

CPLR 203(e): No Relation Back for Amendment to Include Third-Party Defendant

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ARTICLE 2—LIMITATIONS OF TIME

CPLR 203(e): No relation back for amendment to include third-party defendant.

In *Trybus v. Nipark Realty Corp.*,¹ the original defendant in a negligence action served a third-party complaint upon appellant within three years after the accident. The appellant answered the complaints of both the third-party plaintiff and the original plaintiff. After the three-year statute of limitations had expired, the original plaintiff was granted leave to amend his complaint and serve appellant as an additional defendant. The appellate division, second department, reversed and held that the cause of action asserted in the amended complaint was barred by the statute of limitations. It was found that CPLR 203(e), which usually allows an amended complaint to relate back to the time of the original complaint, was not applicable since, here, the original complaint did not give notice to appellant "of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading."²

The purpose of CPLR 203(e) is to abrogate the harsh effect of *Harriss v. Tams*,³ which held that a claim asserted for the first time in an amended pleading did not relate back to the service of summons (for purposes of the statute of limitations) if it proceeded upon a different obligation or liability from that of the original complaint.⁴ In CPLR 203(e), the New York legislature adopted the "transaction-occurrence" terminology of Rule 15(c) of the Federal Rules of Civil Procedure.⁵ In applying this rule, the federal courts had looked principally to the specified conduct of the defendant upon which the plaintiff relied to enforce his claim rather than to the legal theory of the claim,⁶ i.e., if the defendant

¹ 26 App. Div. 2d 563, 271 N.Y.S.2d 5 (2d Dep't 1966).

² CPLR 203(e). The court also held that plaintiff's attempt to amend was actually a statement of a new cause of action against appellant which was barred by the statute of limitations.

³ 258 N.Y. 229, 179 N.E. 476 (1932). This case caused "sophistic distinctions between amendments that merely amplified the original pleadings and those which imposed new liabilities." 7B MCKINNEY'S CPLR 203, commentary 83 (1963).

⁴ 7B MCKINNEY'S CPLR 203, commentary 83 (1963).

⁵ 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 203.30 (1965). Rule 15(c) states: "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back . . ." FED. R. CIV. P. 15(c).

⁶ 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 203.30 (1965).

was notified of litigation concerning a given transaction, he came within the purview of the rule.⁷

Although both CPLR 203(e) and federal rule 15(c) emphasize the facts of the case giving rise to the original and amended pleadings, it would appear from the language of both statutes that the New York provision should be more liberally construed. Yet, pre-CPLR cases had held that amendments to assert claims against third-party defendants after the original statute of limitations had run did not relate back.⁸ The federal courts, in interpreting rule 15(c), however, reached more liberal results.⁹

In *Trybus*, the dissenting judge would have applied CPLR 203(e) to the instant case since appellant, in actuality, had "notice of the transaction" precisely within the language of this provision.

It would appear that, in cases such as *Trybus*, the purpose of CPLR 203(e) should be to protect third-party defendants from surprise. In order to effectuate this purpose, the New York courts should adopt the federal interpretation of rule 15(c) and view change-in-party problems as depending upon timely notice to the ultimate defendant of the factual disputes that will be involved in the litigation. What the court should do under CPLR 203(e) is look at the original pleading and determine whether it gives notice to the defendant broad enough to embrace the matter sought to be added by way of amendment.

CPLR 203(f): Amendment.

CPLR 203(f) has been amended by the insertion of: "Except as provided in article 2 of the uniform commercial code." Section 2-725 of the Uniform Commercial Code provides a four-year statute of limitations for actions for breach of sales contracts. This section states, *inter alia*, that where a warranty explicitly extends to future performance of goods and discovery of the breach must await performance, an action for breach of warranty accrues when discovery is or should have been made. Therefore, the effect of this amendment will be to retain the four-year statute of limitations for breach of warranty from time of discovery and not limit it to two years under 203(f).

⁷ 3 MOORE, FEDERAL PRACTICE ¶15.15, at 1022-23 (2d ed. 1965).

⁸ See *McCabe v. Queensboro Farm Prods., Inc.*, 15 App. Div. 2d 553, 223 N.Y.S.2d 21 (2d Dep't 1961), *aff'd without opinion*, 11 N.Y.2d 963, 183 N.E.2d 326, 229 N.Y.S.2d 11 (1962); *Spen & Co. v. Ocean Box Corp.*, 16 Misc. 2d 436, 184 N.Y.S.2d 152 (Sup. Ct. Kings County 1959).

⁹ See, *e.g.*, *De Franco v. United States*, 18 F.R.D. 156 (S.D. Cal. 1955). Here, a suit was commenced by one partner for a refund of taxes paid by the partnership. Joinder of the remaining partners after the period of limitations had expired was allowed since defendant had notice from the beginning that a partnership claim for a tax refund was involved.