St. John's Law Review

Volume 43
Number 2 *Volume 43, October 1968, Number 2*

Article 11

December 2012

CPLR 302(a)(1): Preparation of Separation Agreement in New York Not Deemed a Transaction of Business Here

St. John's Law Review

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

---

[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).

as authority. However, the *Willis* holding, that a separation agreement is not sufficiently commercial in nature to constitute the transaction of business, has been seriously undermined by subsequent cases.[20] In addition, New York judgments jurisdictionally based upon separation agreements which were construed to be the transaction of business under 302 have been given full faith and credit in both Maryland[21] and Massachusetts.[22]

Although a separation agreement is arguably not a "commercial transaction," there are normally extensive provisions for division of property, apportionment of income, and the erection of tax structure, which are the result of commercial-like bargaining between the parties. Such arrangements do not affect the marital status and are primarily financial. If there were a separation agreement involved here, or if the court's decision was influenced by the *Willis* "non-transaction" viewpoint, this case might be rethought in view of the more recent cases that have stressed the commercial earmarks of such agreements and held them to be sufficient transactions of business to trigger 302(a)(1). However, if the action was based upon the marital res alone, 302 is inapplicable and the statement as to separation agreements should be regarded as dictum.

CPLR 308(4): Court of Appeals establishes guidelines for substituted service.

After past doubt as to what methods of substituted service will be satisfactory[23] under CPLR 308(4), the Court of Appeals has recently provided three cases which can safely serve as a basis for fashioning court-ordered service.

Dobkin v. Chapman, Sellars v. Raye and *Keller v. Rappoport*[24]

---

[20] Kochenthal v. Kochenthal, 52 Misc. 2d 437, 275 N.Y.S.2d 951 (Sup. Ct. Nassau County 1966); Todd v. Todd, 51 Misc. 2d 94, 272 N.Y.S.2d 455 (Sup. Ct. Nassau County 1966) (dictum).

[21] Van Wagenberg v. Van Wagenberg, 241 Md. 154, 215 A.2d 812, *cert. denied*, 385 U.S. 833 (1966).

[22] Spitz v. Spitz, 22 Mass. App. Dec. (16 Legalite 278) 195 (1966).

[23] *See, e.g.*, Sellars v. Raye, 25 App. Div. 2d 757, 269 N.Y.S.2d 7 (2d Dep't 1966); Dobkin v. Chapman, 25 App. Div. 2d 745, 269 N.Y.S.2d 49 (2d Dep't 1966); Deredito v. Winn, 23 App. Div. 2d 849, 259 N.Y.S.2d 200 (2d Dep't 1965); Winterstein v. Pollard, 50 Misc. 2d 354, 270 N.Y.S.2d 525 (Sup. Ct. Nassau County 1966). *See generally The Quarterly Survey of New York Practice*, 42 ST. JOHN'S L. REV. 283, 289 (1967); *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 642, 648-49 (1967); *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 463, 475-76 (1967); *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 279, 296-98 (1966); *A Biannual Survey of New York Practice*, 40 ST. JOHN'S L. REV. 122, 140-42 (1965).

[24] Dobkin v. Chapman, 21 N.Y.2d 490, 236 N.E.2d 451, 289 N.Y.S.2d 161 (1968). The three cases were consolidated for argument before the Court of Appeals.