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 "offending traditional notions of fair play and substantial justice," 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.

Although the dissenting opinion is supported by authority in foreign jurisdictions, until the Legislature acts to include marital actions under the long-arm statute, 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 proceeding 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., to exercise personal jurisdiction over a foreign corporation under CPLR 302(a)(1) rather than under CPLR 301. 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.

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

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21 See DRL §§ 31-42 (McKinney 1964).
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.
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 company\(^30\) "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

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\(^{27}\) 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.

\(^{29}\) *Id.* at 380, 229 N.E.2d at 606, 283 N.Y.S.2d at 36.

\(^{30}\) *Id.* (italics omitted).

\(^{31}\) 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.

\(^{32}\) 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 (1965). See Second Rep. 39. See also The Quarterly Survey, 44 St. John's L. Rev. 135, 138 (1969).

\(^{33}\) 36 App. Div. 2d 923, 320 N.Y.S.2d 885 (1st Dep't 1971) (per curiam).