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Article 8

CPLR 302(a)(1): Jurisdiction Predicated on Combination of Elements Individually Insufficient to Support Jurisdiction

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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."

contract upon which services are to be rendered here pursuant to defendants' order telephoned or mailed from out of State."[35] The court concluded that where "[d]efendants have deliberately opted to take advantage of the facilities available here. . . ,"[36] it is not unreasonable that they be held subject to New York jurisdiction.[37]

CPLR 302(a)(1): "Bootstrap" jurisdiction not permitted in enforcement of foreign divorce decrees.

Where jurisdiction is predicated on CPLR 302(a)(1), the cause of action must arise directly from the transaction of business in New York.[38] In *Kochenthal v. Kochenthal*,[39] the Appellate Division, Second Department, determined that the execution of a separation agreement in New York by New York domiciliaries, "sounds in contract" and therefore constitutes a transaction of business under CPLR 302(a)(1). Subsequently, in *Lawrenz v. Lawrenz*,[40] the Westchester County Family Court held that it could exercise personal jurisdiction over a nondomiciliary defendant to enforce the support provisions of a bilateral Mexican divorce decree, since those provisions were incorporated into the decree from a New York-executed separation agreement.[41]

In *Carmichael v. Carmichael*,[42] the Second Department was presented recently with the same facts as in *Lawrenz*. The plaintiff sought

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35 70 Misc. 2d at 541, 334 N.Y.S.2d at 36-37.

36 *Id.*, 334 N.Y.S.2d at 37.

37 *Accord*, Parke-Bernet Galleries, Inc. v. Franklyn, 26 N.Y.2d 13, 18, 256 N.E.2d 506, 508, 308 N.Y.S.2d 337, 340 (1970); Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 451-52, 209 N.E.2d 68, 71-72, 261 N.Y.S.2d 8, 13-15, *cert. denied*, 382 U.S. 905 (1965), *discussed in The Biannual Survey*, 40 ST. JOHN'S L. REV. 122, 133 (1965).

38 It is uniformly held that the cause of action must arise directly from the in-state transaction. *See* 7B MCKINNEY'S CPLR 302, commentary at 63-65 (1972) and cases therein cited; 1 WK&M ¶ 302.06a; H. WACHTELL, NEW YORK PRACTICE UNDER THE CPLR 32-34 (3d ed. 1970).

39 28 App. Div. 2d 117, 282 N.Y.S.2d 36 (2d Dep't 1967). *Accord*, Zindwer v. Ehrens, 34 App. Div. 2d 906, 311 N.Y.S.2d 389 (1st Dep't 1970) (mem.). *But see* Willis v. Willis, 42 Misc. 2d 473, 248 N.Y.S.2d 260 (Sup. Ct. N.Y. County 1964) (transaction of business connotes a commercial agreement; separation agreement not encompassed by CPLR 302(a)(1)). The *Willis* analysis, specifically disapproved in *Kochenthal*, is easily refuted, since commercial considerations can be the foundation of a separation agreement. "Extensive provisions are normally made for the division of property, complicated tax structures are often erected, and in many cases escrow funds are created, with banks acing as escrowees." 7B MCKINNEY'S CPLR 302, commentary at 83 (1972). *See also* 1 WK&M ¶ 302.06a n.52a.

40 65 Misc. 2d 627, 318 N.Y.S.2d 610 (Fam. Ct. Westchester County 1971).

41 *Id.* at 631, 318 N.Y.S.2d at 615. The court noted that both litigants were New York domiciliaries when the agreement was made, determined that CPLR 302 could properly be used in family court proceedings, and decided that although the cause of action was seemingly based on the terms of the decree, it in fact arose out of the separation agreement. The complaint was dismissed, however, for defective service of process upon the defendant.

42 40 App. Div. 2d 514, 333 N.Y.S.2d 811 (2d Dep't 1972) (mem.).