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. Letteny,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).
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. . . ."