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Article 13

CPLR 203(f): Amendment

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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).

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[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.

CPLR 203(f) now expressly defers to the Uniform Commercial Code's four-year period for sales contracts. Before the amendment, it also deferred, but under the more general terms of CPLR 101. Problems can be expected when the courts are asked to determine whether the contract involved is a sales contract within the meaning of the UCC.

CPLR 204(a): No stay in action involving fire insurance policy.

CPLR 204(a) provides that where commencement of an action has been stayed by a court or by statutory prohibition, the statute of limitations is tolled for the duration of the stay. In *Proc v. Home Ins. Co.*,[10] plaintiff's premises were insured by standard fire insurance policies which provided that: (1) insured must file proof of loss within sixty days of insurer's demand;[11] (2) the claim would be payable sixty days after proof of loss;[12] and (3) no suit could be commenced unless all the requirements of the policy were met and unless such action was commenced within twelve months from the "inception of the loss."[13] The premises were partially destroyed by fire in November, 1962, but plaintiff failed to commence his cause of action until February, 1964. He had filed proof-of-loss papers in May, 1963, two months after the defendant's demand.

The plaintiff argued that since the insurer was allowed sixty days after proof of loss within which to satisfy the claim, and since Section 168(6) of the Insurance Law required that he comply with all the terms of the contract before his cause of action accrued, the commencement of the twelve-month period in which to bring the action was tolled by CPLR 204(a) until the accrual of the cause of action.

However, the Court of Appeals held that Section 168(6) of the Insurance Law was not the type of statutory prohibition contemplated by CPLR 204(a), and concluded that the statute of limitations began running at the time of the fire and not at the time the cause of action accrued.[14] The Court stated that it would not rewrite nearly ninety years of legislative history and subvert the clear legislative intent "by deriving from the less specific terms

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[10] 17 N.Y.2d 239, 217 N.E.2d 136, 270 N.Y.S.2d 412 (1966).

[11] N.Y. INS. LAW §§ 168(6), 172. Section 168(6) contains the standard fire policy form which is required to be used within New York.

[12] N.Y. INS. LAW § 168(6).

[13] *Ibid.*

[14] For a case treating this legislation and its history, see Marguilies v. Quaker City Fire & Marine Ins. Co., 276 App. Div. 695, 97 N.Y.S.2d 100 (1st Dep't 1950).