

## CPLR 214(7): Period of Limitation Is a Condition Precedent

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*Public Administrator*,<sup>25</sup> read CPLR 210(b) as granting the injured party an *extension* of eighteen months after the potential defendant's death to initiate an action in the event that the statute of limitations expired during that period.<sup>26</sup> The appellate division, first department, reversed, and held that CPLR 210(b), as did its predecessors, tolls the statute of limitations for an eighteen-month period in the event of the potential defendant's death.<sup>27</sup>

*CPLR 214(7): Period of limitation is a condition precedent.*

CPLR 214(7) states that an action to annul a marriage on the ground of fraud must be commenced within three years of the discovery of the fraud.<sup>28</sup> As with all periods of limitation, it must be determined whether this statutory period constitutes a statute of limitations or a condition precedent. If it is a statute of limitations, it is only a *limitation* on the cause of action and must be asserted as a defense. But, if it is a condition precedent, it is an *ingredient* of the cause of action which the plaintiff must establish as part of his case. If he cannot establish that the suit was brought within the three-year period, the cause of action is extinguished completely. A general test to ascertain the nature of the period is to look to the common law. If the cause of action was known at common law, the limiting period is merely a statute of limitations. But, if a statute created the cause of action and attached a limitation of time to the commencement of the action, then the limitation period is a condition precedent.<sup>29</sup>

Although it seems that at common law there was no right to annul a marriage on the ground of fraud, and, consequently, any period of limitation would be a condition precedent,<sup>30</sup> in the 1910 decision of *McNair v. McNair*<sup>31</sup> it was ruled that this period was a defense, which, if not raised, was waived. This position was affirmed in 1959 in the case of *Rogers v. Rogers*.<sup>32</sup>

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<sup>25</sup> 50 Misc. 2d 200, 266 N.Y.S.2d 873 (Sup. Ct. Bronx County 1966).

<sup>26</sup> *E.g.*, if the defendant died with one year left for the plaintiff to sue, under prior law the plaintiff would have one year and eighteen months from the date of the defendant's death in which to commence his action. However, under the interpretation given CPLR 210(b) by the supreme court in *Schwartz*, the plaintiff would only have a total of eighteen months from the defendant's death in which to sue.

<sup>27</sup> *Schwartz v. Public Adm'r*, 27 App. Div. 2d 913, 278 N.Y.S.2d 968 (1st Dep't 1967) (memorandum decision).

<sup>28</sup> The section is based upon CPA § 49(9), and no change was intended from the CPA. SECOND REP. 69; FIFTH REP. 55. Section 1750 of the Code of Civil Procedure provided that an action to annul a marriage for fraud could be initiated "at any time." This language was kept until the CPA was amended in 1955. See N.Y. Sess. Laws 1955, ch. 257.

<sup>29</sup> See McLaughlin, *Annual Survey, New York Practice*, 15 SYRACUSE L. REV. 381, 393 (1963).

<sup>30</sup> See *Montgomery v. Montgomery*, 3 Barb. 132 (N.Y. Ch. 1848).

<sup>31</sup> 140 App. Div. 226, 125 N.Y.S. 1 (2d Dep't 1910).

<sup>32</sup> 19 Misc. 2d 487, 187 N.Y.S.2d 575 (Sup. Ct. Nassau County 1959).

Recently, the Court of Appeals, in *Romano v. Romano*,<sup>33</sup> held that the three year period of limitation of CPLR 214(7) was, indeed, a condition precedent. As a result of this decision, it may safely be surmised that CPLR 203(f), the alternative discovery section, which apparently functions only where the statutory period is considered a statute of limitations, is inapplicable to an action brought to annul a marriage on the ground of fraud.<sup>34</sup>

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

#### *CPLR 301: Doing business doctrine liberalized.*

In *Frummer v. Hilton Hotels International, Inc.*,<sup>35</sup> the plaintiff, a New York resident, sued three defendants: Hilton Hotels Limited [Hilton (U.K.)], a British Corporation; Hilton Hotels International; and Hilton Hotels Corporation. The last two were Delaware corporations doing business in New York. The suit arose from personal injuries sustained by plaintiff at Hilton's (U.K.) hotel in England.

Hilton (U.K.), the lessee and operator of the hotel, moved to dismiss plaintiff's complaint for personal injuries on the ground that the court lacked personal jurisdiction over the defendant. The Court of Appeals, affirming a denial of the motion, found that Hilton (U.K.), though it had no New York office, bank account or telephone number, had certain minimum contacts with the State sufficient to confer jurisdiction upon the New York courts. The Court found that the Hilton Reservation Service, a separate corporation doing business in New York, did all the business which Hilton (U.K.) would have done had it been represented in New York by its own officials.<sup>36</sup> The common ownership of Hilton (U.K.) and the Reservation Service gave rise to an inference of broad agency powers on the part of the Reservation Service. This justified a conclusion that Hilton (U.K.) was "present" within the meaning of CPLR 301.

<sup>33</sup> 19 N.Y.2d 444, 227 N.E.2d 389, 280 N.Y.S.2d 570 (1967) (affirming the appellate division, fourth department).

<sup>34</sup> 7B MCKINNEY'S CPLR 214(7), supp. commentary 56 (1966).

<sup>35</sup> 19 N.Y.2d 533, 227 N.E.2d 851, 281 N.Y.S.2d 41 (1967).

<sup>36</sup> According to the majority, the Service did publicity and public relations work for Hilton (U.K.) and other Hilton Hotels. It also accepted and confirmed room reservations for the various Hilton Hotels. The dissent apparently believed that the Service only "confirm[s] availabilities" at various hotels (not merely Hilton Hotels) 'based on forecasts supplied by the hotels.'" *Frummer v. Hilton Hotels International, Inc.*, 19 N.Y.2d 533, 541, 227 N.E.2d 851, 856, 281 N.Y.S.2d 41, 48 (1967). Compare *Miller v. Surf Properties, Inc.*, 4 N.Y.2d 475, 151 N.E.2d 874, 176 N.Y.S.2d 318 (1958).