

Citation/Title

628 N.Y.S.2d 660, 216 A.D.2d 200, Brause 59 Co. v. Bridgemarket Associates,
(N.Y.A.D. 1 Dept. 1995)

*660 628 N.Y.S.2d 660

216 A.D.2d 200

Supreme Court, Appellate Division, First Department, New York.

BRAUSE 59 CO. (A New York Partnership), Plaintiff-Respondent,
v.
BRIDGEMARKET ASSOCIATES (A New York Partnership), et al., Defendants-Appellants.
June 27, 1995.

In action against partner and partnership, the Supreme Court, New York County, Cohen, J., denied defendants' motion to dismiss plaintiff's amended complaint for lack of personal jurisdiction, and defendants appealed. The Supreme Court, Appellate Division, held that defendant partner was not protected by doctrine of immunity from service of process in courthouse prior to commencement of traverse hearing.

Affirmed.

West Headnotes

[1] Process ⇨119

313 ----

313II Service

313II(D) Privileges and Exemptions

313k117 Attendance at Court

313k119 Parties.

[See headnote text below]

[1] Process ⇨120

313 ----

313II Service

313II(D) Privileges and Exemptions

313k117 Attendance at Court

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313k120 Witnesses.

To avail himself of doctrine of immunity, which provides generally that nonresident witness or party who voluntarily appears solely to attend legal proceedings is not amenable to service or process, defendant must prove that (1) he is in fact a nonresident, (2) whose sole purpose in appearing is to attend the legal proceedings, and (3) there were no other means of acquiring jurisdiction over his person other than personal service in the state.

[2] Process $\text{\textcircled{C}}$ 119

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313II Service

313II(D) Privileges and Exemptions

313k117 Attendance at Court

313k119 Parties.

Defendant who entered the jurisdiction solely for purpose of participating in traverse hearing to determine propriety of previous attempt to serve him with process was not protected from service by the doctrine of immunity, where personal jurisdiction over him could have been obtained by serving him outside New York. McKinney's CPLR 302, 313.

*661. M.L. Portnoy, for plaintiff-respondent.

D. Harwood, for defendants-appellants.

Before SULLIVAN, J.P., and RUBIN, ROSS and NARDELLI, JJ.

MEMORANDUM DECISION.

Order, Supreme Court, New York County (Beverly Cohen, J.), entered March 10, 1994, which denied the defendants' motion to dismiss plaintiff's amended complaint for lack of personal jurisdiction, unanimously affirmed, with costs.

[1] Defendant Harley Baldwin, a Colorado resident and partner in the defendant partnership, entered this jurisdiction solely for the purpose of participating in a traverse hearing held to determine the propriety of a previous attempt to serve him with process. Plaintiff served Baldwin with process in the courthouse prior to the commencement of the traverse hearing. Defendant contends that he was protected from service by the doctrine of immunity, which provides generally that a nonresident[216 A.D.2d 201] witness or party who voluntarily appears in

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this state solely to attend legal proceedings is not amenable to service of process (see, generally, *Thermoid Company v. Fabel*, 4 N.Y.2d 494, 176 N.Y.S.2d 331, 151 N.E.2d 883).

[2] We have stated that the "purpose of the privilege of immunity is to encourage nonresidents to come within the jurisdiction of this State to attend judicial proceedings where if they had remained outside of the State they would not be subject to the jurisdiction of our courts" (*Chauvin v. Dayon*, 14 A.D.2d 146, 148, 217 N.Y.S.2d 795). Therefore, to avail himself of the doctrine of immunity as it currently is construed in this state a defendant must prove that (1) he or she is in fact a nonresident, (2) whose sole purpose in appearing in New York is to attend the judicial proceedings, and (3) there were no other means of acquiring jurisdiction over his or her person other than personal service in New York (*Moreo v. Regan*, 140 A.D.2d 313, 315, 527 N.Y.S.2d 547). Since it cannot be disputed that personal jurisdiction over defendant Baldwin could have been obtained by serving him outside of New York pursuant to CPLR 302 and 313, he cannot avail himself of the doctrine of immunity in this matter.