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Article 33

CPLR 503(c): Residence of a Foreign Corporation

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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

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[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.

read with BCL § 102(a)(10), required that venue be laid in the county designated by the plaintiff in its application for authority, as the location of its office, regardless of the quantity or quality of the contacts plaintiff had with that county.[110]

Under CPLR 503(c), a corporation is considered a resident of the county in which its "principal office" is located. BCL § 102(a)(10) states that the county in which such office is located is that stated in the foreign corporation's application for authority. However, in the BCL the term "principal office" is not used; the section refers merely to the "office of the corporation."

This discrepancy has led to certain misconceptions as to what factors control the venue in an action where the plaintiff is a corporation. The frequently asserted contention that a corporate plaintiff is at liberty to bring an action in the county where it is a de facto resident, although its de jure residence is elsewhere, appears to be conclusively refuted by the ruling in the instant case.

Of greater significance, however, is that the ruling in this case dispels the erroneous impression, conveyed by certain recent opinions, that the office named in the application of authority or certificate of incorporation must be a "principal office."[111] The decision seems to effectuate the design of the drafters of the BCL in that they have conspicuously omitted from section 102 the qualifying terminology found in former Section 3(16) of the General Corporation Law.[112]

ARTICLE 10 — PARTIES GENERALLY

CPLR 1001(a): Motion to dismiss for nonjoinder of an "indispensable" party.

In *Blumenthal v. Allen*,[113] a stockholder's derivative action, defendant claimed that the court lacked jurisdiction over the cor-

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[110] *Id.* at 453, 257 N.Y.S.2d at 122.

[111] See Lande v. Deborah Hosp. (Sup. Ct. N.Y. County), 151 N.Y.L.J., April 20, 1964, p. 17, col. 1; Shultz v. O'Connell (Sup. Ct. N.Y. County), 150 N.Y.L.J., Oct. 8, 1963, p. 14, col. 3.

[112] *Compare* N.Y. GEN. CORP. LAW § 3(16): "The term 'office of a corporation' means its *principal office* within the state, or *principal place of business* within the state if it has no *principal office* therein." (Emphasis added.), *with* N.Y. BUS. CORP. LAW § 102(a)(10): "'Office of the corporation' means the office the location of which is stated in the certificate of incorporation of a domestic corporation or in the application of authority of a foreign corporation . . . . Such office need not be a place where business activities are conducted by such corporation."

[113] 46 Misc. 2d 688, 260 N.Y.S.2d 363 (Sup. Ct. Nassau County 1965). *Contra,* Polar Distributors, Inc. v. Granger Realty Corp. (Sup. Ct. Queens County), 151 N.Y.L.J., Feb. 21, 1964, p. 20, col. 1.