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CPLR 204(a): No Stay in Action Involving Fire Insurance Policy

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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).

of another provision (CPLR 204, subd. [a]) just the opposite intention and meaning."[15]

The present case should be contrasted with the prior case of *Creswell v. Doe*.[16] *Creswell* involved Section 618(a) of the Insurance Law. This section requires qualified persons to obtain leave from the supreme court to sue MVAIC on a hit-and-run automobile case. The appellate division held that the statute of limitations was tolled from the date of the accident until the date when leave to sue was granted. By distinguishing *Proc* from *Creswell*, it appears that the Court of Appeals has relied on the clear legislative pronouncements in the area of standard fire insurance policies. It seems unlikely that similar preclusions of CPLR 204(a) will come about absent comparable legislative histories.

CPLR 206(a): Amendment.

CPLR 206(a) has been amended to include: "Except as provided in article 3 of the uniform commercial code." Section 3-122(3) of the Uniform Commercial Code states that a cause of action against a drawer of a draft or an indorser of any instrument accrues upon a demand following dishonor. Typically, such demand takes the form of a notice of dishonor after the instrument has been presented to and dishonored by the person designated on the instrument to pay. Under the prior 206(a) provision, the cause of action was computed from dishonor, not from demand.

CPLR 213(2): Amendment.

CPLR 213(2) has been amended to read that there will be a six-year statute of limitations in any action upon a contractual obligation or liability "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 breach of a sales contract.

The amendment effects no change. CPLR 213(2) now expressly defers to the Uniform Commercial Code's four-year period for sales contract cases. Before the amendment it also deferred, but under the more general terms of CPLR 101. After the Uniform Commercial Code is four years old, which will be on September 27, 1968, the courts can expect a substantial number of cases in which they will be asked to determine whether the contract involved is a sales contract within the meaning of the

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[15] Proc v. Home Ins. Co., 17 N.Y.2d 239, 245, 217 N.E.2d 136, 139, 270 N.Y.S.2d 412, 415 (1966).

[16] 22 App. Div. 2d 942, 255 N.Y.S.2d 946 (2d Dep't 1964). The appellate division, however, did not look at the legislative history behind the wrongful death statute in rendering its decision.