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of the facts.[248] As pointed out in *Sortino*, hearsay reference to the facts is insufficient. However, even though the plaintiff establishes that his claim has great merit, it does not mean that he has avoided dismissal. On the contrary, even an action of great merit may be forfeited by a prolonged delay.[249]

The many recent cases granting motions to dismiss indicate the strict attitude the courts exhibit to any delay in the prosecution of an action. The harsh results of dismissal are not apparent from these decisions since they usually do not mention whether the applicable statute of limitations has expired (which would bar the plaintiff from bringing another suit on the same cause of action).

Although a prime aim of the CPLR is to avoid delay and secure the speedy disposition of litigation, it is also important that all litigants have their day in court. If a defendant to succeed on the motion were required to show prejudice to his position even though the plaintiff's delay be prolonged, such a requirement would work effectively in insuring that both these considerations are met.

NEW YORK CITY CIVIL COURT ACT

Summons Must Be Served With Either Formal Complaint or Indorsement

Plaintiff commenced his action in the New York City Civil Court by service upon the defendant of a summons without either a formal complaint or an indorsement on the summons. Defendant moved to dismiss the summons and vacate service on the ground that the summons did not contain the indorsement required by Section 902(a)(1) of the Civil Court Act.[250] The court held that since neither a formal complaint nor an informal complaint by way of indorsement accompanied the summons, it was void and, hence, could not be cured by amendment.[251] It therefore dismissed the action.

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[248] Sortino v. Fisher, *supra* note 235, at 32, 245 N.Y.S.2d at 194; *accord*, Powell v. Becker Truck Renting Corp., 20 App. Div. 2d 573, 245 N.Y.S.2d 910 (2d Dep't 1963); Milligan v. Hycel Realty Corp., 20 App. Div. 2d 527, 245 N.Y.S.2d 210 (1st Dep't 1963); Keating v. Smith, 20 App. Div. 2d 141, 245 N.Y.S.2d 909 (2d. Dep't 1963).

[249] Hoffman v. Cafanella, 20 App. Div. 2d 524, 245 N.Y.S.2d 203 (1st Dep't 1963).

[250] CCA § 902(a)(1): "All pleadings shall be formal pleadings, as in supreme court practice, except that: (1) If the plaintiff's cause of action is for money only and the summons is served by personal delivery to the defendant within the city of New York, the cause of action may be set forth by indorsement upon the summons."

[251] Paskus, Gordon & Hyman v. Peck, 246 N.Y.S.2d 874 (N.Y. City Civ. Ct. 1964).

The Municipal Court Code, which the Civil Court Act replaced *inter alia,* provided that the summons should inform the defendant of the cause of action against him by being served with a complaint or an indorsement upon the summons.[252] This practice was retained in the Civil Court Act.[253] Since the summons under the Civil Court Act requires the defendant to appear and answer the complaint,[254] it is obvious that the defendant cannot satisfy this requirement unless the complaint is served with the summons.[255] Service of a summons without any complaint at all will render it jurisdictionally defective, and hence, void.[256] Even if the defendant had not made his motion to dismiss but had ignored the summons and defaulted the plaintiff could not enter a default judgment against him.[257]

Note that the plaintiff's procedure would have been quite valid in the supreme court, where Section 3012 of the CPLR dispenses with the requirement that the complaint accompany the summons. The Bar should recognize that in the civil,[258] district[259] and (as of April 1, 1965) city[260] courts, the summons cannot be served alone (except in service by publication).

Real Property Actions and Proceedings Law

Substituted Service — Section 735 of the RPAPL and Section 308(3) of the CPLR

In *Wayside Homes, Inc. v. Upton,*[261] a landlord brought a summary proceeding to recover possession of real property occupied by a defaulting tenant, and for the rent due and owing. Substituted service of process was made pursuant to Section 735 of the RPAPL, which provides: "Service of the notice of petition and petition shall be made in the same manner as personal service of a summons in an action; except that if service cannot be made in such manner, it shall be made by [substituted service]

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252 Munic. Ct. Code § 19.

253 CCA § 902(a)-(b). The one exception to this rule is when service is made by publication. See 29A McKinney's CCA § 902, commentary 141.

254 CCA § 402(a)-(b); N.Y.C. Civ. Ct. R. 2(a)-(b). Defendant will also, of course, have the alternative of moving to dismiss under CPLR R. 3211. See CCA Art. 10.

255 Steffens v. Martin, 100 Misc. 263, 165 N.Y. Supp. 445 (1st Dep't 1917); see Baum v. Halpern, 169 N.Y. Supp. 489 (1st Dep't 1918).

256 Steffens v. Martin, *supra* note 255.

257 Compare CPLR § 3215(e).

258 CCA § 902(a)-(b).

259 UDCA § 902(a)-(b).

260 UCCA § 902(a)-(b). The UCCA became law on April 5, 1964, and is to become effective April 1, 1965. N.Y. Sess. Laws 1964, chs. 497-98.

261 40 Misc. 2d 1087, 244 N.Y.S.2d 624 (Nassau County Dist. Ct. 1963).