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CPLR 301: Parent Corporation Found To Be Doing Business in New York on Agency Theory

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of Haggart,[21] the Surrogate's Court, Chautauqua County, determined whether the decedent's former wife was entitled to apply the twenty-year period to her claim against his estate arising out of support payments, rather than the six-year residuary statute of limitations prescribed in CPLR 213(1).[22]

The plaintiff had obtained a number of court orders requiring the decedent to pay varying amounts for the support of herself and her children. The court distinguished between a claim based on a separation agreement and one due under a final decree of a court. The former, being contractual, is governed by the six-year statute of limitations;[23] the latter is considered a money judgment,[24] imposing a liability on one spouse to pay a sum certain to the other,[25] and thus subject to the twenty-year time limit.

This sound decision clarifies that court-ordered support payments are judgment debts, and thus gives greater protection to a spouse entitled to such monies.

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

CPLR 301: Parent corporation found to be doing business in New York on agency theory.

Jurisdiction may be exercised over a nondomiciliary parent corporation on the basis of its subsidiary's activities within the state if the subsidiary is deemed for jurisdictional purposes either (1) a mere department of the parent, or (2) the parent's agent performing "all the business which [the parent] could do were it here by its own officials."[26] *Sunrise Toyota, Ltd. v. Toyota Motor Co.*[27] illustrates the prerequisites to a finding of the latter relationship.

In *Sunrise Toyota*, the publicly-owned Japanese Toyota manufacturing (Factory) and distributing (Sales) companies jointly and

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21 71 Misc. 2d 157, 335 N.Y.S.2d 751 (Sur. Ct. Chautauqua County 1972).

22 CPLR 213(1) establishes a six-year statute of limitations for actions for which no limitation is specifically fixed by law.

23 *See* Haimes v. Schonwit, 268 App. Div. 652, 52 N.Y.S.2d 272 (2d Dep't), *aff'd*, 295 N.Y. 577, 64 N.E.2d 283 (1945); Winer v. Ginsburg, 35 Misc. 2d 1054, 231 N.Y.S.2d 622 (Sup. Ct. N.Y. County 1962); Estate of Philippe, 31 Misc. 2d 193, 220 N.Y.S.2d 924 (Sur. Ct. N.Y. County 1961), *aff'd mem.*, 14 N.Y.2d 600, 198 N.E.2d 263, 248 N.Y.S.2d 886 (1964).

24 CPLR 105(n) defines a money judgment as "a judgment, or any part thereof, for a sum of money or directing the payment of a sum of money."

25 *See In re* Bassford's Will, 91 N.Y.S.2d 105 (Sur Ct. Westchester County 1949), *aff'd mem.*, 277 App. Div. 1128, 101 N.Y.S.2d 136 (2d Dep't 1950).

26 *See, e.g.*, Sunrise Toyota, Ltd. v. Toyota Motor Co., 55 F.R.D. 519 (S.D.N.Y. 1972); Delagi v. Volkswagenwerk AG, 29 N.Y.2d 426, 278 N.E.2d 895, 328 N.Y.S.2d 653 (1972), *discussed in The Quarterly Survey*, 46 ST. JOHN'S L. REV. 768, 772 (1972).

27 55 F.R.D. 519 (S.D.N.Y. 1972).

wholly owned the United States importer (Importer), a California corporation, which, in turn, wholly owned the United States distributor (Distributor), also a California corporation. Importer took title to the cars it purchased from Sales at a Japanese port of departure. Distributor allocated the vehicles in the United States to either independent wholesale distributors or directly to franchised independent dealers. In addition, Distributor contracted with independent dealers in New York for service and sale of the cars, and pursuant thereto, Distributor's representative entered New York to consult each dealer monthly about service or sales problems. Distributor received directions on important matters from Factory and Sales, whose Joint 1969 Annual Report depicted this sales system as an integrated network. Importer shared the same corporate name as parent Sales except that "U.S.A." was added to Importer's title, and it was listed in the Manhattan telephone directory without the suffix.[28]

Finding these facts insufficient to establish that the subsidiaries were mere departments of the Toyota parents,[29] the United States District Court for the Southern District of New York held that Factory and Sales "created wholly-owned subsidiaries solely to serve their interests"[30] and thus were subject to New York jurisdiction[31] on the agency theory elucidated in *Frummer v. Hilton Hotels International, Inc.*[32]

In *Frummer*, Hilton Reservation Service, a partly-owned[33] New York affiliate of Hilton Hotels International, Inc., a British corporation, operating on a nonprofit basis, performed public relations and reservations acceptance and confirmation services here for its parent, International. Stating that Reservation "does all the business which [International] could do were it here by its own officials,"[34] the Court of Appeals held that International was doing business in New York through the activities of its agent, Reservation.

In so sustaining jurisdiction over a nondomiciliary parent, the

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[28] Although this fact was not litigated, the court took judicial notice of it. *Id.* at 526 n.3.

[29] *Id.* at 528.

[30] *Id.* at 530.

[31] *Id.* at 528.

[32] 19 N.Y.2d 533, 227 N.E.2d 851, 281 N.Y.S.2d 41, *cert. denied*, 389 U.S. 923 (1967), *discussed in The Quarterly Survey*, 42 ST. JOHN'S L. REV. 436, 444 (1968).

[33] International, a Delaware corporation, had complete stock ownership of the British corporate defendant except for one share. It, in turn, was partly owned by Hilton Hotels Corporation, a Delaware corporation. International and Hilton Hotels Corporation jointly owned Hilton Credit Corporation. Reservation was a branch of this latter Hilton affiliate. *Id.* at 540, 227 N.E.2d at 855-56, 281 N.Y.S.2d at 47 (Breitel, J., dissenting).

[34] *Id.* at 537, 227 N.E.2d at 854, 281 N.Y.S.2d at 44.

Sunrise Toyota court distinguished *Delagi v. Volkswagenwerk AG*,[35] wherein the Court of Appeals unanimously held that the German parent was not subject to New York jurisdiction on the basis of its subsidiary's activities on either an agency or department theory. In *Delagi*, the American Volkswagen distributor was a publicly-owned franchise whose only significant contact with the German manufacturer was through its purchase of cars at dockside from the American importer, a wholly-owned subsidiary of the manufacturer, which was not doing business here. In denying jurisdiction, the Court stated that "[w]here, as here, there exists [sic] truly separate corporate entities, not commonly owned, a valid inference of agency cannot be sustained."[36]

The instant court's characterization of the relationship between the Japanese parents and their American subsidiaries as one of agency is in accord with *Frummer* and *Delagi*. Moreover, it fairly places responsibility on the nondomiciliary parents to defend litigation stemming from the purposeful use of the state by their subsidiaries which they planned and at least partially controlled.

CPLR 305(b): Court is powerless to enter default judgment where notice served with summons fails to state object of action.

Although an action is commenced by the service of a summons,[37] a judgment may not be entered against a defaulting defendant unless service of either a complaint or a CPLR 305(b) or 316(a) notice is also proved.[38] In the absence of such proof, a court is without jurisdiction to enter a default judgment.[39] When a plaintiff attempts to serve a summons and notice pursuant to CPLR 305(b), but his notice fails to meet the statutory requirements, what are the jurisdictional consequences?

In *Arden v. Loew's Hotels, Inc.*,[40] the plaintiff commenced a personal injury action by service of a summons containing a notice stating the amount of damages sought, but not the nature of the claim. The notice was, therefore, defective in that, while it set forth the relief sought, it failed to state the object of the action as required by CPLR 305(b).[41] Finding that the defendant was aware of the nature and the

35 29 N.Y.2d 426, 278 N.E.2d 895, 328 N.Y.S.2d 653 (1972).

36 *Id.* at 431, 278 N.E.2d at 897, 328 N.Y.S.2d at 656.

37 CPLR 304.

38 CPLR 3215(e).

39 *See* McDermott v. Hoenig, 32 App. Div. 2d 838, 302 N.Y.S.2d 280 (2d Dep't 1968) (mem.); Malone v. Citarella, 7 App. Div. 2d 871, 182 N.Y.S.2d 200 (2d Dep't 1959) (mem.).

40 40 App. Div. 2d 894, 337 N.Y.S.2d 669 (3d Dep't 1972) (mem.).

41 CPLR 305(b) provides in pertinent part: