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CPLR 6312: Preliminary Injunction May Be Granted Despite Lack of a Pleading

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ARTICLE 63 — INJUNCTION

CPLR 6312: Preliminary injunction may be granted despite lack of a pleading.

Section 211 of the Domestic Relations Law forbids the service of a complaint in divorce actions for 120 days from the service of a summons or until the expiration of conciliation proceedings. In *Aqualina v. Aqualina*,²⁰⁸ plaintiff-wife served a summons seeking divorce and a complaint seeking an accounting and praying that a trust be impressed on certain bank accounts. The court dismissed the complaint on the basis of section 211,²⁰⁹ but granted injunctive relief reasoning that no pleading was required to justify a preliminary injunction in the circumstances disclosed.

To obtain a preliminary injunction a plaintiff must establish two elements: first, he must establish a prima facie cause of action; second, he must establish that there are grounds for the issuance of an injunction.²¹⁰ *Aqualina* stands for the proposition that where the two elements are established, a preliminary injunction can be granted despite the lack of a complaint.

ARTICLE 75 — ARBITRATION

CPLR 7502; 7503: First application to court arising out of arbitrable controversy must be served in accordance with CPLR 7503.

Under CPLR 7502(a), a "special proceeding shall be used to bring before a court the first application arising out of an arbitrable controversy which is not made by motion in a pending action." Thus, the general procedure of Article 4 governing all special proceedings is applicable. Under CPLR 7503(c), after a notice of intention to arbitrate is served, the party served has 12 days to make an application to stay arbitration. "Notice of such application shall be served in the same manner as a summons or by registered or certified mail, return receipt requested."²¹¹

²⁰⁸ 56 Misc. 2d 357, 288 N.Y.S.2d 671 (Sup. Ct. Kings County 1968).

²⁰⁹ It was the opinion of the court that DRL §211 forbids the service of any complaint with the summons in an action for divorce. For a general discussion of New York's "cooling-off" statute see *The Quarterly Survey of New York Practice*, 42 ST. JOHN'S L. REV. 615, 634 (1968).

²¹⁰ 7 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶6312.02; 12 CARMODY-WAIT 2d, CYCLOPEDIA OF NEW YORK PRACTICE §78:62 (1966).

²¹¹ The inclusion of service by registered mail was suggested by the bar associations, as it was the prevalent practice. SIXTH REP. 647.