

The Quarterly Survey of New York Practice Table of Contents

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

THE QUARTERLY SURVEY OF NEW YORK PRACTICE

TABLE OF CONTENTS

PREFATORY NOTE

<i>CPLR 7503(c): Ten-day period within which to apply for a stay of arbitration construed as a statute of limitations</i>	760
---	-----

N.Y. CONSTITUTION

<i>Art. 6, § 19(f): Status of litigation in supreme court affected by proceedings in New York City Civil Court even though civil court transferred the action because it lacked jurisdiction</i>	770
--	-----

ARTICLE 2 — LIMITATIONS OF TIME

<i>CPLR 203(e): Plaintiff permitted to add second cause of action arising out of same occurrence even though statute of limitations had run</i>	771
---	-----

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

<i>CPLR 303: Court declares personal delivery to be the only acceptable method of service</i>	773
---	-----

ARTICLE 5 — VENUE

<i>CPLR 506(b)(2): Express venue provision for comptroller held controlling in action with multiple defendants</i>	775
--	-----

ARTICLE 22 — STAY, MOTIONS, ORDERS AND MANDATES

<i>CPLR 2212(a): "Adjoining county" theory not utilized by New York City Civil Court</i>	776
--	-----

ARTICLE 31 — DISCLOSURE

<i>CPLR 3101(a): Courts continue to grant liberal disclosure of witnesses' names</i>	778
--	-----

ARTICLE 32 — ACCELERATED JUDGMENT

<i>Collateral Estoppel: Texas judgment against common carrier given collateral estoppel effect in subsequent action brought by other plaintiffs in New York ...</i>	779
<i>CPLR 3213: Judgment obtained against insured cannot serve as the basis for a 3213 motion against the insurer</i>	781

ARTICLE 41 — TRIAL BY JURY

<i>CPLR 4111(c): Case arising under CPA illustrates utility of CPLR provision ...</i>	783
---	-----

ARTICLE 71 — RECOVERY OF CHATTEL

<i>CPLR 7102: Court vacates replevin since summons and complaint was not promptly served upon defendant in possession</i>	783
---	-----

NEW YORK CITY CIVIL COURT ACT

<i>GCA 1908: Absence of express statutory authority is not a bar to recovery of necessary litigation expenses</i>	785
---	-----

BUSINESS CORPORATION LAW

<i>BCL § 304(a): Court will not vacate default judgment where corporate defendant had not received notice due to its own neglect</i>	786
--	-----

*Introduction**

This issue introduces a feature that is expected to become an annual and integral part of the *Survey*: the intensive analysis of the most significant decision reviewed during the year. Unfortunately, as evidenced by the tenor of the article on *Jonathan Logan, Inc. v. Stillwater Worsted Mills, Inc.*, the selected decision cannot always be lauded. Indeed, certain characteristics of *Logan* dictated a critical approach. Of particular moment is the fact that the decision appears to contravene the liberal construction of the CPLR mandated by the legislature and the prevailing notion that the arbitral process is very informal. In short, *Logan* reflects a dangerous judicial insensitivity to the exigencies of the practitioner. Hopefully, the recognition of *Logan's* shortcomings will eventually lead to a reevaluation by the Court of Appeals, or, in the alternative, to legislative relief.

Reported elsewhere in this issue, are progressive decisions dealing with the disclosure of a witness' name and the offensive use of a judgment to collaterally estop a common carrier from relitigating the issue of its negligence. And, the reader's attention is directed to the decision reported under article 6, section 19(f) of the state constitution: the conflict between the transfer provisions of the CPLR and those of the state constitution continues to present difficult questions of interpretation for the judiciary.

* 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 City Court Act	UCCA
Real Property Actions and Proceedings Law	RPAPL
Domestic Relations Law	DRL
WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE (1969)	W. K. & 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. 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. 13	SECOND REP.
1959 N.Y. LEG. DOC. 17	THIRD REP.
1960 N.Y. LEG. DOC. No. 20	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.

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.

PREFATORY NOTE

CPLR 7503(c): Ten-day period within which to apply for a stay of arbitration construed as a statute of limitations.

The advantages of "arbitral preclusion" as a protection against the unwarranted interruption of arbitration are obvious; certain "threshold questions"¹ properly should be decided before proceedings before the arbitrator have been commenced. However, where a ten-day preclusionary provision is construed as a statute of limitations,² thereby foreclosing judicial review of such questions under *all* circumstances, the "justifications" proffered in its defense should be carefully examined.

Under CPA 1459, arbitration was denominated a special proceeding to be initiated by service of a notice of intention to arbitrate.³ The party so served was precluded from asserting that a valid agreement to arbitrate had not been made or complied with, unless notice of an application to stay arbitration was served within ten days.⁴ As an incident to a special proceeding, such applications were justifiably

¹ Under CPLR 7503(c) the threshold questions are:

(1) whether a valid agreement to arbitrate was made;

(2) whether it was complied with;

(3) whether the claim sought to be arbitrated is barred by the statute of limitations.

See 7B MCKINNEY'S CPLR 7503, commentary 488 (1963).

² Jonathan Logan, Inc. v. Stillwater Worsted Mills, Inc., 24 N.Y.2d 208, 249 N.E.2d 477, 301 N.Y.S.2d 636 (1969), *aff'g* 31 App. Div. 2d 208, 295 N.Y.S.2d 853 (1st Dep't 1968).

³ Katz v. Burkin, 1 Misc. 2d 67, 146 N.Y.S.2d 332 (App. T. 2d Dep't 1955); 7B MCKINNEY'S CPLR 7503, *supp.* commentary 110 (1967); S. TRIPP, A. GUIDE TO MOTION PRACTICE § 199 (rev. ed. 1949); 8 W. K. & M. ¶ 7502.04.

Although there appears to be a dispute as to when this special proceeding was commenced under the CPA, courts frequently held that it was neither by a motion to compel arbitration nor a motion to stay arbitration, but instead, by service of a notice of intention to arbitrate. Falls, *Arbitration Under the Civil Practice Law and Rules in New York*, 9 N.Y.L.F. 335 (1963).

⁴ CPA 1458(2).