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Article 15

CPLR 308: Immunity from Service of Process Extended to Arbitration Proceedings

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yet would not have jurisdiction over a domiciliary who commits the same act, solely because of a change of domicile prior to commencement of the action.

CPLR 308: Immunity from service of process extended to arbitration proceedings.

A nonresident, voluntarily present in this state solely for the purpose of appearing as a party or witness in a judicial proceeding, is immune from service of civil process during the proceeding and for a reasonable time before and after.[26] This immunity is afforded to encourage voluntary appearance of nonresidents and to secure the expedient administration of justice.[27] Every proceeding of a judicial nature which relates to the trial of the issues of a case or to a public matter comes within the rule.[28]

In *Treadway Inns Corp. v. Chase*,[29] defendant, a nonresident, was served with process while voluntarily attending an arbitration proceeding as a witness. The supreme court held that immunity from service extended to parties or witnesses voluntarily appearing in arbitration proceedings. Arbitration proceedings are, in essence, a form of judicial proceeding in that the arbitrator has the power to subpoena and administer oaths.[30] Thus, to extend immunity from service of civil process to parties and witnesses in these proceedings is desirable.

CPLR 308(3): Validity of service unaffected by defendant's failure to find affixed process.

In *Denning v. Lettenty*,[31] a malpractice case, the court referred to a referee the question of whether there had been proper service. The plaintiff claimed that valid service was effected pursuant to CPLR 308(3),[32] and, in support thereof, introduced the affidavit

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[26] 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 308.05 (1965).

[27] Where attendance in the state is involuntary there is no immunity. 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 308.06 (1965).

[28] Matter of Ferrari, 134 Misc. 728, 236 N.Y. Supp. 406 (Surr. Ct. Kings County 1920); 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 308.05 (1965).

[29] 47 Misc. 2d 937, 263 N.Y.S.2d 551 (Sup. Ct. Monroe County 1965).

[30] Treadway Inns Corp. v. Chase, 47 Misc. 2d 937, 940, 263 N.Y.S.2d 551, 553 (Sup. Ct. Monroe County 1965).

[31] 48 Misc. 2d 185, 264 N.Y.S.2d 619 (Sup. Ct. N.Y. County 1965).

[32] "Personal service upon a natural person shall be made: (3) where service under paragraph one cannot be made with due diligence, by mailing the summons to the person to be served at his last known residence and . . . affixing the summons to the door of his place of business, dwelling house or usual place of abode within the state. . . ."