

CPLR 325(c): Wrongful Transfer to Lower Court Does Not Affect Monetary Jurisdiction Limit of that Court

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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*,⁶² 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.⁶³ 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.

⁶² 47 Misc. 2d 126, 261 N.Y.S.2d 820 (County Ct. Essex County 1965).

⁶³ 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.

The plaintiff contended, however, that the transfer was not made pursuant to the CPLR, but instead, was made pursuant to Article 6, Section 19(a) of the New York State Constitution.⁶⁴ Plaintiff further contended that, for transfers made pursuant to section 19(a), the court was authorized to render a judgment for \$10,000 under section 19(j) which provides that "each court shall exercise jurisdiction over any action or proceeding transferred to it pursuant to this section."⁶⁵

The court in rejecting plaintiff's contention relied on section 19(k) which states that the legislature *may* provide that the judgment in a transferred action shall not be subject to the monetary limitation of the court to which it is transferred.⁶⁶ The obvious inference from section 19(k) is that since the legislature has not exercised this power, the lower courts are still subject to their jurisdictional monetary limitations in actions which are transferred to them.

The instant case illustrates the confusion caused by having provisions for transferring actions in both the constitution and the CPLR.

The practitioner should be extremely wary of the fact that although the great majority of county courts now have a monetary jurisdictional limitation of \$10,000, there are still eighteen counties which are subject to the limitation of \$6,000.

ARTICLE 6—JOINER OF CLAIMS, CONSOLIDATION AND SEVERANCE

CPLR 603: Court has discretion to allow severance in furtherance of convenience or to avoid prejudice.

In *Mullett v. Sacco*,⁶⁷ plaintiff, a truck driver, sued defendants as joint tort-feasors for personal injuries sustained as a result of two separate collisions occurring within a matter of minutes. The defendants moved pursuant to CPLR 603 for a severance into two separate causes of action. The court granted the defendants' motion on the ground that it would be in the furtherance of convenience since separate charges to the jury would result in a more equitable assessment of damages. The court, by this action, established a joint trial under CPLR 602, and thus preserved the integrity of each

⁶⁴ "The supreme court may transfer any action . . . except one over which it shall have exclusive jurisdiction which does not depend upon the monetary amount sought, 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" N.Y. CONST. art. VI, § 19(a).

⁶⁵ N.Y. CONST. art. VI, § 19(j).

⁶⁶ N.Y. CONST. art. VI, § 19(k).

⁶⁷ 47 Misc. 2d 441, 262 N.Y.S.2d 796 (Sup. Ct. Onondaga County 1965).