St. John's Law Review

Volume 47, March 1973, Number 3 Article 7

CPLR 302(a)(1): Attorney Cannot Predicate Jurisdiction in Action Against Client on Attorney's Legal Services in State for Client

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in its discretion should determine the applicable period of limitations on the basis of the facts in each case, and that the proceeding should be barred if not commenced by the petitioner within a time "reasonably necessary to protect his rights."[23] Here, said the unanimous court, the proceeding would not be maintainable because "[t]he District Attorney is not an unsophisticated litigant and should be expected to act promptly"[24] in such a situation.

Thus, litigants are forewarned not to presume that no time limitation will apply to a petition for a writ of prohibition. If a point in time at which the improper assumption of jurisdiction took place can be pinpointed, the application will be barred if not seasonably made.

ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

CPLR 302(a)(1): Attorney cannot predicate jurisdiction in action against client on attorney's legal services in state for client.

Under CPLR 302(a)(1) a nonresident who individually or through an agent "transacts any business within the state" is subject to in personam jurisdiction. In *Perlman v. Martin*,[25] the plaintiff, a New York attorney, sought recovery of legal fees for professional services allegedly rendered in New York for the defendant, a nondomiciliary, and contended that personal jurisdiction over the defendant could be exercised pursuant to CPLR 302(a)(1) on the basis of the plaintiff's performance of legal services here.

Finding that the mere performance of such services was not an independent basis for long-arm jurisdiction,[26] the Supreme Court, Nassau County, emphasized that a lawyer's role is that of an independent contractor.[27] Thus, the critical issue, as the court noted, was whether the client himself engaged in purposeful activity within the state.[28] Finding the defendant's telephone calls from Washington to New York to retain the plaintiff not a "transaction of business" pursu-

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tage of the appeal procedure available to him as to the order granted by the county judge. *Id.* at 249, 333 N.Y.S.2d at 885.

[23] *Id.* at 250, 333 N.Y.S.2d at 887.

[24] *Id.*

[25] 70 Misc. 2d 169, 332 N.Y.S.2d 360 (Sup. Ct. Nassau County 1972) (mem.).

[26] *Id.* at 170, 332 N.Y.S.2d at 362.

[27] *Id.* at 171, 332 N.Y.S.2d at 363.

[28] *Id., citing* Parke-Bernet Galleries, Inc. v. Franklyn, 26 N.Y.2d 13, 256 N.E.2d 506, 308 N.Y.S.2d 337 (1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 145, 147 (1970); Reich v. Pines Hotel, 68 Misc. 2d 1001, 328 N.Y.S.2d 918 (N.Y.C. Civ. Ct. Queens County 1972), *discussed in The Quarterly Survey*, 47 ST. JOHN'S L. REV. 148, 183 (1972).

ant to CPLR 302(a)(1),[29] the court ordered a traverse hearing to determine if the defendant himself had any requisite contacts with the state.

Perlman, in accord with prior decisional law,[30] recognizes that a lawyer must rely on his client's activities within the state rather than his own activity to perfect jurisdiction in an action against a nondomiciliary client.

CPLR 302(a)(1): Jurisdiction predicated on combination of elements individually insufficient to support jurisdiction.

In *Margaret Watherston, Inc. v. Forman*,[31] the Civil Court, New York County, decided whether the nonresident defendants' activities constituted the transaction of business in New York. The defendants contacted the plaintiff by mail and telephone from Chicago, and then shipped a painting to the plaintiff in New York for restoration. After the work was done in New York and the painting was returned, the defendants refused to pay, claiming unsatisfactory performance. Acknowledging that jurisdiction could not be predicated on a telephone or mail order from outside New York,[32] on the performance of services here,[33] or on the shipment of goods into New York,[34] the court held that the combination of these elements was a sufficient basis for jurisdiction "where defendants import into New York the *res* of the

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29 *Id.*, *citing* Ferrante Equip. Co. v. Lasker-Goldman Corp., 26 N.Y.2d 280, 258 N.E.2d 202, 309 N.Y.S.2d 913 (1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 342, 347 (1970).

30 *See* Glassman v. Hyder, 23 N.Y.2d 354, 244 N.E.2d 259, 296 N.Y.S.2d 783 (1968); McKee Elec. Co. v. Rauland-Borg Corp., 20 N.Y.2d 377, 229 N.E.2d 604, 283 N.Y.S.2d 34 (1967), *discussed in The Quarterly Survey*, 42 ST. JOHN'S L. REV. 615, 617 (1968); Standard Wine & Liquor Co. v. Bombay Spirits Co., 20 N.Y.2d 13, 228 N.E.2d 367, 281 N.Y.S.2d 299 (1967), *discussed in The Quarterly Survey*, 42 ST. JOHN'S L. REV. 436, 447 (1968).

31 70 Misc. 2d 539, 334 N.Y.S.2d 35 (N.Y.C. Civ. Ct. N.Y. County 1972).

32 *Id.* at 540, 334 N.Y.S.2d at 36, *citing* M. Katz & Son Billiard Prods., Inc. v. G. Correale & Sons, Inc., 20 N.Y.2d 903, 232 N.E.2d 864, 285 N.Y.S.2d 871 (1967); Electronic Devices, Inc. v. Mark Rogers Assocs., 63 Misc. 2d 243, 311 N.Y.S.2d 413 (App. T. 2d Dep't 1970) (per curiam).

33 70 Misc. 2d at 540, 334 N.Y.S.2d at 36. The court distinguished cases which predicated jurisdiction on the performance of services in New York, reasoning that the New Yorker was the nonresident defendant's agent. Collateral Factors Corp. v. Meyers, 39 App. Div. 2d 27, 330 N.Y.S.2d 833 (1st Dep't 1972) (per curiam); John De Nigris Assocs., Inc. v. Pacific Air Transp. Int'l, Inc., 38 App. Div. 2d 363, 329 N.Y.S.2d 939 (1st Dep't 1972); Elman v. Belson, 32 App. Div. 2d 422, 302 N.Y.S.2d 961 (2d Dep't 1969), *discussed in The Quarterly Survey*, 44 ST. JOHN'S L. REV. 532, 540 (1970).

34 70 Misc. 2d at 540, 334 N.Y.S.2d at 36, *citing* Standard Wine & Liquor Co. v. Bombay Spirits Co., 20 N.Y.2d 13, 228 N.E.2d 367, 281 N.Y.S.2d 299 (1967), *discussed in The Quarterly Survey*, 42 ST. JOHN'S L. REV. 436, 447 (1968); Kramer v. Vogl, 17 N.Y.2d 27, 215 N.E.2d 159, 267 N.Y.S.2d 900 (1966), *discussed in The Quarterly Survey*, 41 ST. JOHN'S L. REV. 279, 292 (1966). The court distinguished these cases where the shipment of goods into New York was the "essence or end of the contract" from the instant case where the shipment of the painting into New York was "simply the means to or beginning of the contract."