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CPLR 302(a)(1): "Bootstrap" Jurisdicition Not Permitted in Enforcement of Foreign Divorce Decrees

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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.).

to enforce the alimony and support provisions of a Mexican divorce decree which had been incorporated into the decree from a New York-executed separation agreement. The defendant, a nondomiciliary, had been personally served in New Jersey. The court held that the enforcement proceeding arose "directly out of the activity of the parties in the foreign jurisdiction and only remotely out of the business transacted in New York, i.e., execution of the separation agreement."[43]

The *Carmichael* court stressed the necessity of an immediate nexus between the business transacted in New York and the suit; its decision represents a refusal to loosen the jurisdictional prerequisites as to marital decrees.

ARTICLE 6 — JOINDER OF CLAIMS, CONSOLIDATION AND SEVERANCE

CPLR 603: Law of the case limits the power to sever claims.

Judicial discretion in granting a severance is limited by the doctrine of the law of the case.[44] By refusing severance a court establishes the law of the case and thereby binds other courts of coordinate jurisdiction.[45] Only an intervening new fact would permit another court to decide otherwise.

In *Dain & Dill, Inc. v. Betterton*,[46] the Supreme Court, Putnam County, severed three actions previously consolidated at special term. The Appellate Division, Second Department, reversed, stating that for a court of coordinate jurisdiction to ignore the law of the case was to "arrogate to [itself] powers of appellate review."[47]

ARTICLE 11 — POOR PERSONS

CPLR 1102: Departments divided as to responsibility for indigents' publication costs.

In *Boddie v. Connecticut*,[48] the United States Supreme Court held that due process requires the removal of state monetary bars

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[43] *Id.*, 333 N.Y.S.2d at 812.

[44] "The 'law of the case' ordinarily signifies a proposition of law that has been litigated and is deemed concluded by virtue of a previous *judicial determination* in the same case . . . ." 7 WK&M ¶ 5501.11.

[45] *See* George W. Collins, Inc. v. Olsker-McLain Indus., Inc., 22 App. Div. 2d 485, 257 N.Y.S.2d 201 (4th Dep't 1965), *discussed in The Biannual Survey*, 40 ST. JOHN'S L. REV. 122, 148 (1965). "Setting aside the judicial act of one judge by another of co-ordinate jurisdiction is avoided, wherever possible, as not conducive to the orderly administration of justice." United Press Ass'ns v. Valente, 281 App. Div. 395, 398, 120 N.Y.S.2d 174, 178 (1st Dep't 1953), *aff'd*, 308 N.Y. 71, 123 N.E.2d 888 (1954).

[46] 39 App. Div. 2d 939, 333 N.Y.S.2d 237 (2d Dep't 1972) (mem.).

[47] *Id.*, 333 N.Y.S.2d at 238, *citing* George W. Collins, Inc. v. Olsker-McLain Indus., Inc., 22 App. Div. 2d 485, 489, 257 N.Y.S.2d 201, 205 (4th Dep't 1965).

[48] 401 U.S. 371 (1971), *noted in* 18 CATH. LAW. 67 (1972); 10 DUQUESNE L. REV. 123 (1971); 17 S.D.L. REV. 269 (1972).