

CPLR 302(a)(2): Personal Jurisdiction Secured Over Nondomiciliary Who Through an Agent Committed a Tort in New York

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CPLR 302(a)(2): Personal jurisdiction secured over nondomiciliary who through an agent committed a tort in New York.

CPLR 302(a)(2) authorizes the exercise of personal jurisdiction over a nondomiciliary who commits a tortious act (except defamation) within New York either in person or by an agent.⁵¹ *Neilson v. Sal Martorano, Inc.*⁵² is a healthy example of the successful invocation of this provision against a nondomiciliary who through an agent commits a tort within this state.

In *Neilson*, plaintiff sought to recover from defendant Perez moneys allegedly paid to her by the defendant corporation to satisfy certain mortgages. Plaintiff alleged that no consideration for said mortgages was provided by the former defendant. Defendant Perez moved to dismiss the complaint against her for want of personal jurisdiction, but the supreme court denied her motion. On appeal the appellate division affirmed, for there were facts tending to prove that defendant Perez participated in fraudulent conveyances within this state through agents.⁵³ "A trier of the facts," the court concluded, "could find that the defendant Perez conspired with her brother to effect fraudulent conveyances, that he acted as her agent in preparing and recording the mortgages and in the payment to her in satisfaction of the mortgages, and that those acts therefore constituted tortious acts in New York."⁵⁴

CPLR 315: Indigent has constitutional right to free publication in divorce action.

The right of indigents to maintain marital actions regardless of their inability to pay court fees and costs has been established.⁵⁵ This does not, however, break all financial barriers confronting an indigent

cases. . . . may well be tempted by the expectation that the same rule will be reciprocally applied . . ." *A. Millner Co. v. Noudar*, LDA, 24 App. Div. 2d 326, 329, 266 N.Y.S.2d 289, 294 (1st Dep't 1966).

Limitations were inserted deliberately into CPLR 302 to keep said provision "well within constitutional bounds." TWELFTH REP. 341.

⁵¹ See 1 WK&M ¶ 302.10.

⁵² 36 App. Div. 2d 625, 319 N.Y.S.2d 480 (2d Dep't 1971).

⁵³ *Id.*, 319 N.Y.S.2d at 481.

⁵⁴ *Id.* at 626, 319 N.Y.S.2d at 482.

⁵⁵ *Boddie v. Connecticut*, 401 U.S. 371 (1971). Justice Harlan, speaking for the Court, stated:

Our conclusion is that, given the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship, due process does prohibit the state from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages.

Boddie recognized an alternative to publication, *i.e.*, "service at defendant's known address by mail and posted service . . ." *Id.* at 382. See also Note, *Litigation Costs: The Hidden Barrier to the Indigent*, 56 GEO. L.J. 516 (1968).