

St. John's Law Review

Volume 40
Number 1 *Volume 40, December 1965, Number*
1

Article 32

CPLR 325: Alternate Bases for Removal

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.

his jurisdictional objection under the 1965 amendment to CPLR 3211(e).¹⁰⁴

CPLR 325: Alternate bases for removal.

Frankel Associates, Inc. v. Dun & Bradstreet, Inc.,¹⁰⁵ was an action originally brought in supreme court due to the monetary limitation of the City Court of New York. Upon merger of the city court into the newly created civil court, with its increased monetary jurisdiction, the plaintiff applied for removal to that court. Although the consent of the defendant was not sought, the court held that CPLR 325(a) or (c) permitted the removal. Even if the defendant's consent were necessary to effect removal under CPLR 325, the court stated that removal could nevertheless be ordered under Article VI, § 19(a) of the New York State Constitution.¹⁰⁶

In *Mather v. Ginsroe, Inc.*,¹⁰⁷ it was held that once a CPLR 325 removal has occurred, the transferor court under CPLR 326(b) has no further jurisdiction over motions or applications except for an appeal from the order of transfer. Any motion or application other than for such appeal must be made in the transferee court.

ARTICLE 5 — VENUE

CPLR 503(c): Residence of a foreign corporation.

General Precision, Inc. v. Ametek, Inc.,¹⁰⁸ involved a suit between two foreign corporations for breach of contract. Plaintiff laid venue in Westchester County declaring that all of its business within the state was transacted therein. In opposition to defendant's motion to change the venue to New York County, the plaintiff contended that even though its application for authority named New York County as the location of the corporate office, the corporation in fact had virtually no contact with that county and thus venue belonged in Westchester County.¹⁰⁹ In granting the defendant's motion, the court held that CPLR 503(c) when

¹⁰⁴ For a thorough discussion of this problem under CPLR 3211(e) see 7B MCKINNEY'S CPLR 3211, supp. commentary 92 (1965).

¹⁰⁵ 45 Misc. 2d 607, 257 N.Y.S.2d 555 (Sup. Ct. N.Y. County 1965).

¹⁰⁶ "The supreme court may transfer any action or proceeding, except one over which it shall have exclusive jurisdiction . . . to any other court having jurisdiction of the subject matter within the judicial department provided that such other court has jurisdiction over the classes of persons named as parties . . ."

¹⁰⁷ 45 Misc. 2d 674, 257 N.Y.S.2d 472 (Sup. Ct. N.Y. County 1965).

¹⁰⁸ 45 Misc. 2d 451, 257 N.Y.S.2d 120 (Sup. Ct. Westchester County 1965).

¹⁰⁹ *Id.* at 452, 257 N.Y.S.2d at 122.