St. John's Law Review

Volume 45
Number 3 *Volume 45, March 1971, Number 3*

Article 29

CCA 404: Execution within New York City of Contract To Send Child to Summer Camp Is Not a Transaction of Business

St. John's Law Review

soned that if the ten-day period is indeed a statute of limitations, then the movant should be afforded a *full* ten days in which to act.

In *Knickerbocker Insurance Co. v. Gilbert*[176] the opposite position was taken by the Appellate Division, First Department. A notice of intention to arbitrate was served on December 1, 1969. On December 11, petitioner posted by certified mail a notice of petition for a stay of arbitration which was received on the following day. Service was deemed untimely on the ground that the moving papers were not received within ten days after service of the notice of intention to arbitrate.

The court compared the situation at hand to cases holding that the ten-day period did not begin to run until the notice of intention to arbitrate was actually received[177] and concluded that since the legislature employed identical language in both parts of CPLR 7503(c) the constructions should be identical. In so doing, the court utilized cases which attempted to afford the practitioner a full ten days in which to act as a postulate for an outcome which drastically reduces the number of days in which to act. But, practical considerations were of little import to the court inasmuch as "[e]xpediency and convenience have no place in determining questions of jurisdiction."[178]

In view of the stringent constructions placed on CPLR 7503(c),[179] it is extremely unfortunate that the *Knickerbocker* court refused to offer some relief to the belabored practitioner. It would have facilitated greatly the processing of an application to stay arbitration if the First Department had sanctioned a procedure whereby the attorney could mail the moving papers on the tenth day and use the return receipt as evidence that they were in fact mailed on that date. As the law stands under *Knickerbocker*, the attorney must either mail his moving papers at least three days before the expiration of the ten-day period or abandon the mailing provision altogether in favor of personal delivery.

New York City Civil Court Act

CCA 404: Execution within New York City of contract to send child to summer camp is not a transaction of business.

"CCA § 404 *is* CPLR § 302, tailored to fit the jurisdiction of the Civil Court."[180] It follows, therefore, that case law arising under CPLR

176 35 App. Div. 2d 21, 312 N.Y.S.2d 406 (1st Dep't 1970).

177 *See* cases cited note 171 *supra*.

178 35 App. Div. 2d at 21, 312 N.Y.S.2d at 408.

179 *See, e.g.*, Jonathan Logan, Inc. v. Stillwater Worsted Mills, Inc., 24 N.Y.2d 898, 249 N.E.2d 477, 301 N.Y.S.2d 636 (1969); General Accident & Life Assurance Corp. v. Cerretto, 60 Misc. 2d 216, 303 N.Y.S.2d 223 (Sup. Ct. Monroe County 1969).

180 29A McKinney CCA, commentary at 103 (1963).

302 serves as a useful reference in civil court cases.[181] Unfortunately, the construction problems arising in the supreme court under the CPLR are also encountered by the civil court in interpreting its own long-arm provision. For example, the New York City Civil Court in *Crystal Lake Camp Corp. v. Silver*[182] was confronted with a recurring question: what type of activity constitutes "business" under the long-arm statute?

In *Crystal Lake* the parties had executed a contract at plaintiff's office in Queens whereby defendant, a Nassau County resident, agreed to send her son to plaintiff's summer camp in upstate New York. Defendant reneged; plaintiff sued. In granting defendant's motion to dismiss the action for lack of personal jurisdiction, the court proferred two reasons: the defendant had not purposely availed herself of the privilege of conducting business in New York City, and the transaction between the parties was devoid of any real business characteristics.

As mentioned above, plaintiff's camp was located outside New York City. Thus, nothing other than the signing of the contract in Queens connected the transaction with the forum. And, the court regarded this singular event as insufficient, in and of itself, to constitute a transaction of business within New York City,[183] particularly because the locus of execution was wholly fortuitous; there was little doubt that the contract would have been signed at defendant's residence had she so desired. Accordingly, the court concluded that defendant had not met the purposeful availment criterion established in *Hanson v. Denckla*.[184]

While the first aspect of the court's decision was well reasoned and sound, the validity of the second ground for dismissal is debatable. Focusing on the word "business" in the long-arm statute, the court undertook to determine whether "those whose activities within the concerned jurisdiction are not profit-making or commercial in character"[185] are subject to jurisdiction under CCA 404(a)(1). In the process of deciding that defendant's conduct did not constitute "business" within the meaning of CCA 404(a), the court distinguished cases involving separation agreements[186] on the ground that they are based on "very distinct con-

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181 Similarly, CPLR 302 case law is applicable in cases arising under the district court's long-arm statute, UDCA 404.

182 63 Misc. 2d 562, 313 N.Y.S.2d 68 (N.Y.C. Civ. Ct. N.Y. County 1970).

183 The court thus heeded the following admonition: "Care should be taken against placing too much stock in the place where the contract is executed . . . ." 7B McKINNEY'S CPLR 302, supp. commentary at 137 (1965). *See also* M. Katz & Son Billiard Prods., Inc. v. G. Correale & Sons, Inc., 26 App. Div. 2d 52, 270 N.Y.S.2d 672 (1st Dep't), *aff'd*, 29 N.Y.2d 903, 232 N.E.2d 864, 285 N.Y.S.2d 871 (1966); A. Millner Co. v. Noudar, LDA, 24 App. Div. 2d 326, 266 N.Y.S.2d 289 (1st Dep't 1966).

184 357 U.S. 235 (1958).

185 63 Misc. 2d at 563, 313 N.Y.S.2d at 69.

186 Courts have recognized the commercial aspects of a seperation agreement and have

siderations implicit in the matrimonial area."[187] Next, *Parke-Bernet Galleries, Inc. v. Franklyn*[188] was distinguished inasmuch as it concerned "a prolonged course of competitive bidding to acquire valuable objects, . . . at a total price of $96,000."[189]

The distinction between *Crystal Lake* and earlier cases is not so readily perceived. Although the decisions have not been without opposition,[190] courts have recognized the commercial nature of separation agreements despite the absence of a profit motive.[191] And, in *Parke-Bernet* the Court of Appeals intimated that one need not be in business in order to be deemed to have transacted business. Moreover, CPLR 302 has been extended so far as to secure jurisdiction over the donees of a gift.[192] In short, there is no indication that the long-arm statute is confined to corporate enterprise effecting profit through commercial transactions in the forum.

Notwithstanding the failure to discern what could possibly be deemed a business transaction, *Crystal Lake* should withstand appellate attack. The decision that defendant had not transacted business in New York City is in accord with those cases holding that domestic execution of a contract is not the sole criterion for determining whether a defendant has transacted business in the forum.[193] Moreover, the consequence of the court's holding is minimized by the fact that plaintiff is not compelled thereby to undergo the expense of out-of-state litigation; it can either sue in Nassau County or commence its action in the New York County Supreme Court.[194]

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sustained jurisdiction in such circumstances. *See* Kochenthal v. Kochenthal, 52 Misc. 2d 437, 275 N.Y.S.2d 951 (Sup. Ct. Nassau County 1966); Raschitore v. Fountain, 52 Misc. 2d 402, 275 N.Y.S.2d 709 (Sup. Ct. Monroe County 1966) (dictum); Todd v. Todd, 51 Misc. 2d 94, 272 N.Y.S.2d 455 (Sup. Ct. Nassau County 1966) (dictum).

187 63 Misc. 2d at 564, 313 N.Y.S.2d at 71.

188 26 N.Y.2d 13, 256 N.E.2d 506, 308 N.Y.S.2d 337 (1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 145, 147 (1970).

189 63 Misc. 2d at 565, 313 N.Y.S.2d at 71. The *Crystal Lake* court was of the opinion that whether the defendant in *Parke-Bernet* had purchased the paintings for pleasure or investment was immaterial. Instead, the court focused primarily on the fact that the paintings cost $96,000. However, it should be noted that huge claims are without the jurisdiction of the civil court and the enormity of a claim vis-à-vis constituting a transaction of business must be viewed on a much smaller scale.

190 *See* Whitaker v. Whitaker, 56 Misc. 2d 625, 289 N.Y.S.2d 465 (Sup. Ct. Ulster County 1968) (dictum); Willis v. Willis, 42 Misc. 2d 473, 248 N.Y.S.2d 260 (Sup. Ct. New York County 1964).

191 *See* note 186 *supra*.

192 Parker v. Rogerson, 33 App. Div. 2d 284, 307 N.Y.S.2d 986 (4th Dep't 1970), *appeal dismissed*, 26 N.Y.2d 964, 259 N.E.2d 479, 311 N.Y.S.2d 7 (1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 145, 149-50 (1970).

193 *See* note 183 *supra*.

194 Of course, the decision does affect plaintiff in that by suing in the supreme court it may be denied costs of the action. *See* CPLR 8102.