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Statute of Limitations Continues to Run as to Co-Partner Who Has Not Been Personally Served

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limitations for negligence actions[20] was applicable and had already run. The court held that an "action for indemnity is based upon principles of a quasi contract and is governed by the six-year period of limitations . . . as distinguished from the 'action to recover damages for a personal injury.'"[21] This holding is in accord with and reaffirms prior case law.[22] It has always been the rule, in the impleader context, that the indemnity cause of action does not "accrue" until the actual payment by the third party plaintiff of a judgment recovered against it on the cause of action stated in the complaint.[23] Thus, under Section 1007 of the CPLR,[24] a third party complaint is actually served even before the cause of action it pleads (indemnity) accrues. This carries forward the prior impleader practice, which is designed to avoid a multiplicity of actions.

Statute of limitations continues to run as to co-partner who has not been personally served.

First Nat'l City Bank v. Cervera[25] involved an action against co-partner Cervera on a note executed by him and the partnership as co-makers.[26] In January 1954, there was a default on a payment, and the entire note immediately became due and payable. In May 1954, co-partner Pedretti was personally served, and in July 1954, a judgment by default was entered against him and the partnership for the entire outstanding obligation. However, only a small sum was collected on that judgment. In July 1963, approximately nine years after the cause of action had accrued, defendant Cervera was properly served. Defendant pleaded the statute of limitations under CPLR 213, claiming that the six years had run. The civil court[27] granted defendant's motion for summary judgment,[28] pointing out that the defendant could raise every defense that he could have asserted in the first action on the note, as well as any that may have arisen since the judgment against the partnership had been entered.[29] Since the present action had not been

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[20] CPLR 214(5).

[21] Hansen v. City of New York, *supra* note 19, at 696.

[22] *E.g.*, Sheftman v. Balfour Housing Corp., 219 N.Y.S.2d 461 (Sup. Ct. 1961); Smith v. Smucker, 100 N.Y.S.2d 35 (Sup. Ct. 1950).

[23] Satta v. City of New York, 272 App. Div. 782, 69 N.Y.S.2d 653 (2d Dep't 1947).

[24] This was also the practice under § 193-a(1) of the CPA.

[25] 252 N.Y.S.2d 537 (N.Y. Munic. Ct. 1964).

[26] Section 26 of the Partnership Law makes each partner jointly and severally liable, while the note in question does the same.

[27] The advance sheet (252 N.Y.S.2d 537), in which the case appears, erroneously states that it was rendered by the "Municipal Court." This court was abolished on September 1, 1962.

[28] CPLR 3212.

[29] CPLR 1502.

commenced within six years after the accrual of the cause of action, the defense of the statute of limitations was an effective bar.

The holding in the instant case recognizes that service upon one partner is effective only as against the partner personally served and the jointly held partnership property. In order to hold an individual partner personally liable, service must be made *on him.* Since the defendant here had not been personally served in the first action, the judgment entered therein could only affect the value of his partnership interest, not his personal assets. The twenty-year period of limitations applicable to a money judgment [30] was not discussed, apparently because the court felt that it did not apply, no personal judgment against the individual defendant having been obtained.

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

CPLR 302 being liberally construed to expand jurisdictional bases in actions against non-domiciliaries.

Section 301[31] of the CPLR has retained the bases of jurisdiction which existed under the CPA and former case law. By the enactment of the "longarm" statute, section 302,[32] the legislature has greatly broadened the state's bases of in personam jurisdiction.

Before the enactment of section 302(a)(1), a foreign corporation could not be considered "present" for jurisdictional purposes unless it had systematic and regular contacts with New York, *i.e.,* the corporation had to be doing business here.[33] As Judge Cardozo stated: "if it is here, not occasionally or casually, but with a fair measure of permanence and continuity, then . . . it is within the jurisdiction of our courts."[34]

In 1945, the Supreme Court of the United States relaxed the former demands of due process and went beyond the "presence" test, holding that due process requires only that the defendant have

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[30] CPLR 211(b).

[31] CPLR 301. A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.

[32] CPLR 302(a): "A court may exercise personal jurisdiction over any non-domiciliary . . . as to a cause of action arising from any of the acts enumerated in this section . . . if, in person or through an agent, he:

1. transacts any business within the state; or
2. commits a tortious act within the state . . . or
3. owns, uses or possesses any real property situated within the state."

[33] See, *e.g.,* Miller v. Surf Properties, Inc., 4 N.Y.2d 475, 151 N.E.2d 874, 176 N.Y.S.2d 318 (1958); Elish v. St. Louis Southwestern Ry., 305 N.Y. 267, 112 N.E.2d 842 (1953); Sterling Novelty Corp. v. Frank & Hirsch Distrib. Co., 299 N.Y. 208, 86 N.E.2d 564 (1949).

[34] Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 267, 115 N.E. 915, 917 (1917).