

## CPLR 103(c): Correction Made Where Proceeding Brought in Improper Form

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## ARTICLE 1 — SHORT TITLE; APPLICABILITY AND DEFINITIONS

*CPLR 103(c): Correction made where proceeding brought in improper form.*

Two recent cases, *Phalen v. Theatrical Protective Union*,<sup>1</sup> from the Court of Appeals, and *Lakeland Water District v. Onondaga County Water Authority*,<sup>2</sup> from the appellate division, fourth department, have demonstrated the usefulness of CPLR 103(c). This section provides that once a court has jurisdiction over the parties to a civil judicial proceeding, that proceeding shall not be dismissed solely because it is brought in the improper form. The court is directed to make whatever order is required for the proper prosecution of the suit. Thus, wide discretion is vested in the court to take whatever steps are necessary to keep the parties before it so as to litigate their grievances.<sup>3</sup>

In *Lakeland*, an Article 78 proceeding, improperly used as a vehicle for seeking a determination of the validity of a water authority's rate increase, was converted into an action for a declaratory judgment. In *Phalen*, an Article 78 proceeding, used to secure admission of petitioners to respondents' labor union, was reversed and remanded with instructions that it should proceed as an ordinary action in equity for injunction against economic discrimination and for incidental damages.

In *Phalen*, the Court of Appeals also pointed out the significance of CPLR 3017(a) in conjunction with its discussion of 103(c). Section 3017(a) provides that a court can "grant any type of relief within its jurisdiction appropriate to the proof whether or not demanded."

## ARTICLE 2 — LIMITATIONS OF TIME

*CPLR 203(a): Conflict develops as to when cause of action based on "strict tort liability" accrues.*

In *Mendel v. Pittsburgh Plate Glass Co.*,<sup>4</sup> plaintiffs instituted suit for personal injuries arising out of an accident which occurred in 1965 on the premises of defendant bank. Alleged as the cause of the accident was the installation of a faulty glass door by defendant, Pittsburgh Plate, the manufacturer, in 1958. Proceeding on the basis of "strict tort liability,"<sup>5</sup> plaintiffs contended

<sup>1</sup> 22 N.Y.2d 34, 238 N.E.2d 295, 290 N.Y.S.2d 881 (1968).

<sup>2</sup> 29 App. Div. 2d 1042, 289 N.Y.S.2d 875 (4th Dep't 1968).

<sup>3</sup> See 7B MCKINNEY'S CPLR 103 commentary 13 (1963).

<sup>4</sup> 57 Misc. 2d 45, 291 N.Y.S.2d 94 (Sup. Ct. Monroe County 1967).

<sup>5</sup> Plaintiffs relied on *Goldberg v. Kollsman Instrument Corp.*, 12 N.Y.2d 432, 191 N.E.2d 81, 240 N.Y.S.2d 592 (1963).