

CPLR 302(a)(1): Further Construction of the Phrase "Transaction of Business"

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that the defendant retained sufficient contacts with New York to enable the court to grant incidental in personam relief without "offend[ing] traditional notions of fair play and substantial justice,"¹⁸ and that

[p]ublic policy and interest of the State in the marital status and financial support of a dependent wife dictate that this court should assume such jurisdiction in matrimonial actions . . . as may be constitutionally permissible.¹⁹

Although the dissenting opinion is supported by authority in foreign jurisdictions, until the Legislature acts to include marital actions under the long-arm statute,²⁰ no in personam relief should be awarded against a nondomiciliary served without the state who does not appear in the action or otherwise consent to in personam jurisdiction. Until that time, plaintiffs may seek support either by a Uniform Support Act proceeding²¹ or by bringing an action in the defendant's state or domicile.

CPLR 302(a)(1): Further construction of the phrase "transaction of business."

The Southern District Court of New York has chosen, in *Monclair Electronics, Inc. v. Electra Midland Corp.*,²² to exercise personal jurisdiction over a foreign corporation under CPLR 302(a)(1)²³ rather than under CPLR 301.²⁴ Defendant's contacts with this state, which the court concluded constituted transaction of business, included: (1) preliminary negotiations in New York by a high level corporate officer; (2) three trips by another corporate officer concerning the contract, both before and after its execution; (3) expectation of substantial economic benefit from the above excursions into the state; (4) maintenance of a New York bank account; and (5) advertisement of its products in two New York trade publications.²⁵

Compared with *McKee Electric Co. v. Rauland-Barg Corp.*,²⁶ the

¹⁸ 37 App. Div. 2d at 187, 323 N.Y.S.2d at 149 (Eager, J., dissenting), quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

¹⁹ 37 App. Div. 2d at 187, 323 N.Y.S.2d at 149 (Eager, J., dissenting).

²⁰ See, e.g., *Mizner v. Minzer*, 84 Nev. 268, 439 P.2d 679, cert. denied, 393 U.S. 847, rehearing denied, id. 972 (1968).

²¹ See DRL §§ 31-42 (McKinney 1964).

²² 326 F. Supp. 839 (S.D.N.Y. 1971).

²³ CPLR 302(a)(1) provides that "a court may exercise personal jurisdiction over any nondomiciliary . . . who in person or through an agent . . . transacts any business within the state."

²⁴ 326 F. Supp. at 841.

²⁵ *Id.* at 841-42.

²⁶ 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. 616, 617 (1968).

facts of *Monclair* are clearly sufficient to constitute a "transaction of business"²⁷ under 302(a)(1).²⁸ In *McKee*, where jurisdiction under 302(a)(1) was denied, the defendant had made less than five percent of its sales to independent distributors in New York.²⁹ Additionally, two of its representatives had conferred in New York for approximately two hours with the plaintiff, and its northeastern representative had visited a co-defendant New York company³⁰ "a few times"³¹ concerning this dispute. While it is clear that "every corporation whose officers or sales personnel happen to pass the time of day with a New York customer in New York [should not run] the risk of being subjected to the personal jurisdiction of our courts,"³² where, as in *Monclair*, no such danger exists,³³ jurisdiction under 302(a)(1) should be upheld.

CPLR 302(a)(1): Third party's video tape distribution in New York of monologue not a "transaction of business" by performer.

Whether a nondomiciliary who defames without the state may be subject to in personam jurisdiction depends upon whether the defamation constitutes "transaction of business" under CPLR 302(a)(1).³⁴ This, in turn, may depend upon the contractual relationships of various parties.

In *Streslin v. Barrett*,³⁵ the nondomiciliary defendant, a television newscaster, allegedly libeled the plaintiff in a monologue broadcast in New York. The monologue had been performed by defendant Barrett and recorded by her co-defendant, Metromedia, Inc., in California. The trial court denied defendant Barrett's motion to dismiss for want

²⁷ Moreover, there was a second basis of jurisdiction: (1) solicitation by two commission companies and their distributors, who had received the exclusive right to sell defendant's products in New York; and (2) the advertisement in the two New York trade magazines.

²⁸ In addition to the fact that *Monclair* presents a dramatic increase in contact with New York, it is noteworthy that denial of jurisdiction in *McKee* was by a vote of four to three.

²⁹ 20 N.Y.2d at 379, 229 N.E.2d at 605, 283 N.Y.S.2d at 35.

³⁰ *Id.* at 380, 229 N.E.2d at 606, 283 N.Y.S.2d at 36.

³¹ *Id.* (italics omitted).

³² 20 N.Y.2d at 382, 229 N.E.2d at 607, 283 N.Y.S.2d at 37.

³³ In *Monclair*, the activity of the defendant's representatives in New York was a necessary part of the transaction. By contrast, the New York activity in *McKee* was neither significant nor necessary to the transaction between the parties.

³⁴ CPLR 302(a)(2) expressly provides that defamation is not a tort whose commission without the state permits the exercise of in personam jurisdiction. However, "if the defamation grows out of the transaction of business in New York, the preceding subdivision [302(a)(1)] would ensnare the defendant since no exceptions are made therein for defamation." 7B MCKINNEY'S CPLR 302, commentary at 443 (1963). See SECOND REP. 39. See also *The Quarterly Survey*, 44 ST. JOHN'S L. REV. 135, 138 (1969).

³⁵ 36 App. Div. 2d 923, 320 N.Y.S.2d 885 (1st Dep't 1971) (per curiam).