

CPLR 303: Agent for Service of Process Relationship Exists Only as Long as the Action Is Pending

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

Without specifically deciding when the cause of action accrued, or if indeed the cause of action must arise at the time of ownership, the court also intimated that jurisdiction could be sustained under CPLR 302(a)(4). However, a prerequisite to jurisdiction under this subsection would appear to be that defendant has some relationship to the land at the time the cause of action accrues.²⁹ Thus, it is conceivable that other courts will adopt a stricter approach, especially when it is established that defendant has not transacted any business,³⁰ or that a number of years have passed between the disposition of the property and the accrual of the cause of action.³¹

CPLR 303: Agent for service of process relationship exists only as long as the action is pending.

The commencement of an action in New York by one who is not subject to personal jurisdiction³² is an automatic designation of his attorney in the action as his agent for service of process.³³ Consequently, a defendant who wishes to assert a cause of action in the nature of a counterclaim against the nonresident plaintiff may do so by serving the initiatory papers upon the attorney.³⁴ However, this mode of service is permissible only as long as the original action is pending,³⁵ *i.e.*, from the service of process to the entry of final judgment.³⁶

In *Banco Do Brasil v. Madison Steamship Corp.*,³⁷ the plaintiff commenced an action to recover an amount allegedly received by defendants in excess of the amount of judgment in a prior action, by serving the attorneys who had represented the defendants. Since judgment had already been entered in the original action, the court correctly held that service upon the defendants' attorneys did not secure personal jurisdiction over the defendants.

²⁹ See note 26 and accompanying text *supra*.

³⁰ See, *e.g.*, *Glassman v. Hyder*, 23 N.Y.2d 354, 244 N.E.2d 259, 296 N.Y.S.2d 783 (1969).

³¹ See, *e.g.*, *Murphy v. Indovina*, 384 Pa. 26, 119 A.2d 258 (1956).

³² The section is not limited to nonresidents. It applies to any plaintiff over whom the defendant cannot acquire personal jurisdiction. 7B MCKINNEY'S CPLR 303, commentary at 440 (1963).

³³ CPLR 303.

³⁴ It should be noted that substituted service on the attorney rather than personal delivery is ineffective. *Twentieth Century-Fox Film Corp. v. Dupper*, 33 App. Div. 2d 682, 305 N.Y.S.2d 918 (1st Dep't 1969).

³⁵ CPLR 303. Similar statutory schemes have been upheld as a proper exercise of the state's jurisdiction. See, *e.g.*, *Adam v. Saenger*, 303 U.S. 59 (1938).

³⁶ See *Concourse Super Serv. Station, Inc. v. Price*, 33 Misc. 2d 503, 226 N.Y.S.2d 651 (Sup. Ct. Bronx County 1962). See also 7B MCKINNEY'S CPLR 303, commentary at 441 (1963).

³⁷ 61 Misc. 2d 1028, 307 N.Y.S.2d 344 (Sup. Ct. N.Y. County 1970).