

December 2012

# CPLR 302(a)(1): Perfection of Security Agreement and Liquidation of Assets in New York Deemed a Transaction of Business

St. John's Law Review

Follow this and additional works at: <http://scholarship.law.stjohns.edu/lawreview>

---

### Recommended Citation

St. John's Law Review (2012) "CPLR 302(a)(1): Perfection of Security Agreement and Liquidation of Assets in New York Deemed a Transaction of Business," *St. John's Law Review*: Vol. 45: Iss. 3, Article 33.

Available at: <http://scholarship.law.stjohns.edu/lawreview/vol45/iss3/33>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact [cerjanm@stjohns.edu](mailto:cerjanm@stjohns.edu).

courts are discerning jurisdictional prerequisites with remarkable facility.

The *Survey* sets forth in each installment those cases which are deemed to make the most significant contribution to New York's procedural law. Due to limitations of space, however, many other less important, but, nevertheless, significant cases cannot be included. While few cases are exhaustively discussed, it is hoped that the *Survey* accomplishes its basic purpose, *viz.*, to key the practitioner to significant developments in the procedural law of New York.

The Table of Contents is designed to direct the reader to those specific areas of procedural law which may be of importance to him. The various sections of the CPLR which are specifically treated in the cases are listed under their respective titles.

ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE  
AND CHOICE OF COURT

*CPLR 302(a)(1): Perfection of security agreement and liquidation of assets in New York deemed a transaction of business.*

CPLR 302(a)(1) authorizes the assumption of in personam jurisdiction over any nondomiciliary who, in person or through an agent, "transacts any business" in New York. Inasmuch as the legislature elected not to establish precise guidelines when enacting this subsection,<sup>1</sup> the determination of whether a defendant has transacted business in the state must be made according to the circumstances of each case. *Alan Howard, Inc. v. American Acceptance Corp.*<sup>2</sup> is yet another illustration of the novel factual situations which have arisen under this proviso.<sup>3</sup>

Defendant, a Delaware corporation which neither maintained an office nor conducted business in New York, had advanced money to Hale's Bedding Stores of New York, Inc. (Hale's) and received in return a security interest in the latter's inventory, accounts receivable and contract rights within the state. This agreement was perfected by filing a financing statement with the Secretary of State and the appropriate county clerk. Subsequently, Hale's assets were liquidated and

<sup>1</sup> *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 456, 209 N.E.2d 68, 75, 261 N.Y.S.2d 8, 18, *cert. denied*, 382 U.S. 905 (1965); *see also* SECOND REP. 39-40.

<sup>2</sup> 35 App. Div. 2d 923, 316 N.Y.S.2d 1 (1st Dep't 1970) (*per curiam*).

<sup>3</sup> *E.g.*, *Aquascutum of London, Inc. v. S. S. American Champion*, 426 F.2d 205 (2d Cir. 1970) and *Ferrante Equip. Co. v. Lasker-Goldman Corp.*, 26 N.Y.2d 280, 258 N.E.2d 202, 309 N.Y.S.2d 913 (1970), *discussed in The Quarterly Survey*, 45 ST. JOHN'S L. REV. 342, 345 (1970); *Parke-Bernet Galleries, Inc. v. Franklyn*, 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, 148 (1970).

applied in partial satisfaction of defendant's loan. Plaintiff, a judgment creditor of Hale's, sued to recover that portion of the proceeds which resulted from the surrender by Hale of a lease to property situated in New York. Allegedly, the appropriation by defendant of this money was effected with knowledge of Hale's insolvency and was not authorized by the security agreement. The lower court dismissed the action for lack of jurisdiction. The Appellate Division, First Department reversed, holding that the perfection of the security interest in New York and the partial liquidation of Hale's assets by defendant constituted purposeful transactions under the long-arm statute.

*CPLR 302(a)(3)(ii): National manufacturer automatically satisfies general foreseeability criterion.*

CPLR 302(a)(3) was recommended by the Judicial Conference<sup>4</sup> and promptly enacted by the Legislature<sup>5</sup> in response to the Court of Appeals decision in *Feathers v. McLucas*.<sup>6</sup> There, the Court dismissed, for want of jurisdiction, an action in tort against a foreign corporation selling steel products on a national scale and presumably realizing that a defective product could be brought into New York.<sup>7</sup> CPLR 302(a)(3) (ii) therefore provides personal jurisdiction over any nondomiciliary who, in person or by an agent, commits a tort (except defamation) outside New York causing injury therein, if he "expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce."<sup>8</sup> New Yorkers thereby received greater protection, while the restrictions included in this subsection equipped the courts with latitude sufficient to safeguard the rights of nonresident defendants and to insure justice in the particular circumstances of each case.<sup>9</sup>

Theoretically, both elements of CPLR 302(a)(3)(ii) must be satis-

<sup>4</sup> Report to the 1966 Legislature in Relation to the Civil Practice Law and Rules, TWELFTH ANNUAL REPORT OF THE JUDICIAL CONFERENCE OF THE STATE OF NEW YORK 337, 339-44 (1967) [hereinafter TWELFTH REP.].

<sup>5</sup> See 7B MCKINNEY'S CPLR 302, supp. commentary at 128 *et seq.* (1966); 1 WK&M ¶ 302.10a (1969); Homburger & Laufer, *Jurisdiction Over Foreign Torts: The 1966 Amendment of New York's Long-Arm Statute*, 16 BUFFALO L. REV. 67 (1967).

<sup>6</sup> 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8, *cert. denied*, 382 U.S. 905 (1965).

<sup>7</sup> *Id.* at 458, 209 N.E.2d at 76, 261 N.Y.S.2d at 19-20.

<sup>8</sup> Emphasis added. There need not be a connection between the tort and the derivation of substantial revenue from interstate or international commerce. 1 WK&M ¶ 302.10a.

<sup>9</sup> "Enthusiasm for extending jurisdiction over foreign persons . . . in limited contact cases . . . may well be tempered 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).

The limitations were inserted deliberately to keep the provision "well within constitutional bounds." TWELFTH REP. 341.