

CPLR 6214: Extension for Perfection of Attachment May Be Granted Even After Ninety-Day Limitation Period

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CPLR 6214: Extension for perfection of attachment may be granted even after ninety-day limitation period.

CPLR 6214 provides that a levy upon any interest in personal property or debts made by service of an order of attachment is void after ninety days unless: (1) the sheriff has taken into his control the thing attached; or, (2) the plaintiff has commenced a special proceeding to compel payment or delivery of the res; or, (3) the plaintiff has procured an extension of the ninety-day limitation.

Under the CPA, where an action was in rem and the levy had not been perfected within the ninety-day period, the order of attachment as well as the levy became void. Since the in rem action was based upon the attachment, it had to be dismissed.¹⁶³ It has also been held under the CPA that a motion for an extension of time in which to perfect the levy of attachment had to be made within the ninety-day period.¹⁶⁴ However, because of the broad language used in CPLR 6214(e), some writers have felt that an extension of time may be given even after the levy has become void.¹⁶⁵

In *Seider v. Roth*,¹⁶⁶ the appellate division, second department, granted an extension of time in which to perfect a levy on the defendant's interest in a liability insurance policy even though the ninety-day period had expired. Because of "the novelty of the question, the uncertain state of the law and the fact that the requirement of CPLR 6214 is largely ministerial as it relates to intangible property . . .,"¹⁶⁷ the court thought it appropriate to grant an extension even though ninety days had already elapsed.

ARTICLE 75 — ARBITRATION

CPLR 7501: No right to jury trial on threshold questions.

In *Liberty Mutual Insurance Co. v. Gottlieb*,¹⁶⁸ the insurer applied to stay arbitration of a claim against it, and sought an immediate jury trial on the issue of whether or not the automobile

¹⁶³ *Sturcke v. Link*, 176 Misc. 93, 26 N.Y.S.2d 748 (Sup. Ct. N.Y. County 1941).

¹⁶⁴ See *Nemeroff v. National City Bank*, 262 App. Div. 145, 28 N.Y.S.2d 295 (1st Dep't 1941).

¹⁶⁵ 7 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 6214.15 (1965).

¹⁶⁶ 28 App. Div. 2d 698, 280 N.Y.S.2d 1005 (2d Dep't 1967). For a full analysis of the *Seider* case's complication, see 7B MCKINNEY'S CPLR 5201, sup. commentary 13-31 (1967).

¹⁶⁷ *Seider v. Roth*, 28 App. Div. 2d 698, 699, 280 N.Y.S.2d 1005, 1007 (2d Dep't 1967).

¹⁶⁸ 54 Misc. 2d 184, 281 N.Y.S.2d 596 (Sup. Ct. Queens County 1967).