

CPLR 503(f): New Venue Requirements in "Consumer Credit Transactions"

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or an assignment of the cause of action by a non-resident to a resident,⁶⁴ were sufficient to ensure that the doctrine would be no bar.

In *Slaughter*, dissenting Justice McGivern implied that the majority's true motivation in opening up the New York courts to this plaintiff was its belief that he would not get a fair trial in North Carolina.⁶⁵ Such a position is contrary to the policy embodied in *Silver*, and encourages forum shopping and all the injustice growing out of that practice. Underlying a decision of whether or not to apply the doctrine of *forum non conveniens* must be the assumption that the quality of justice in all jurisdictions is equal. The refusal to apply it on the basis of a skepticism about that assumption is contrary to the *Silver* mandate that "justice, fairness and convenience" be the controlling considerations.

CPLR 328: New rule allows New York courts to assist in serving out-of-state judicial documents.

The Judicial Conference has added Rule 328 to the CPLR.⁶⁶ The new rule is an adoption of section 2.04 of the Uniform Interstate and International Procedure Act, and is designed to provide assistance to out-of-state courts and litigants in serving documents on persons domiciled or found within the state. It provides that the Supreme Court or the County Courts may order such service upon application by an "interested person"⁶⁷ or when presented with letters rogatory issued by an out-of-state court. The rule specifically states that service of out-of-state papers may be made without court order. It further provides that service pursuant to court order under the new rule will not automatically make a judgment rendered in a foreign judicial proceeding valid and enforceable in New York. The Judicial Conference recommended this change in recognition of the increasing need for interstate and international cooperation in the growing number of cases having "cosmopolitan aspects."⁶⁸

ARTICLE 5 — VENUE

CPLR 503(f): New venue requirements in "consumer credit transactions."

To combat abuses of venue provisions heretofore prevalent in actions based on consumer credit sales, the Legislature has enacted a

⁶⁴ See, e.g., *Wagner v. Braunsberg*, 5 App. Div. 2d 564, 173 N.Y.S.2d 525 (1st Dep't 1958).

⁶⁵ 41 App. Div. 2d at 811, 342 N.Y.S.2d at 182.

⁶⁶ JUDICIAL CONFERENCE OF THE STATE OF NEW YORK, REPORT TO THE 1973 LEGISLATURE IN RELATION TO THE CIVIL PRACTICE LAW AND RULES AND PROPOSED AMENDMENTS ADOPTED PURSUANT TO SECTION 229 OF THE JUDICIARY LAW 76 (1973).

⁶⁷ *Id.*

⁶⁸ *Id.* at 77.

package of amendments protecting the borrower-purchaser.⁶⁹ The main thrust of this package is contained in the new CPLR 503(f) which specifies that venue in an action arising out of a "consumer credit transaction"⁷⁰ must be laid in the county wherein the defendant resides, if he is a New York resident, or where the transaction took place, if within New York.⁷¹ CPLR 305(a) was changed⁷² to provide that the summons in such an action must prominently display at its head (1) that it is based on a consumer credit transaction, (2) the county of residence of any New York resident defendant, and (3) the county, if within the state, where the transaction took place. These requirements are designed to aid in implementing the new CPLR 513⁷³ which directs court clerks to reject a summons in a consumer credit transaction where it appears on its face that it is sought to be filed in an improper county. After a rejection, service is complete ten days after the plaintiff files in the proper county. This new filing must include proof of service of the original summons and proof of service by certified mail of a notice specifying (1) the proper county, (2) the date the summons was filed in the proper county, (3) the date by which the defendant must answer or appear, and (4) where the defendant must file his answer or notice of appearance.

These provisions eliminate the hardship to which a defendant with limited funds was formerly exposed when forced to travel to a remote county either to defend an action or simply to transfer it when the plaintiff had specified an improper county.⁷⁴

ARTICLE 31 — DISCLOSURE

CPLR 3101(a): Court denies discovery of police records to avoid interference with an ongoing criminal investigation.

With certain qualifications,⁷⁵ a party bringing action against the state is entitled to disclosure of all evidence "material and necessary"⁷⁶

⁶⁹ L. 1973, ch. 238, at 317, eff. Sept. 1, 1973.

⁷⁰ This is defined by the new CPLR 105(f), also added by L. 1973, ch. 238, as any transaction whereby credit is extended to an individual, and the subject of the transaction is to be used primarily for personal, family or household purposes.

⁷¹ If no defendant resides within the state and the transaction did not occur there, normal venue provisions apply. CCA 301(a) has been changed similarly by L. 1973, ch. 238 for transactions taking place in, or involving residents of, New York City.

⁷² L. 1973, ch. 238, at 317, eff. Sept. 1, 1973.

⁷³ *Id.* at 318.

⁷⁴ See McLaughlin, *New York Trial Practice*, 170 N.Y.L.J. 9, July 13, 1973, at 1, col. 1.

⁷⁵ CPLR 3102(f) provides that the state may not be compelled to answer interrogatories or to make admissions. Whereas disclosure against a private litigant is obtainable on notice, a court order is necessary to compel disclosure by the state.

⁷⁶ CPLR 3101(a) requires "full disclosure of all evidence material and necessary in the prosecution or defense of an action . . ."