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CPLR 302(a)(1) & (3)(ii): Case Illustrates Transaction of Business and Limitation of Tort Subdivision

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CPLR 302(a)(1) & (3)(ii): Case illustrates transaction of business and limitation of tort subdivision.

In *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.* the Court of Appeals noted that the Legislature deliberately determined to fix flexible guidelines in enacting CPLR 302.[37] *American Eutectic Welding Alloys Sales Co., Inc. v. Dytron Alloys Corp.*[38] is another example of the resultant determination of the jurisdictional question on a case-by-case basis, this time by a federal court of appeals seeking to divine what New York courts would do if confronted with the complicated fact pattern.

American Eutectic was a diversity action by former employers (New York corporations) against former employees (nondomiciliaries) and their subsequent employer (Michigan corporation) seeking, *inter alia*, an injunction against use or disclosure of confidential information imparted to said former employees. The district court quashed service of process and dismissed the action against all defendants for lack of jurisdiction. Plaintiffs appealed.[39]

Plaintiffs attempted to secure jurisdiction of their former employees under CPLR 302(a)(1), which authorizes personal jurisdiction over nondomiciliaries who "transact any business" in New York.[40] These employees had received intensive three-month training courses in New York, during which time plaintiffs had paid their salaries and living expenses and had instructed them in metallurgy and in their specific welding techniques. Subsequently, said employees were assigned to sales areas outside New York and were given customer control cards containing information which they promised to keep confidential. Additionally, said employees agreed not to work for a competitor in their respective territories for two years from termination of their employment. During their periods of employment with plaintiffs, five and thirteen years respectively, said employees were in continuous contact with New York by telephone regarding orders and business problems.[41] The court of appeals concluded that said employees participated in "purposeful acts" in New York[42] and held that by their conduct they transacted business within New York, out of which plaintiffs' cause of action arose, within the meaning of CPLR 302(a)(1).[43]

[37] 15 N.Y.2d 443, 456, 209 N.E.2d 68, 75, 261 N.Y.S.2d 8, 18 (1964), *cert. denied*, 382 U.S. 905 (1965).

[38] 439 F.2d 428 (2d Cir. 1971).

[39] *Id.* at 429.

[40] *See* 7B McKINNEY'S CPLR 302 (1963); 1 WK&M ¶ 302 (1969).

[41] 439 F.2d at 430.

[42] *Id.* at 431.

[43] *Id.* at 432.

Plaintiffs also argued that the court had jurisdiction over the corporate defendant, under CPLR 302(a)(3)(ii), which authorizes personal jurisdiction over a nondomiciliary who

> 3. Commits a tortious act without the state causing injury to person or property within the state, . . . if he
>
> (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.

The decisive question was whether the acts of said corporate defendant caused injury to plaintiffs within New York. Plaintiffs maintained that said defendant injured them in New York by depriving them of customers in Kentucky and Pennsylvania. The court rejected this contention, reasoning that for jurisdictional purposes the situs of an injury resulting from an act of unfair competition is the place where plaintiff lost business.[44] Under this analysis, the court added, the action would be tried in a forum reasonably foreseeable by the alleged tortfeasor and in the place where the acts in dispute occurred.[45] While it is true that plaintiffs did suffer derivative commercial injury in this state, said injury was solely the result of their domiciles being in New York, and therefore insufficient basis for jurisdiction.[46] The court rejected the proposition that injury must occur in New York if a plaintiff is in New York when said injury occurs. " 'The potential of so sweeping a doctrine is enormous,' " the court observed, " 'and it is suggested, in many cases would violate due process.' "[47] Hence, it affirmed the district court's dismissal for want of jurisdiction of the action against the corporate defendant.[48] Thus, personal jurisdiction was secured over the employees, for transaction of business, but not over the corporation, for its alleged tort did not cause injury in New York.

The court of appeals has wisely interpreted the meaning of the phrase "injury . . . within the state" in CPLR 302(a)(3). The Legislature did not intend to extend jurisdiction to the full extent constitutionally permissible.[49] The decision in *American Eutectic* is consistent with both legislative intent and sound public policy.[50]

[44] *Id.* at 433; *see* Spectacular Promotions, Inc. v. Radio Station WING, 272 F. Supp. 734, 737 (E.D.N.Y. 1967).

[45] *Id.*

[46] *See* Friedr. Zoellner (New York) Corp. v. Tex Metals Co., 396 F.2d 300, 303 (2d Cir. 1968); Black v. Oberle Rentals, Inc., 55 Misc. 2d 398, 285 N.Y.S.2d 226 (Sup. Ct. Onondaga County 1967). *But see* General Motors Acceptance Corp. v. Richardson, 59 Misc. 2d 744, 300 N.Y.S.2d 757 (Sup. Ct. Monroe County 1969).

[47] 439 F.2d at 434, *quoting* J. McLaughlin, 7B McKinney's CPLR 302, supp. commentary at 123 (1970).

[48] *Id.* at 435.

[49] Twelfth Annual Report of the Judicial Conference of the State of New York 339-41 (1967) [hereinafter Twelfth Rep.].

[50] "Enthusiasm for extending jurisdiction over foreign persons . . . in limited contact