

CPLR 325(d): Damages Sought Limited by Monetary Jurisdiction in Lower Court After Transfer by Supreme Court Without Plaintiff's Consent

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avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.³⁵

The appellate division had upheld jurisdiction on the basis of the broad language of *Frummer* and *Gelfand*. By rejecting this approach, the Court of Appeals remained within the boundaries expressed in *Hanson*. From a pragmatic viewpoint, German Volkswagenwerk AG's activities were only those basic to engaging in international commerce — establishment of a subsidiary and shipment of goods to it. Certainly, these activities, indistinct from those employed in interstate commerce, are not a basis for in personam jurisdiction.

CPLR 325(d): Damages sought limited by monetary jurisdiction in lower court after transfer by supreme court without plaintiff's consent.

CPA 110-b provided that the written consent of the plaintiff was necessary to transfer a case from the supreme court to a lower court.³⁶ In 1962, however, a new state constitution was adopted. Article VI, section 19(a), provides that

[t]he supreme court may transfer any action or proceeding, except one over which it shall have exclusive jurisdiction which does not depend upon the monetary amount sought, to any other court having jurisdiction of the subject matter within the judicial department provided that such court has jurisdiction over the classes of persons named as parties.³⁷

This provision has generally been viewed as self-executing.³⁸ It was devised to enable the supreme court to directly relieve its calendar congestion.³⁹ Article VI, section 19(k), of the state constitution states that

[t]he legislature may provide that the verdict or judgment in actions and proceedings so transferred shall not be subject to the limitation of monetary jurisdiction of the court to which the actions and proceedings are transferred if the limitation be lower than that of the court in which the actions and proceedings were originated.⁴⁰

³⁵ *Id.* at 253.

³⁶ *Martirano v. Valger*, 19 App. Div. 2d 544, 240 N.Y.S.2d 792 (2d Dep't 1963) (mem.). CPLR 325(c) incorporates this consent requirement.

³⁷ N.Y. CONST. art. VI, § 19(a) (McKinney 1969).

³⁸ *American Mut. Liab. Ins. Co. v. Bova*, 32 App. Div. 2d 527, 300 N.Y.S.2d 86 (1st Dep't 1969) (mem.); *Turntables, Inc. v. M.B. Plastics Corp.*, 31 App. Div. 2d 792, 297 N.Y.S.2d 51 (1st Dep't 1969) (per curiam); *Trussell v. Strongo*, 29 App. Div. 2d 851, 288 N.Y.S.2d 125 (1st Dep't 1968) (per curiam); *Garland v. Raunhein*, 29 App. Div. 2d 383, 288 N.Y.S.2d 417 (1st Dep't 1968), discussed in *The Quarterly Survey*, 43 *ST. JOHN'S L. REV.* 302, 316 (1968); 1 *WK&M* ¶ 325.04.

³⁹ *The Quarterly Survey*, 44 *ST. JOHN'S L. REV.* 313, 330 (1969).

⁴⁰ N.Y. CONST. art. VI, § 19(k) (McKinney 1969).

It was in light of this provision that the state legislature enacted CPLR 325(d), empowering the individual appellate divisions to act on this matter.⁴¹ The Third⁴² and Fourth⁴³ Departments have adopted appropriate rules, but as of yet the First and Second Departments have not done so.⁴⁴ Thus, the approach of the several departments is not uniform.

*Haas v. Scholl*⁴⁵ is a recent illustration of the problems which arise in the departments which have not eliminated the lower court's damage ceiling in transfer cases. In denying the plaintiff's motion for re-argument on the denial of a general preference in a negligence action, the trial judge transferred the case down to the Westchester County Court without the consent of the plaintiff, observing that the plaintiff would be subject to the monetary ceiling of the lower court.⁴⁶ Relying upon Article VI, section 19(a), as the basis for its decision, the court stated that it had "no authority to judicially abrogate the constitutionally mandated monetary limitations of the County Court."⁴⁷

The instant case reflects the unequal positions of plaintiffs transferred under CPLR 325(d) in the different departments — a situation which the court lamented.⁴⁸ The need for uniformity throughout the state is evident.⁴⁹ Additionally, *Haas* is vulnerable on the ground that

⁴¹ CPLR 325(d) was devised

to allow the supreme court, pursuant to Appellate Division rule, to transfer pending cases to lower courts in these judicial departments where the calendars of the higher courts are so congested as to interfere with the efficient administration of justice therein, but where the lower court calendars are clear enough to absorb these extra leads.

FOURTEENTH ANNUAL REPORT OF THE JUDICIAL CONFERENCE OF THE STATE OF NEW YORK 24 (1969). See 7B MCKINNEY'S CPLR 325, commentary at 444 (1972).

⁴² 22 N.Y.C.R.R. § 861.18 (1968).

⁴³ 22 N.Y.C.R.R. § 1024.20 (1970). See *Kloc v. Cissell*, 331 App. Div. 2d 885, 298 N.Y.S.2d 107 (4th Dep't 1969), discussed in *The Quarterly Survey*, 44 Sr. JOHN'S L. REV. 313, 330 (1969) (appellate division allowed transfer down to stand although the trial court ignored the plaintiff's medical evidence, because the monetary ceiling of the transferee court did not apply in view of the Fourth Department rules).

⁴⁴ See 7B MCKINNEY'S CPLR 325, commentary at 445 (1972):

In view of the congestion in the lower courts of the First and Second Departments, implementing provisions in these departments do not seem to be in the offing.

⁴⁵ 68 Misc. 2d 197, 325 N.Y.S.2d 844 (Sup. Ct. Westchester County 1971).

⁴⁶ *Id.* at 202, 325 N.Y.S.2d at 851, citing 7B MCKINNEY'S CPLR 325, supp. commentary at 269 (1965). Westchester County is in the Second Judicial Department.

⁴⁷ 68 Misc. 2d at 204, 325 N.Y.S.2d at 851.

⁴⁸ *Id.* at 204, 325 N.Y.S.2d at 851.

The better procedure surely is to accord uniform treatment to all litigants in this state and not unequal treatment predicated upon the mere happenstance of residency (or venue).

Id. at 205, 325 N.Y.S.2d at 852.

⁴⁹ The legislation was enacted in 1965 and vetoed on the ground that litigants would seek to commence all actions in the supreme court and thereby increase that court's calendar congestion. See 7B MCKINNEY'S CPLR 325, supp. commentary at 268-69 (1965).

it violates the due process clause.⁵⁰ The court limited the damages allowable to the plaintiff before his cause of action was tried. If the proof which the court required did not meet a certain objective standard, such as that required for summary judgment, the disposition was arbitrary and therefore contrary to due process. A certain standard of proof recognizable at law must be adduced to validate such a decision. Thus, the *Haas* case may be challenged under the due process and equal protection clauses of the fourteenth amendment.

ARTICLE 5 — VENUE

CPLR 511(b): The county specified as proper by defendant must in fact be proper.

A plaintiff has the right, in the first instance, to choose the venue of the action. CPLR 511(b) provides, however, that if the plaintiff's choice is improper, the defendant may move to change the venue to a county that "he specifies as proper." Will the county specified by the defendant as proper be deemed so without regard to its propriety in fact?

A domestic corporation stated in its certificate of incorporation that Queens County was to be its principal place of business. Thereafter, it moved its facilities to Westchester County. Nevertheless, for venue purposes as prescribed in CPLR 503(c), the corporation is deemed to be a resident of Queens County and not Westchester County.⁵¹ The defendant formally surrendered its authority to do business in New York prior to the commencement of this action, by filing the requisite certificate.⁵² As a foreign corporation, it had no residence in New York for venue purposes.⁵³ The only proper place for this action, therefore, was the plaintiff's residence, Queens County.⁵⁴ Nevertheless, the plaintiff brought suit against the defendant in Westchester County. The defendant moved for a change of venue and, pursuant to CPLR 511(b), specified New York County as a proper county. Its contention was that it complied with the letter of the law in that it was only required to name a county that it "specifies as proper,"⁵⁵ the

⁵⁰ "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). For a thorough discussion of the requirements of procedural due process, see *Goldberg v. Kelly*, 397 U.S. 254 (1970).

⁵¹ See *General Precision, Inc. v. Ametek, Inc.*, 45 Misc. 2d 451, 257 N.Y.S.2d 120 (Sup. Ct. Westchester County), discussed in *The Biannual Survey*, 40 ST. JOHN'S L. REV. 122, 143 (1965), *aff'd*, 24 App. Div. 2d 757, 263 N.Y.S.2d 470 (2d Dep't 1965) (mem.), discussed in *The Quarterly Survey*, 41 ST. JOHN'S L. REV. 121, 135 (1966); 7B MCKINNEY'S CPLR 503, *supp. commentary* at 12 (1965).

⁵² N.Y. BUS. CORP. LAW § 1310 (McKinney 1963).

⁵³ Cf. 7B MCKINNEY'S CPLR 503, *commentary* at 6 (1963).

⁵⁴ CPLR 503(a).

⁵⁵ CPLR 511(b).