

## CPLR 3211(e): Jurisdictional Defense Raised in Amended Answer Relates Back to Time of Original Answer

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](mailto:selbyc@stjohns.edu).

It seems, however, that the soundest procedure would be to rely upon a direct 3212 motion in such situations until the legislature provides a specific provision by which the defendant can speed the determination of 3211 defenses.

*CPLR 3211(e): Jurisdictional defense raised in amended answer relates back to time of original answer.*

In *Blatz v. Benschine*,<sup>88</sup> defendant raised the defense of lack of personal jurisdiction,<sup>89</sup> not in his original answer, but in his responsive pleadings to plaintiff's amended complaint. The Supreme Court, Queens County, ruled that the defense interposed was timely.<sup>90</sup> The court reasoned: since plaintiff decided to serve, as a matter of right, an amended complaint, defendant was forced to respond, also as a matter of course, with amended pleadings which contained the CPLR 3211(a)(8) defense. The amendment was deemed to relate back to the time of service of the original answer, therefore, defendant's assertion of the jurisdictional defense was timely.

It is significant to note that the court in the present case allowed the interposition of the defense as a *matter of right*, and not as a matter of its discretion. Thus, the plaintiff who elects to amend his complaint may then be faced with a jurisdictional defense.

*CPLR 3213: Summary judgment on conditional instrument denied.*

CPLR 3213 provides that "[w]hen an action is based upon a judgment or instrument for the payment of money only, the plaintiff may serve with the summons a notice of motion for summary judgment . . . in lieu of a complaint." The statute was conceived in an effort to provide a speedy and effective means of securing a judgment on claims presumptively meritorious where a formal complaint would be superfluous and the resulting delay needless.<sup>91</sup>

In *Baker v. Gundermann*,<sup>92</sup> the plaintiff's motion for summary judgment was based on two written instruments. The first failed to come within the purview of the statute as an "instrument for

<sup>88</sup> 53 Misc. 2d 352, 278 N.Y.S.2d 533 (Sup. Ct. Queens County 1967).

<sup>89</sup> CPLR 3211(a)(8).

<sup>90</sup> 53 Misc. 2d at 354, 278 N.Y.S.2d at 535. CPLR 3211(e) provides: "An objection based upon a ground specified in paragraphs eight or nine of subdivision (a) is waived if a party . . . does not raise such objection in the responsive pleading."

<sup>91</sup> FIRST REP. 91. See also 4 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3213.01 (1965).

<sup>92</sup> 52 Misc. 2d 639, 276 N.Y.S.2d 495 (Sup. Ct. Nassau County 1966).