The Quarterly Survey of New York Practice Table of Contents

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# THE QUARTERLY SURVEY OF NEW YORK PRACTICE

## Table of Contents

**Article 2—Limitations of Time**
- CPLR 203(b)(4): Delivery of summons in wrong county of New York City not a bar to sixty-day extension. 286

**Article 3—Jurisdiction and Service, Appearance and Choice of Court**
- CPLR 302: Held applicable to person who was domiciliary at time of tort. 287
- CPLR 308(1): Redelivery of service held improper where no exigent circumstances found. 288
- CPLR 308(3): Server's testimony as to custom and habit allowed to cure defect in affidavit of service. 289
- CPLR 308(4): Court-ordered service on defendant's insurer set aside. 289

**Article 10—Parties Generally**
- CPLR 1001: Dismissal for failure to join necessary party. 290
- CPLR 1005(a): Limited partners allowed to bring class action and derivative action. 291

**Article 22—Stay, Motions, Orders and Mandates**
- CPLR 2201: Stay denied because of attorney's conflict of interest. 294
- CPLR 2214: Deficiency in notice held to be procedural defect. 294

**Article 30—Remedies and Pleading**
- CPLR 3013: Request for equitable relief not fatal where facts indicated legal relief was proper. 296
- CPLR 3024(c): Untimeliness not a bar to motion to strike pre-judicial matter. 297

**Article 31—Disclosure**
- CPLR 3101(d): Employee's accident report deemed material prepared for litigation. 298
- CPLR 3110: Objection rules out attorney's office for taking deposition. 299

283
**Article 32—Accelerated Judgment**

- CPLR 3211(a)(8): Motion challenging jurisdiction granted after service of answer.  
  301
- CPLR 3211(e): Jurisdictional defense raised in amended answer relates back to time of original answer.  
  302
- CPLR 3213: Summary judgment on conditional instrument denied.  
  302
- CPLR 3216: Counterclaim dismissed for general delay.  
  303
- Collateral Estoppel: Defense allowed despite claim that issue was not decided by the jury.  
  304

**Article 52—Enforcement of Money Judgments**

- CPLR 5231 and Personal Property Law Section 49-b: Simultaneous deductions under support order and income execution allowed.  
  305
- CPLR 5231: Employer must comply with both tax levy and income execution.  
  306
- CPLR 5231: *Morris Plan* rule not applied.  
  306
- CPLR 5239: Prior perfected U.C.C. security interest superior to judgment lien.  
  308

**Article 63—Injunction**

- CPLR 6301: Injunction may be granted in special proceeding.  
  309

**Article 75—Arbitration**

- CPLR 7501: Whether dispute is covered by arbitration agreement determined by the court.  
  310
- CPLR 7503: Third-party action stayed pending arbitration.  
  311

**Domestic Relations Law**

- DRL § 236: Impact on support proceedings in Family Court.  
  312
- DRL § 240: Failure to obey child support order not punishable by contempt.  
  313

**New York City Civil Court Act**

- CCA § 201: No jurisdiction to award money judgment for fraudulent conveyance.  
  314

**MVAIC**

- MVAIC: No exception to filing requirements except those found in statute.  
  315
THE QUARTERLY SURVEY OF NEW YORK PRACTICE

Introduction *

This episode of the Survey presents to the practitioner a varied fare, cases both significant and unique. Of special significance are the brace of Court of Appeals' decisions found in Article 10, in which limited partners were allowed to bring actions both derivative and representative in nature against the limited partnerships. Unique is the case in Article 32 wherein the court dismissed a counterclaim on grounds of general delay. Note-worthy cases also will be found under the usually fecund Articles 3, 32, and 52. Notable by its absence in this installment, though, is the regularly epic treatment of CPLR 3216. But this is not by oversight. Because of the repeal of CPLR 3216 and its replacement with a new provision, the case law built upon the foundation of the old section is now useful solely as an historical

* 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

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. No. 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.

Additional tools for quick reference are the one-volume pamphlet editions of the CPLR published by Matthew Bender & Co. and Edward Thompson Co.
tool for predicting the reactions of the New York courts to the
new enactment. In the absence of case law under the new
section, discussion of reaction or prediction would be tenuous
indeed.

The basic purpose of the *Quarterly Survey* is to key the
practising attorney to significant developments in New York
practice. To this end, in each installment of the survey are
set forth those cases which have a weighty impact upon the
procedural law of New York. Ideally, all the significant cases
concerning New York's procedural law would be covered. But,
because of space limitations, many other less important, but,
nevertheless, significant cases cannot be included.

Considering the *raison d'être* of the *Survey* to be the im-
parting of information geared to keeping practitioners abreast of
the New York law of procedure, feedback from attorneys would be
an important aid in an analysis of our efforts. The *St. John's
Law Review* would, therefore, welcome critiques from the readers
of the *Survey*. In this way, perhaps, any disjunction between
the material in the *Survey* and the needs of the attorneys might be
effectively healed.

**ARTICLE 2—LIMITATIONS OF TIME**

*CPLR 203(b)(4): Delivery of summons in wrong county of
New York City not a bar to sixty-day extension.*

*CPLR 203(b)(4)* provides for an automatic sixty-day exten-
sion of the statute of limitations by delivery of the summons to
the sheriff of the county where the defendant resides, is
employed, or is doing business. If the defendant is a corpo-
ration, the summons may be delivered to the sheriff "in the county
in which [the corporation] . . . may be served. . . ."

Under CPA Section 17, the predecessor of CPLR 203(b)(4),
the courts required delivery to the sheriff of the proper county
as a condition to the extension where the defendant was a
natural person. However, this requirement was waived under
the CPLR in *Kosofsky v. Spivak,* where the delivery was made
in Kings County, although defendant, a real person, lived in
Bronx County and worked in New York County. Recently, in
*Wieboldt v. Rentways, Inc.* the supreme court held that the

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3 52 Misc. 2d 931, 277 N.Y.S.2d 216 (Sup. Ct. Nassau County 1967).