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Forum Non Conveniens: Case Illustrates Arbitrariness of Doctrine

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actions and proceedings wherein the amount sought to be recovered does not exceed $10,000.[119] In *Abbey Rent-a-Car v. Moore*[120] the Appellate Division, First Department ruled that the trial court is powerless to reduce a verdict in excess of its jurisdictional limitation; instead, the case must be resubmitted to the jury for further deliberation.[121] Recently, in *Izzi v. Dolgin*[122] the New York City Civil Court, Kings County, refusing to equate the principle of stare decisis with petrifying rigidity,[123] adopted a contrary approach.[124]

The plaintiff in *Izzi* had originally commenced an action in the supreme court. Subsequently, the case was transferred to the civil court by stipulation after a general preference was denied. The jury returned a verdict for the plaintiff in the amount of $35,000 and the trial court reduced the verdict to $10,000 with the plaintiff's consent. Defendant there upon moved for a new trial, contending that the court's action was improper.

In denying this motion, the court cited a number of sound and practical considerations. First, there was no prejudice to the defendant inasmuch as it would be unreasonable to expect that the jury would reduce its unanimous verdict of $35,000 to less than $10,000. Moreover, the court reasoned that plaintiff would be justified in seeking to transfer the action back to the supreme court with a view toward securing a higher measure of recovery rather than to relitigate the matter in the civil court. Finally, the court noted that since the civil court in New York City potentially has the power to entertain negligence actions in excess of its jurisdictional limits[125] it certainly possesses the inherent authority to reduce a verdict in excess of its jurisdiction, particularly in light of the court's overcrowded calendar.

FORUM NON CONVENIENS

Forum non conveniens: Case illustrates arbitrariness of doctrine.

When one nonresident brings an action against another nonresident on a cause of action arising outside the state, New York courts

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119 CCA 202.

120 30 App. Div. 2d 952, 294 N.Y.S.2d 229 (1st Dep't 1968).

121 *Accord,* Daigneault v. Hough, 162 N.Y.L.J. 13, July 18, 1969, at 9, col 8 (App. T. 2d Dep't).

122 Izzi v. Dolgin, 315 N.Y.S.2d 1005 (N.Y.C. Civ. Ct. Kings County 1970).

123 *Cf.* Bing v. Thunig, 2 N.Y.2d 656, 143 N.E.2d 3, 163 N.Y.S.2d 3 (1957).

124 *Accord,* Abood v. Hospital Ambulance Serv., 161 N.Y.L.J. 66 April 4, 1969, at 17, col. 3 (Sup. Ct. Kings County).

125 *See* CPLR 325(d). To date, this expansive jurisdictional proviso has not been adopted in either the first or second departments. Apparently, the appellate divisions therein are cautious because of the calendar congestion already existent in the lower courts. *See* 7B McKINNEY'S CPLR 325, supp. commentary at 266, 268 (1970).

may decline to hear the case under the doctrine of *forum non conveniens.*[126] In such circumstances the court must balance the interests of the state and the defendant against the possible unavailability or undesirability of another forum in determining whether to dismiss the claim.[127] If either party is a New York resident, however, the court must entertain the action.[128]

In *Silver v. Great American Insurance Co.*,[129] the First Department reluctantly followed the rule requiring it to retain jurisdiction.[130] Therein, the plaintiff had commenced actions pertaining to the same subject matter in Hawaii, where the convenience of witnesses would be served best and to whose jurisdiction the defendant had submitted. Hence, the circumstances of this case were most appropriate for dismissal by reason of *forum non conveniens.* But, the fact that the defendant was a New York corporation — New York's sole contact with the controversy — left the court without discretion in the matter. Understandably, reconsideration of the rule by the Court of Appeals was suggested by the First Department.

The New York Judicial Conference, upon the recommendation of Professor Smit,[131] has proposed enactment of a new section 327 to the CPLR, whereby New York courts would be specifically authorized to stay or to dismiss a suit without regard to the residence of either party, upon a finding that substantial justice would be best served if the action were heard in another forum.[132] A bill to enact this proviso passed the Assembly, but died in the Senate Codes Committee during the 1969 session of the Legislature. Its enactment is necessary to permit the flexibility required to insure fairness to all litigants.[133]

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126 *See, e.g.*, Aetna Ins. Co. v. Creole Petroleum Corp., 27 App. Div. 2d 518, 275 N.Y.S.2d 274 (1st Dep't 1966) *aff'd* 23 N.Y.2d 715, 244 N.E.2d 55, 296 N.Y.S.2d 363 (1968); *see also* 1 WK&M ¶ 301.07; Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 COLUM. L. REV. 1 (1929).

The doctrine is applicable to contracts and other property litigation as well as to tort actions. Bata v. Bata, 304 N.Y. 51, 105 N.E.2d 623, 100 N.Y.S.2d 845 (1952).

127 Varkonyi v. S.A. Empresa De Viacao Airea Rio Grande (Varig), 22 N.Y.2d 333, 239 N.E.2d 542, 292 N.Y.S.2d 670 (1968).

128 De La Bouillerie v. De Vienne, 300 N.Y. 60, 62, 89 N.E.2d 15, 16, 86 N.Y.S.2d 475, 477, *reargument denied*, 300 N.Y. 644, 90 N.E.2d 496, 88 N.Y.S.2d 687 (1949).

129 35 App. Div. 2d 317, 316 N.Y.S.2d 186 (1st Dep't 1970) (per curiam).

130 "[T]here is no choice but to accept the suit here." *Id.* at 317, 316 N.Y.S.2d at 187.

131 Smit, *Report on Whether to Adopt in New York, in Whole or in Part, the Uniform Interstate and Internationl Procedure Act*, in THIRTEENTH ANNUAL REPORT OF THE N.Y. JUDICIAL CONFERENCE 130 *et seq.* (1968).

132 FIFTEENTH ANNUAL REPORT OF THE N.Y. JUDICIAL CONFERENCE A 113 *et seq.* (1970).

133 *Cf.* H. PETERFREUND & J. MCLAUGHLIN, NEW YORK PRACTICE 54 (2d ed. 1968).