

CPLR 203(a): Cause of Action for Breach of Contract Accrues When Plaintiff Is Harmed and Not When the Breach Occurs

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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).

The time a cause of action accrues has been defined as the time at which a plaintiff is first able to maintain the action.⁴ The *Lewis* court was quick to perceive that plaintiff could not have maintained the action during the decedent's life, since she was entitled to receive the proceeds from the policy only upon his death. An action sought to be maintained upon the cancellation of the policy in 1956 would have been premature since plaintiff had not then been injured by the breach, and decedent could have made other arrangements before his death to ensure that plaintiff received the amount of money that would have been due under the policy. The plaintiff's action, although instituted twelve years after the breach, was therefore timely.⁵

CPLR 203(b)(4): Delivery of summons to foreign sheriff does not extend statute of limitations.

The statute of limitations governing any claim may be extended sixty days if the summons is delivered to a proper sheriff pursuant to CPLR 203(b)(4) before the expiration of the designated period.⁶ When the defendant is a corporation, the "proper sheriff" is one in a county in which the corporation may be served. It is readily apparent that failure to comply with the statute may be a grievous error when the limitation period has nearly expired.

In *Butler v. UBS Chemical Co.*,⁷ the plaintiff attempted to avail himself of this sixty-day extension. However, the defendant was a foreign corporation which, while transacting business in New York, had its offices in Newark, New Jersey; and plaintiff had delivered the summons to a New Jersey sheriff. The Appellate Division, First Department, reversing the order of the trial court, declared that delivery to a *foreign* sheriff does not invoke the extension; service upon the defendant had therefore been effected without the three year period governing personal injury actions,⁸ and the cause of action was barred.

⁴ Cary v. Koerner, 200 N.Y. 253, 93 N.E. 979 (1910).

⁵ It is clear that the court was not employing a "discovery of the breach" theory since the statute of limitations began to run upon decedent's death. Plaintiff's knowledge of the breach was immaterial in this regard. Cf. CPLR 206(c); CPLR 213(5) & (7); CPLR 214(7).

⁶ Delivery to a "proper sheriff" beyond the expiration of the controlling statute is, of course, ineffective. *Manse Builders Inc. v. Northrup*, 186 Misc. 839, 60 N.Y.S.2d 30 (Sup. Ct. Monroe County 1946). And delivery to the wrong sheriff is also ineffective. *Guilford v. Brody*, 237 App. Div. 726, 262 N.Y.S. 722 (1st Dep't 1933). However, the proper sheriff need not serve the summons himself; any person qualified to serve the summons under the CPLR may do so. *Cohoes Bronze Co. v. Georgia Home Ins. Co.*, 243 App. Div. 224, 276 N.Y.S. 619 (3d Dep't 1935).

⁷ 32 App. Div. 2d 8, 299 N.Y.S.2d 247 (1st Dep't 1969).

⁸ CPLR 214.