

CPLR 302(a)(3): Jurisdiction Obtained in Conversion Action

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the Supreme Court's requirement of minimum contacts⁵⁴ with the state of the forum. Judge Mansfield opined that

[t]he standards set forth by the Supreme Court contemplate a more substantial contact with the forum state itself as opposed to a general engagement in interstate commerce.⁵⁵

As to Grover, the sole jurisdictional issue was whether CPLR 302(a)(3)(ii) was constitutionally applicable. The court answered this question in the negative because Blumenthal failed to prove that Grover regularly introduced goods into interstate commerce. Furthermore, the jurisdictional reasoning applicable to Christians could be applied even more so to Grover because the latter had even fewer contacts with New York:

If Grover could be brought into this action, then any supplier of raw material to a manufacturer which engages in interstate commerce could be compelled to defend an action in foreign jurisdictions with which the supplier has never had any contact.⁵⁶

The court's discussion of due process and substantial revenue is a welcome addition to the mounting case law on our long-arm statute. Moreover, the *Chunky* rationale presents a realistic approach which curbs, at least temporarily, some of the inequities that could arise from any overly liberal application of CPLR 302(a)(3).

CPLR 302(a)(3): Jurisdiction obtained in conversion action.

The scope of CPLR 302(a)(3) has, in the past, been limited to negligence and product liability cases. However, in *General Motors Acceptance Corp. v. Richardson*,⁵⁷ the section was extended to encompass conversion actions as well.

Defendant Richardson, a New York domiciliary, was a conditional vendee of an automobile in which the plaintiff, General Motors Acceptance Corp. (hereinafter GMAC), had a secured interest. Richardson delivered the automobile to the second defendant, Manheim Auto Auction, Inc. (hereinafter Manheim) for the purpose of effecting a sale. Manheim's principal place of business was in Pennsylvania.

GMAC sued both defendants for conversion in New York, claiming that jurisdiction existed over Manheim by virtue of CPLR 302(a)(1) and (3). The latter's operations as an auto auctioneer consisted

⁵⁴ See *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

⁵⁵ 299 F. Supp. at 116.

⁵⁶ *Id.* at 117.

⁵⁷ 59 Misc. 2d 744, 300 N.Y.S.2d 757 (Sup. Ct. Monroe County 1969).

of the following acts: New York and national car dealers, for an annual fee of \$15, received the defendant's weekly market report listing the makes and prices of automobiles traded; periodically the same dealers were sent special invitations announcing defendant's auto sales; and, on occasion, individual dealers or organizations were approached regarding the marketing of cars at defendant's auction. Manheim contended that these activities were merely geared to provide information to automobile dealers. However, the court found that, at the very least, the market reports and lists served a dual function; that is, they were also deemed to be solicitational materials.⁵⁸

Since Manheim shipped no automobiles into New York, the court found jurisdiction lacking under 302(a)(1). Solicitation, without more, was deemed insufficient to satisfy the jurisdictional requisites of that subsection.⁵⁹ But as to 302(a)(3)(i),⁶⁰ the court felt otherwise; regular solicitation, when coupled with the commission of a tortious act in Pennsylvania causing injury to GMAC in New York, satisfied that subsection. Furthermore, the court accepted GMAC's contention that jurisdiction could also be predicated upon 302(a)(3)(ii).⁶¹ GMAC had successfully raised the two inferences that Manheim should have reasonably expected the act to have consequences in New York and that, by virtue of its self-proclamation as the " 'nation's finest and largest auto auction,' " ⁶² it derived substantial revenue from interstate commerce.⁶³ And Manheim offered no proof in contravention of these inferences.

⁵⁸ The market lists advertised various automobiles for sale, and the market reports identified Manheim as " 'the nation's finest and largest auto auction.' " *Id.* at 746, 300 N.Y.S.2d at 759.

⁵⁹ *See, e.g.,* Greenburg v. R.S.P. Realty Corp., 22 App. Div. 2d 690, 253 N.Y.S.2d 344 (2d Dep't 1964).

⁶⁰ *See* note 50 *supra* for the text of this subsection.

⁶¹ CPLR 302(a)(3)(ii) establishes in personam New York jurisdiction when a defendant 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. . . .

⁶² 59 Misc. 2d at 746, 300 N.Y.S.2d at 759.

⁶³ Significantly, when CPLR 302(a)(3) is utilized, the additional activities required (*e.g.*, solicitation) need not relate to plaintiff's claim although the tort itself must bear a causal relationship to New York. Homburger & Laufer, *Expanding Jurisdiction Over Foreign Torts: The 1966 Amendment of New York's Long-Arm Statute*, 16 BUFF. L. REV. 67, 71 (1966). For detailed analysis of CPLR 302 (a)(3); *see* Reese, *A Study of CPLR 302 in Light of Recent Judicial Decisions*, in ELEVENTH ANNUAL REPORT OF THE JUDICIAL CONFERENCE OF THE STATE OF NEW YORK 132 (1966); *Report to the 1966 Legislature in Relation to the Civil Practice Law and Rules*, *supra* note 52 at 337; Homburger & Laufer, *supra*. For additional case law that has developed under the statute *see* *The Quarterly Survey*, 42 ST. JOHN'S L. REV. 615, 619-28 (1968).

Although the *General Motors* court recognized that CPLR 302 (a)(3) was primarily intended to provide jurisdictional bases for the traditional products liability or negligence action,⁶⁴ it somewhat reluctantly admitted that the statute applied to conversion cases as well.⁶⁵ The court also noted that the main purpose of the statute, *i.e.*, to assist a domiciliary in prosecuting litigation in local courts at minimal expense, had been circumvented here due to the plaintiff's large corporate size and its resultant ability to litigate in various other jurisdictions, including Pennsylvania. Nevertheless, the court believed that the corporate size of the plaintiff was immaterial in view of the express language of the statute.

If large corporations have indeed found a "loophole" in our long-arm statute, it will require legislative action to remedy the defect. However, the objection voiced by the court applies to the many other causes of action for which jurisdiction can be obtained pursuant to 302 because large corporations by their very nature generally have the ability to select the forum in which they wish to prosecute a claim against a nondomiciliary. And, if the corporations themselves are subjected to jurisdiction wherever they do business, it would clearly be inequitable to deny them the use of the same courts which are available to parties bringing actions against them.

ARTICLE 4—SPECIAL PROCEEDINGS

CPLR 407: Personal injury counterclaim denied in summary proceeding where "inordinate delay" would result.

In *Great Park Corp. v. Goldberger*,⁶⁶ the court recognized that a

⁶⁴ 59 Misc. 2d at 749, 300 N.Y.S.2d at 762; see Homburger & Laufer, *Expanding Jurisdiction over Foreign Torts: The 1966 Amendment of New York's Long-Arm Statute*, 16 BUFF. L. REV. 67, 70 (1966), where it is recognized that the expansion of products liability throughout the nation

did much to stimulate the rapid growth of long-arm jurisdiction in the United States: widening products liability as a matter of substantive law would be of limited help to a victim who is denied access to a convenient forum. Hence, the 1966 change is designed to let these plaintiffs freely enter the "tortgate" of New York's jurisdiction instead of turning many of them away and forcing still others to squeeze awkwardly through the half-opened doors of the business clause.

⁶⁵ It would appear that the phrase "commits a tortious act," as employed in CPLR 302(a)(2) and (3) was *specifically* intended to encompass conversion cases. Before the enactment of the CPLR, the Advisory Committee proposed that 302(a)(2) be limited to "tortious acts within the state only if the acts result in *physical injury* to a person or property." SECOND REP. 39 (emphasis added). However, this limitation was expressly rejected: "Under the former proposal a conversion of property within the state would not have been included as an act of providing a basis for jurisdiction. It is now included." FINAL REP. A-156.

⁶⁶ 41 Misc. 2d 988, 246 N.Y.S.2d 810 (N.Y.C. Civ. Ct. N.Y. County 1964).