CPLR 1005(a): New York Court Refuses To Extend Basis for Class Actions

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the apartment during the entire week prior to service of process.\textsuperscript{54} The court cited \textit{Pickford v. Kravetz},\textsuperscript{55} in which it had been held that a hotel where defendant was a guest for one week constituted his dwelling place. It noted that "Warren Avis' connection with the Park Avenue apartment is considerably greater than a transient's nexus to a hotel."\textsuperscript{56}

The court's construction of "dwelling place" as being broader than "residence" is a most pragmatic one. For, "[i]n a highly mobile society it is unrealistic to interpret CPLR 308(2) as mandating service at only one location where, in fact, a defendant maintains several dwelling places."\textsuperscript{57} Furthermore, such decision is in accord with the underlying purpose of CPLR 308(2), \textit{i.e.}, to assure fair notice to the defendant.\textsuperscript{58} It cannot be argued seriously that delivery of process to an individual of suitable age and discretion at an apartment such as the one discussed above, is not well calculated to give fair notice to the defendant.\textsuperscript{59}

\textbf{ARTICLE 10—PARTIES GENERALLY}

\textit{CPLR 1005(a): New York court refuses to extend basis for class actions.}

With the advent of the consumer protection movement, there has been an upsurge in interest in the class action.\textsuperscript{60} In the recent case of \textit{Zachary v. R. H. Macy \& Co.},\textsuperscript{61} the Supreme Court, New York County, declined to liberalize the requirements for instituting such actions. While deploring the inadequacy of solutions, the court concluded that plaintiff Zachary could not institute a class action. Zachary alleged that Macy's bookkeeping system imposed interest upon previous financing charges, but was not a proper party because her account had not yet been charged such interest.\textsuperscript{62}
New York's concept of the class action has undergone only slight revision since its initial appearance in the Field Code in 1848. Nevertheless, finding a representative to commence the action is no simple matter. Actions have been denied in cases where the question raised, the remedy sought, or the defenses available differed with each party. Not only must a class representative show a cause of action, but he must also show "that he is bound by a 'unity of interest' with other members of the alleged class." In the instant case the court provided no guidance as to what actually constitutes the "unity of interest" demanded. Previously, an alleged class action based on similarity of contracts had been disallowed by the Court of Appeals. Although recognizing that other jurisdictions, including the federal, are much more receptive to class actions, the Zachary court refused, under stare decisis, to extend the New York rule.

If higher courts are not willing to extend CPLR 1005(a) by overruling or limiting Hall v. Coburn Corp. of America, which viewed the class action restrictively, legislative reevaluation is clearly necessary. The consumer must have a viable class action weapon.