St. John's Law Review

Volume 46, May 1972, Number 4 Article 33

# Judiciary Law § 190: County Court Held Without Jurisdiction Over Action Against Non-Resident Notwithstanding Service of Summons Pursuant to Vehicle and Traffic Law § 253

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## JUDICIARY LAW

*Judiciary Law § 190: County court held without jurisdiction over action against non-resident notwithstanding service of summons pursuant to Vehicle and Traffic Law § 253.*

Section 190(5) of the Judiciary Law limits the county court's jurisdiction in actions for a sum of money only to instances "where the defendant, or if there are two or more defendants, where all of them . . . reside in the county. . . ." *Bonk v. Hodgkins*,[233] an action which arose from a New York automobile accident, was commenced in the County Court of Schenectady. One of the defendants, a non-resident of New York, was notified by service upon the Secretary of State pursuant to Vehicle and Traffic Law section 253, New York's non-resident motorist statute. This defendant moved to dismiss on jurisdictional grounds.

In granting the motion, the court ruled that a 1937 amendment to section 253 did not create an exception to the residency requirements of the county court. That amendment provided that service upon the Secretary of State would have the same legal effect as personal service on the non-resident "within the territorial jurisdiction of the court from which the summons issues. . . ."[234] An earlier county court decision,[235] interpreting this language, reasoned that since jurisdiction may be conferred over the parties by their consent, the county court could obtain jurisdiction under section 253 by applying the doctrine of implied consent which is the basis of that statute.

The *Bonk* court found such a construction unpersuasive. The purpose of the amendment, it reasoned, was to effectively confer in personam jurisdiction upon courts of limited territorial jurisdiction. These courts, generally limited to service of process within their territorial boundaries, could not otherwise obtain in personam jurisdiction over a non-resident by service upon the Secretary of State as his agent, unless an office of the Secretary was within its territory.[236] Section 190 of the Judiciary Law, on the other hand, deals not with the question of acquiring in personam jurisdiction, but contains residential prerequisites to the county court's exercise of jurisdiction. Therefore,

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233 68 Misc. 2d 148, 326 N.Y.S.2d 140 (Schenectady County Ct. 1971).

234 N.Y. VEH. & TRAF. LAW § 253 (McKinney 1970).

235 LaPlaca v. Hutcheson, 191 Misc. 27, 79 N.Y.S.2d 355 (Monroe County Ct. 1948).

236 This is no longer true concerning the civil or district courts; the 1964 amendments to the CCA and UDCA 403 conferred long-arm jurisdiction upon those courts in specific instances. But it has continued relevance in the city, town and village courts which have not been granted such jurisdiction. *See* 29A MCKINNEY'S N.Y.C. CIV. CT. ACT 403, supp. commentary at 39 (1964).

the court concluded that, absent a clearer legislative pronouncement, it would not decide that the amendment to Vehicle & Traffic Law section 253 was intended to waive the residency requirements of the county courts with regard to non-resident motorists. Thus, although section 253 may be utilized to effect service upon a non-resident, the residential prerequisites of the court seeking jurisdiction must also be satisfied.

## REAL PROPERTY ACTIONS AND PROCEEDINGS LAW

*RPAPL 755: "Abuse of process" recognized as an actionable tort.*

Delay in the final disposition of cases both criminal and civil has plagued the judicial process in New York. In civil actions, a party often delays in the hope that his adversary will concede out of despair. Illustrative of this is *500 West 174 Street v. Vasquez*,[237] where the Civil Court, New York County, condemned this tactic in no uncertain terms.

In *Vasquez*, the tenant requested in 1968 that certain repairs to his apartment be made, but the landlord ignored this request. In January 1970, the tenant stopped paying rent; in June 1970, the landlord commenced nonpayment proceedings. The tenant then sought relief under section 755 of the RPAPL.[238] Both the landlord and his attorney continually failed to appear in court, but recommenced proceedings five times.[239] On the various calendar dates, the tenant, who had to close his one-man grocery store to go to court, appeared at least nine of ten times; the landlord appeared only once.[240]

The court deemed the unconscionable conduct of the landlord a tort designated "abuse of process,"[241] fixing damages at $1,000. Additionally, the landlord's attorney's behavior was referred by the court to the Grievance Committee of the Association of the Bar.[242] Thus, landlords were warned that misuse of process may be costly, and lawyers who aid in such unethical practices were put on notice that they will be subject to disciplinary proceedings.

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237 67 Misc. 2d 993, 325 N.Y.S.2d 256 (N.Y.C. Civ. Ct. N.Y. County 1971).

238 *Id.* at 994, 325 N.Y.S.2d at 257.

239 The landlord commenced non-payment proceedings in June 1970, November 1970, December 1970, June 1971, and July 1971. *Id.* at 995-96, 325 N.Y.S.2d at 257-58.

240 *Id.* at 996, 325 N.Y.S.2d at 258.

241 *Id.* at 995, 325 N.Y.S.2d at 258. In discussing "abuse of process," Dean Prosser states:

> [T]he gist of the tort is not commencing an action or causing process to issue without justification, but misusing, or misapplying process justified in itself for an end other than that which it was designated to accomplish.

W. PROSSER, LAW OF TORTS 856 (4th ed. 1971). *See also* Hauser v. Bartow, 273 N.Y. 370, 7 N.E.2d 268, *reargument denied*, 274 N.Y. 489, 8 N.E.2d 617 (1937).

242 67 Misc. 2d at 996, 325 N.Y.S.2d at 259. The landlord failed to appear in court