

Forum Non Conveniens: Doctrine Invoked by Nassau County District Court on Intrastate Basis

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been so intent upon receiving summary judgment before the bankruptcy adjudication that it saw no need to raise allegations as to fraud which required more than "paper proof" if they were to be sustained.

Where a judgment exists, a court is bound by that judgment and it may not go behind it.²⁵⁴ Thus, the *Galich* court was foreclosed from inquiring into any facts existing outside of the pleadings and the record in the former actions, and, because of this inability, the court could see nothing which prevented discharge of the judgment even though circumstantial evidence as to fraud was unquestionably present. The case serves to demonstrate that summary judgment is an inadequate remedy against a purchaser who has perpetrated a fraud and has sought refuge in bankruptcy.

FORUM NON CONVENIENS

Forum non conveniens: Doctrine invoked by Nassau County District Court on intrastate basis.

Since 1929, when the term *forum non conveniens* was first popularized by a much cited law review article,²⁵⁵ the doctrine has been widely accepted, and today New York courts will, in the absence of special circumstances, refuse to hear tort actions between nonresidents when the cause of action did not arise within the state.²⁵⁶

In the recent case of *Suriano v. Hosie*,²⁵⁷ the District Court of Nassau County extended the doctrine by applying it where both parties were residents of Queens County and the cause of action arose in that county. The court stated that there was no reason why the "doctrine should not be invoked . . . as it pertains to non-residents of Nassau County since the same policy considerations prevail . . ." on the intrastate and interstate levels.²⁵⁸ The court, however, granted the dismissal on the express condition that defendant submit to the jurisdiction of the appropriate Queens county court.²⁵⁹

²⁵⁴ *In re Benoit*, 124 App. Div. 142, 108 N.Y.S. 889 (1st Dep't 1908), *aff'd*, 194 N.Y. 549, 87 N.E. 1115 (1909).

²⁵⁵ Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 COLUM. L. REV. 1 (1929).

²⁵⁶ *Aetna Ins. Co. v. Creole Petroleum Corp.*, 27 App. Div. 2d 518, 275 N.Y.S.2d 274 (2d Dep't 1966).

²⁵⁷ 59 Misc. 2d 973, 302 N.Y.S.2d 215 (Dist. Ct. Nassau County 1969).

²⁵⁸ *Id.* at 974-75, 302 N.Y.S.2d at 217. This appears to be the first instance since the establishment of the Uniform Court Acts and during the life of the CPLR that *forum non conveniens* has been invoked on an intrastate basis.

²⁵⁹ The ability to attach such conditions has been held to be within a court's discretion. *See, e.g.*, *Ginsburg v. Hearst Publishing Co.*, 5 App. Div. 2d 200, 170 N.Y.S.2d 691 (1st Dep't 1958), *aff'd*, 5 N.Y.2d 894, 156 N.E.2d 708, 183 N.Y.S.2d 77 (1959).

New York does not specifically deal with the doctrine of *forum non conveniens* in its statutes.²⁶⁰ Wisconsin, on the other hand, has apparently chosen to legislatively preclude its use on an intrastate basis.²⁶¹ At any rate, the result in *Suriano* is clearly justifiable. It must be understood that district court judges are paid by the county in which they sit.²⁶² Thus, if the courts were unable to resort to a remedy like *forum non conveniens*, they might be forced to hear cases bearing no relation whatsoever to their county, and the taxpayers of that county would, in effect, be required to finance litigation in which they possessed no interest at all. Moreover, a contrary result would undoubtedly encourage forum shopping by New York plaintiffs.²⁶³

²⁶⁰ See generally 1 WK&M ¶ 301.07 (1969).

²⁶¹ Wis. STAT. ANNO. § 262.19 (1957) (emphasis added):

(1) If a court of this state, on motion of any party, finds that trial of an action pending before it should as a matter of substantial justice be tried in a forum *outside this state*, the court may . . . enter an order to stay further proceedings on the action in this state.

²⁶² COUNTY GOVERNMENT LAW OF NASSAU COUNTY § 2404 (1936). This section provides that such salaries shall be a county charge.

²⁶³ Shorter calendars, a particularly qualified judge and higher recoveries are a few of the obvious reasons why nonresidents might flock to a particular court.