

CPLR 302: Possible Extension in Matrimonial Actions

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detention based upon an improper judgment of conviction for second degree burglary in 1943. The parties stipulated that claimant's imprisonment provided a toll until 1959. In 1959 the claimant was released on parole, but was subsequently reincarcerated eight months later for a parole violation. The court held that the two year period of limitation prescribed by the Court of Claims Act began to run upon claimant's release on parole and continued to run despite claimant's subsequent reincarceration. The action was thus time barred.

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

CPLR 302: Possible extension in matrimonial actions.

In *Venizelos v. Venizelos*,¹⁰ a separation action, the appellate division, second department, affirmed the denial of defendant husband's motion to dismiss for lack of personal jurisdiction and the allowance of wife's cross-motion for an injunction with respect to husband's proceedings in Greece. It was found that the defendant who was married in New York, where the matrimonial domicile was maintained for nine years and where the children of the marriage resided, was subject to personal jurisdiction although he had returned to his native Greece.

While there is authority for holding that the preparation and execution of a separation agreement is a transaction of business which will subject an absentee spouse to in personam jurisdiction as to causes of action arising out of it,¹¹ there was no separation agreement mentioned here. The court stated:

whether defendant was a domiciliary of New York or not at the time of commencement of this action, it is our opinion that his contacts with this State and the interests of New York in the litigation are sufficient to subject him, under the appropriate statutes, to the jurisdiction of our courts in an action for separation. . . . It was proper . . . to enjoin defendant from taking any steps to enforce the foreign decree and from instituting an action for divorce in Greece.¹²

Thus, it appears that a new extension of long-arm jurisdiction is about to be charted.

The court, however, refused to base its decision entirely on such tenuous grounds. It was held that the defendant had waived

¹⁰ 30 App. Div. 2d 856, 293 N.Y.S.2d 20 (2d Dep't 1968).

¹¹ See 7B MCKINNEY'S CPLR 302, supp. commentary, 104, 106-07 (1967).

¹² 30 App. Div. 2d 856, 293 N.Y.S.2d 20, 21 (2d Dep't 1968).

any objection to personal jurisdiction by the execution of two stipulations.

CPLR 302(a) (1): Entering state to receive medical treatment deemed a transaction of business.

Under CPLR 302(a)(1), a nondomiciliary who transacts business in New York subjects himself to personal jurisdiction as to causes of action arising out of that transaction.¹³ As 302(a)(1) is continuously applied to novel fact situations, light is shed on its outer limits.

In *Cohen v. Haberkorn*,¹⁴ the appellate division, second department, recently held that a nondomiciliary who enters the state to receive medical treatment "transacts business" under 302(a)(1) and thus becomes amenable to personal jurisdiction in an action by the physician to recover the value of his services.

CPLR 308(1): Court of Appeals rules on redelivery problem.

The Court of Appeals has recently addressed itself to the problem of whether a summons, originally delivered to an improper person, is valid if through eventual redelivery it comes into the possession of the party to be served. In *McDonald v. Ames Supply Co.*,¹⁵ the summons, seeking to secure jurisdiction over defendant, a foreign corporation, was delivered to a building receptionist who was not an employee of the defendant. The receptionist subsequently delivered the summons to a proper party, but the service was held invalid. (Had the receptionist been an employee of the defendant, service would probably still have failed since CPLR 311 provides that service upon a foreign corporation be made by delivering the summons to "an officer, director, managing or general agent, or cashier or assistant cashier.")

The Court stated that generally, original personal delivery to the wrong person constitutes improper service even though the summons is shortly received by the correct person.¹⁶ It pointed out that any other rule would undermine the statutory procedure for setting aside a defectively served summons, since the motion to set aside is itself evidentiary of eventual receipt of the summons.

¹³ See generally 7B MCKINNEY'S CPLR 302, supp. commentary 104 (1968).

¹⁴ 30 App. Div. 2d 530, 291 N.Y.S.2d 119 (2d Dep't 1968).

¹⁵ 22 N.Y.2d 111, N.E.2d, 291 N.Y.S.2d 328 (1968).

¹⁶ See, e.g., *Clark v. Fifty Seventh Madison Corp.*, 13 App. Div. 2d 693, 213 N.Y.S.2d 849 (2d Dep't) *appeal dismissed*, 10 N.Y.2d 808, 178 N.E.2d 225, 221 N.Y.S.2d 509 (1961); *Commissioners of State Ins. Fund v. Singer Sewing Mach. Co.*, 281 App. Div. 867, 119 N.Y.S.2d 802 (1st Dep't 1953).