CPLR 311 and BCL § 307: Alternate Methods of Service

St. John's Law Review
succeed, the direct result sought to be accomplished by the statute would be thwarted. The result reached in the instant case is the only logical one in light of what the statute seeks to insure. To hold otherwise would compel a plaintiff who desires to effect service pursuant to section 254 to continually survey a proposed defendant's residence in order to determine whether or not he had returned from his more than thirty-day absence.

CPLR 311 and BCL § 307: Alternate methods of service.

In lieu of employing the provisions of Article 3 of the CPLR, jurisdiction over foreign corporations may be based upon BCL § 307, and service of process may be made as therein prescribed. Under the CPLR, foreign corporations are subject to the jurisdiction of New York for their business activities if they are "doing business" here in the traditional sense, or if they "transact any business" in this state and are sued with respect to that business. In either case personal service of process must normally be made upon an officer or agent of the defendant pursuant to CPLR 311. In comparison, BCL § 307, prior to September 1, 1965, subjected a foreign corporation to New York's jurisdiction if it was "doing any business" here and provided that service of process be made upon the Secretary of State followed by service of process upon an officer or agent of the defendant either personally or by mailing.

In Railex Corp. v. White Machine Co., decided June 7, 1965, the plaintiff attempted to obtain jurisdiction over the defendant foreign corporation by service of process upon the Secretary of State pursuant to BCL § 307. The court, however, held that no jurisdiction had been obtained because BCL § 307 was applicable only when the defendant was "doing business" in New York in the traditional sense. The court found it irrelevant that a basis for jurisdiction probably existed under the long-arm statute, CPLR 302(a)(1) (transacting any business), since in such event service should have been made personally upon an officer or an agent of the defendant pursuant to CPLR 311.

As of September 1, 1965, however, BCL § 307 has been amended so as to effect in personam jurisdiction over a foreign corporation in the New York courts in any case where jurisdiction would also exist under Article 3 of the CPLR.

58 CPLR 301 allows New York courts to exercise such jurisdiction over non-domiciliaries as could be exercised prior to the enactment of the CPLR. The traditional requirement for jurisdiction over foreign corporations is that they be "doing business" in New York. For a clarification of "doing business," see Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965).

59 CPLR 302(a)(1).


61 Id. at 384.
Henceforth, whenever jurisdiction exists over a foreign corporation under the CPLR, jurisdiction also exists under BCL § 307, and service of process may be made on the Secretary of State followed by delivery of a notice and copy of the process to an officer or agent of the defendant either personally or by mailing. It should be noted that the sole significant value of BCL § 307 is that it provides an alternate means of service upon foreign corporations.

CPLR 325(c): Wrongful transfer to lower court does not affect monetary jurisdictional limit of that court.

CPLR 325(c) provides that where it appears that the amount of damages sustained are less than demanded, and a lower court would have had jurisdiction but for the amount demanded, the court in which the action is pending may remove it to the lower court upon the written consent of the plaintiff and upon the reduction of the amount demanded to the monetary jurisdictional limit of the lower court. The consent of the defendant is also required if the lower court would not have had jurisdiction over the defendant if the action had been originally commenced there.

In Martin v. Farrell, the action had originally been brought in the supreme court where the relief demanded was $25,000. Subsequently it was transferred to the Essex County Court. There was, however, neither plaintiff's written consent for the transfer, nor a reduction in his demand for relief to $6,000, which was then the monetary jurisdictional limitation of the Essex County Court. Also lacking was defendant's written consent to the transfer which was required under CPLR 325(c), since the defendant, a non-domiciliary of Essex County, would not have been subject to the jurisdiction of the court if the action had been initially brought there. Neither party, however, made any objection to the transfer either before or during trial. At the end of the trial, the jury rendered a verdict for $10,000. Following the verdict the defendant sought to have it reduced to $6,000. The court, in considering this motion, held that although the transfer was improper under CPLR 325(c), both the plaintiff and defendant had waived any right to object to the jurisdiction of the court by impliedly consenting to the transfer and proceeding with the trial.

82 47 Misc. 2d 126, 261 N.Y.S.2d 820 (County Ct. Essex County 1965).
83 JUDICIARY RULES § 190(3) states that the monetary jurisdictional limit of county courts outside New York City is $6,000. This is modified, however, by subdivision 5 of the same section which enumerates forty-four counties which are exceptions to subdivision 3 and have a jurisdictional monetary limitation of $10,000. It should be noted that as of September 1, 1965, Essex has been added to the latter list of counties and therefore it now may validly render a judgment up to the limit of $10,000.