315
<i>CPLR 203(b)(4): Delivery of summons to foreign sheriff does not extend statute of limitations</i>	316
<i>CPLR 217: Ambiguous "final and binding determination" resolved against administrative body</i>	317

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

<i>CPLR 302(a): Third department refuses to extend long-arm statute in matrimonial action</i>	318
<i>CPLR 302(a)(1): Execution of indemnity agreement in New Jersey by non-domiciliary not a "transaction of business" in New York even though performance by subcontractor was to take place in New York</i>	320
<i>CPLR 302(a)(1): Retention of New York attorney is "transaction of business" within the state if defendant authorized institution of New York action</i>	321
<i>CPLR 308(4): Substituted service permitted upon plaintiff's own insurer as "real party in interest"</i>	323
<i>CPLR 311(1): "Acting" managing agent not managing agent for purpose of receiving service on behalf of corporation</i>	325
<i>CPLR 325(d): Damages sought not limited by monetary jurisdiction in lower court after transfer by supreme court without plaintiff's consent</i>	330

ARTICLE 10—PARTIES GENERALLY

<i>CPLR 1007: Premature suit for indemnification not permitted</i>	330
--	-----

ARTICLE 31—DISCLOSURE

<i>CPLR 3101(d): Second department adopts liberal view with regard to disclosure of witnesses' names</i>	331
--	-----

ARTICLE 32—ACCELERATED JUDGMENT

<i>CPLR 3212: Dobkin "real party in interest doctrine" not extended to motion for summary judgment</i>	332
<i>CPLR 3213: Court suggests that error in computation of motion date can be remedied through exercise of its discretion</i>	333
<i>CPLR 3213: Separation agreement held not to be an instrument for the payment of money only</i>	335

ARTICLE 34—CALENDAR PRACTICE; TRIAL PREFERENCES

<i>CPLR 3402: Second department conditions restoration to calendar on payment of money by plaintiff's attorney to defendant</i>	338
---	-----

ARTICLE 41—TRIAL BY A JURY

<i>CPLR 4111: Compromise verdict requires new trial on all issues</i>	339
<i>CPLR 4111: Use of interrogatories is advised</i>	339

ARTICLE 50—JUDGMENTS GENERALLY

<i>CPLR 5004: Conflict over legal rate of interest</i>	340
--	-----

ARTICLE 52—ENFORCEMENT OF MONEY JUDGMENTS

<i>CPLR 5201: Seider action dismissed in federal court because absence of "genuine" New York plaintiff eliminated a "debt" present in New York</i>	342
<i>CPLR 5231(b): Income execution available against non-resident judgment debtor</i>	344

ARTICLE 56 — APPEALS TO THE COURT OF APPEALS

CPLR 5602: Warning by Court of Appeals with regard to observance of Court rules 346

ARTICLE 65 — NOTICE OF PENDENCY

CPLR 6515: Court utilizes discretionary power in cancellation of notice of pendency upon substitution of surety bond for property 346

ARTICLE 75 — ARBITRATION

CPLR 7501: Court refuses to enforce inadequate arbitration agreement in child custody dispute 347
CPLR 7501: Consolidations of arbitrations permissible unless prejudice would thereby result 349
CPLR 7502: Federal Arbitration Act is controlling in petition for a stay of arbitration in maritime actions 350

DOMESTIC RELATIONS LAW

DRL § 215-c(a): Failure to file notice of commencement of divorce action results in termination of temporary alimony 351

*Introduction**

The lower courts are consistently reluctant to interpret the CPLR provisions governing jurisdiction in a liberal fashion without some indication of prior approval from the Court of Appeals, and several decisions reported under Article 3 in this issue of the *Survey* are illustrative of this phenomenon. In interpreting other CPLR provisions, however, the lower courts are by no means as conservative. Cases reported under Articles 2, 34, 52 and 65 reveal novel and liberal solutions to difficult questions confronting the courts. Particularly welcome is the result achieved in the supreme court's construction of CPLR

* The following abbreviations will be used uniformly throughout the *Survey*:
 New York Civil Practice Law and RulesCPLR
 New York Civil Practice ActCPA
 New York Rules of Civil PracticeRCP
 New York City Civil Court ActCCA
 Uniform District Court ActUDCA
 Uniform City Court ActUCCA
 Real Property Actions and Proceedings LawRPAPL
 Domestic Relations LawDRL
 Extremely valuable in understanding the CPLR are the five reports of the Advisory Committee on Practice and Procedure. They 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. 13SECOND REP.
 1959 N.Y. LEG. DOC. No. 17THIRD REP.
 1960 N.Y. LEG. DOC. No. 20FOURTH REP.
 1961 FINAL REPORT OF THE ADVISORY COMMITTEE
 ON PRACTICE AND PROCEDUREFINAL REP.
 Also valuable are the two joint reports of the Senate Finance and Assembly Ways and Means Committees:
 1961 N.Y. LEG. DOC. No. 15FIFTH REP.
 1962 N.Y. LEG. DOC. No. 8SIXTH REP.

5231(b); an effort has been made to afford a judgment debtor notice of his New York obligation even though he resides and is employed without the state.

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 2 — LIMITATIONS OF TIME

CPLR 203(a): Cause of action for breach of contract accrues when plaintiff is harmed and not when the breach occurs.

CPLR 203(a) declares that a statute of limitations begins to run from the time a cause of action accrues, and a cause of action for breach of contract generally accrues at the moment the contract is breached.¹ Situations arise, however, when the cause of action does not accrue simultaneously with the breach; and in such cases the court must determine when the six year statute of limitations² began to run. *Lewis v. Lewis*,³ a recent civil court case, provides an excellent illustration of this type of situation.

The plaintiff, decedent's ex-wife, and decedent had entered into a separation agreement in 1952 providing, *inter alia*, that decedent should maintain an existing life insurance policy, in which plaintiff was named as the sole beneficiary, so long as plaintiff did not remarry. Plaintiff and decedent were subsequently divorced. But, in 1956, without plaintiff's knowledge, decedent cancelled the policy in violation of the agreement. Knowledge of this breach first came to plaintiff in 1968, shortly after the decedent's death, at which time she commenced an action to recover damages in an amount equivalent to the proceeds she would have received under the policy. The defendant, executrix of decedent's estate, contended that the statute of limitations barred the action since it had begun to run in 1956 when the policy was cancelled.

¹ See 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 203.01 (1968).

² CPLR 213.

³ 59 Misc. 2d 525, 299 N.Y.S.2d 755 (N.Y.C. Civ. Ct. N.Y. County 1969).