

CPLR 203(b): Employer and Employee Are "United in Interest"

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ARTICLE 2 — LIMITATIONS OF TIME

CPLR 203(b): Employer and employee are "united in interest."

CPLR 203(b) provides, in part, that "a claim asserted in the complaint is interposed against the defendant or a co-defendant united in interest with him when: 1. the summons is served upon the defendant." While the term united in interest has proven difficult to apply,¹ *Prudential Insurance Co. v. Stone*² offers the most often relied upon definition: "if the interest of the parties in the subject matter is such that they stand or fall together and that judgment against one will similarly affect the other then they are 'otherwise united in interest.'" ³

In *Modica v. Westchester Rockland Newspapers, Inc.*,⁴ a libel action was commenced against both the newspaper and writer of an allegedly libelous article by service of summons and complaint on the defendant newspaper.⁵ Regarding the defendants' relationship as one of employer-employee, the court held the service sufficient to toll the running of the statute against the defendant writer.

On several occasions an employer-employee relationship has been held to evidence unity of interest.⁶ *Modica*, therefore, indicates another example for the application of this principle.

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

CPLR 302(a)(1): Further examination of "transaction of business" concept.

CPLR 302(a)(1) provides that personal jurisdiction may be had of a non-domiciliary defendant where the cause of action arises out of the "transaction of business" by the defendant within the

¹ WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶203.06 (1967).

² 270 N.Y. 154, 200 N.E. 679 (1936).

³ *Id.* at 159, 200 N.E. at 680.

⁴ 54 Misc. 2d 1086, 283 N.Y.S.2d 939 (Sup. Ct. Westchester County 1967).

⁵ In *Shaw v. Cock*, 78 N.Y. 184 (1879), the Court held that for service to be valid as to other defendants united in interest, all defendants must be named in the summons as parties. However, as in the instant case, a person can be named fictitiously if his true identity cannot be determined. *Plumitallo v. 1407 Broadway Realty Corp.*, 279 App. Div. 1019, 111 N.Y.S.2d 720 (2d Dep't 1952) (mem.); *Halucha v. Jockey Club*, 31 Misc. 2d 186, 220 N.Y.S.2d 567 (Sup. Ct. N.Y. County 1961) (dictum).

⁶ *E.g.*, *Plumitallo v. 1407 Broadway Realty Corp.*, 279 App. Div. 1019, 111 N.Y.S.2d 720 (2d Dep't 1952) (mem.) (service on corporation for which the defendant was employed); *Diver v. Jewish Hospital of Brooklyn*, 18 Misc. 2d 231, 188 N.Y.S.2d 1003 (Sup. Ct. Kings County 1959) (service on hospital in which defendant was doctor).