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Article 9

CPLR 302(a)(1): Making Promissory Note Payable in New York Not Deemed a Transaction of Business Here

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be one of trust and confidence. It would be detrimental to such a relationship for the patient to question the doctor's every action at the moment of execution.

Courts in the first and second departments have recently employed this exception in attorney malpractice suits.[5] In the first department case of *Wilson v. Econom*,[6] suit was brought against an attorney when it was discovered that he had failed to institute the plaintiff's action within the short one year and thirty day period of limitations applicable to suits against the Transit Authority. The attorney's office repeatedly assured the plaintiff that his case was proceeding properly. A Bar Association investigation subsequently revealed a contrary state of affairs.

In the second department a similar situation arose in *Siegel v. Kranis*,[7] but the appellate division, in deciding the case, gave no indication that it was aware of the prior treatment of the problem in *Wilson*. The malpractice suit arose from a failure to file a timely MVAIC claim. In both cases the courts felt that the similarity of a doctor-patient and an attorney-client relationship was more than superficial. Both necessitate continued trust, confidence and attention.

With sound authority in two departments for an extension of the "continuing practice" theory, a malpractice suit can not now be evaded by merely giving a client meaningless reassurances or by futile attempts to remedy the situation.

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

CPLR 302(a)(1): Making promissory note payable in New York not deemed a transaction of business here.

The appellate division, first department, in *Wirth v. Prenyl*,[8] recently held that personal jurisdiction will not be obtained in New York by merely making a promissory note payable here. In *Wirth*, the underlying contract involved the shipment of machinery from the United Kingdom, by the plaintiff, a New York resident, to the defendant, an Argentine domiciliary. Disputes under the contract were to be arbitrated by the Argentine Stock Exchange. Suing on the promissory note alone, plaintiff sought

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[5] It is especially significant to note the second department's use of the theory, for it, originally, was somewhat restrictive even in the medical area. Borgia v. City of New York, 16 App. Div. 2d 927, 229 N.Y.S.2d 318 (2d Dep't), *rev'd*, 12 N.Y.2d 151, 187 N.E.2d 777, 237 N.Y.S.2d 319 (1962).

[6] 56 Misc. 2d 272, 288 N.Y.S.2d 381 (Sup. Ct. N.Y. County 1968).

[7] 29 App. Div. 2d 447, 288 N.Y.S.2d 831 (2d Dep't 1968).

[8] 29 App. Div. 2d 373, 288 N.Y.S.2d 377 (1st Dep't 1968).

jurisdiction under CPLR 302(a)(1) by alleging that the provision for making the note payable in New York constituted the transaction of business here. The court ruled that, although the note was delivered, completed, made payable and had its payment refused in New York, these facts were insufficient in themselves to confer jurisdiction in New York.

The court noted that payment was to be made here through a New York bank but delivery of the note to it for completion and eventual payment was intended only as an accommodation to the plaintiff to enable him to avoid Argentine taxes. This procedure was not chosen so that the defendants could avail themselves of New York law nor did commercial benefit accrue to the defendants by making the notes payable in New York. The major part of the commercial dealing was intended to be conducted in Argentina.

The decision seems to be commendable, since a contrary holding would mean that any party could become subject to personal jurisdiction in New York with no more substantial contact than paying or receiving payment of a debt through a New York commercial institution. Moreover, the decision prevents two parties with no other contacts with New York except banking facilities from choosing New York as their forum by simply making their notes payable here. Thus, a potential avenue of forum shopping is foreclosed.

CPLR 302(a)(1), CCA § 404(a): Placement of telephone order for goods with New York domiciliary not deemed a transaction of business here.

Section 404(a) of the New York City Civil Court Act parallels CPLR 302(a)(1).[9] As with 302, personal jurisdiction is predicated upon the defendant's contacts with the jurisdiction and the federally imposed limitations based upon "fair play and substantial justice"[10] control both sections.[11] A recent case, *Katz & Son Billiards Products, Inc. v. Correale & Sons, Inc.*,[12] interpreting the "transacts business" section of

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[9] 29A MCKINNEY'S N.Y.C. CIVIL COURT ACT 404, commentary 103 (1963).

[10] The permissible constitutional limits of long-arm jurisdiction are laid down in Hanson v. Denckla, 357 U.S. 235, 251 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945).

[11] 29A MCKINNEY'S N.Y.C. CIVIL COURT ACT 404, commentary 103 (1963).

[12] 20 N.Y.2d 903, 232 N.E.2d 864, 286 N.Y.S.2d 871 (1967), *aff'g* 26 App. Div. 2d 52, 270 N.Y.S.2d 671 (1st Dep't 1966).