

CPLR 302: Jurisdiction Not Obtained in Defamation Action Because Defamation Did Not Arise from Transaction of Business

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more detailed pleading is required. Notwithstanding Judge Shapiro's praise, the practitioner is well advised to continue to heed the issuer's caveats.

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

CPLR 302: Jurisdiction not obtained in defamation action because defamation did not arise from transaction of business.

CPLR 302(a)(1) enables a plaintiff to obtain jurisdiction over a non-domiciliary defendant where the cause of action arises out of the "transaction of business" by the defendant within the state. While the "long-arm" statute may not be used to obtain jurisdiction in defamation actions based on tortious acts committed within or without the state and resulting in injury within the state,⁷ no such limitation exists where such a cause of action arises from the *transaction of business* within the state.⁸

In a recent libel action,⁹ defendants moved to dismiss the complaint for lack of jurisdiction. In granting the motion, the Supreme Court, New York County, indicated that while the defendant had transacted business within the state, the claim did not arise from such transaction of business. The defendant's contacts with the state included the direct solicitation of advertising amounting to only slightly more than three percent of its advertising revenue. Furthermore, the average daily circulation in New York of defendant's newspaper, the Baltimore Sun, was less than three percent of its total average daily circulation. The court decided that the acts of publication and circulation which gave rise to plaintiff's complaint occurred in Baltimore.

If the cause of action had been brought by a New York subscriber for failure to deliver the paper, jurisdiction would obviously have been acquired by service under CPLR 302(a)(1), since the cause of action would then have arisen out of the transaction of business by the defendant within the state.

ARTICLE 10 — PARTIES GENERALLY

CPLR 1021: Motion to dismiss for failure to substitute denied pending the appearance of the adversary.

CPLR 1021 provides that "[i]f the event requiring substitution occurs before judgment and substitution is not made within a reason-

⁷ CPLR 302(a)(2) & (3).

⁸ CPLR 302(a)(1).

⁹ *American Radio Ass'n v. A.S. Abell Co.*, 58 Misc. 2d 483, 296 N.Y.S.2d 21 (Sup. Ct. N.Y. County 1968).