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CPLR 302(a)(1), CCA § 404(a): Placement of Telephone Order for Goods with New York Domiciliary Not Deemed a Transaction of Business Here

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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).

CCA 404(a) should find uniform application in the long-arm provisions of the CCA, UDCA, UCCA and the CPLR.[13]

In *Katz*, the defendant, as was his custom, placed a telephone order for goods from New Jersey which was accepted by the plaintiff in New York. In a dispute over the defendant's refusal to pay the balance due upon shipments, the appellate division reversed the lower court and held that the defendant's contacts with New York did not constitute purposeful acts sufficient for jurisdiction. The court further ruled that the assertion of a counterclaim based upon the same transaction was not a waiver of the jurisdictional objection.[14] The Court of Appeals affirmed without opinion.

Support is thus added to earlier rulings that it is the defendant's contacts in New York and not the plaintiff's which are necessary for the exercise of personal jurisdiction.[15] Mere shipment of goods into New York has been held to be an insufficient contact [16] and now it can be said that merely ordering goods from an individual in New York is also insufficient.

CPLR 302(a)(1): Preparation of separation agreement in New York not deemed a transaction of business here.

In *Whitaker v. Whitaker*,[17] an action for separation, plaintiff wife moved for counsel fees and temporary alimony. It is not clear from the reported opinion what the jurisdictional predicate was, however, it appeared to be the marital res. Apparently, plaintiff attempted to obtain personal jurisdiction under CPLR 302, but the court ruled that none of the four sub-sections were applicable to obtain the jurisdiction sought. This is undoubtedly correct if the only predicate were merely the res of the marital status. The court, however, stated that even where there is a separation agreement the weight of authority holds that the agreement does not constitute the transaction of business which will give rise to in personam jurisdiction under CPLR 302(a)(1). *Raschitore v. Fountain* [18] and *Willis v. Willis* [19] were cited

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[13] *See, e.g.*, Home Crafts, Inc. v. Gramery Homes, Inc., 41 Misc. 2d 591, 246 N.Y.S.2d 153 (Dist. Ct. Nassau County 1964).

[14] For a further discussion of this point see Powsner v. Mills, 56 Misc. 2d 411, 288 N.Y.S.2d 846 (Sup. Ct. Nassau County 1968). *See also The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 463, 486 (1967).

[15] *See A Biannual Survey of New York Practice*, 38 ST. JOHN'S L. REV. 406, 408-09 (1964).

[16] Kramer v. Vogl, 17 N.Y.2d 27, 215 N.E.2d 159, 267 N.Y.S.2d 900 (1966).

[17] 56 Misc. 2d 625, 289 N.Y.S.2d 465 (Sup. Ct. Ulster County 1968).

[18] 52 Misc. 2d 402, 275 N.Y.S.2d 709 (Sup. Ct. Monroe County 1966).

[19] 42 Misc. 2d 473, 248 N.Y.S.2d 260 (Sup. Ct. N.Y. County 1964).