

# CPLR 302(a)(1): Husband's Implied Promise To Pay for Necessaries Is Not a Transaction of Business

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second action the defense contended that the prior dismissal constituted a dismissal for "neglect to prosecute" thus rendering the six month saving period provided by CPLR 205(a) unavailable. In holding against this contention the court stated that the record did not show, nor did the trial justice intend, the consequences of a dismissal for neglect to prosecute.

When counsel has acted in good faith and has not willfully or deliberately refused to go to trial, the potentially disastrous effect of a dismissal after the statute of limitations has run will be alleviated by the provisions of 205(a).

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

*CPLR 302(a)(1): Husband's implied promise to pay for necessities is not a transaction of business.*

In *Inkelas v. Inkelas*,<sup>4</sup> an action for support and necessities, plaintiff-wife attempted to secure personal jurisdiction over her non-resident husband on the basis of an implied promise to pay for necessities. Plaintiff contended that, since she resided in New York when the promise was made requiring her husband to perform here, the obligation constituted her an agent to make purchases on his behalf. Each purchase, it was argued, constituted a transaction of business under CPLR 302(a)(1).

The Supreme Court, Bronx County, rejected plaintiff's argument and dismissed for lack of jurisdiction. Reasoning that plaintiff's husband had not committed any "purposeful act"<sup>5</sup> within New York, the court distinguished those situations in which a separation agreement is executed in New York.<sup>6</sup>

While the rationale of *Inkelas* appears to be sound, its result is contrary to *Venizelos v. Venizelos*,<sup>7</sup> recently decided by the appellate division, second department. Unfortunately, however, the court in *Venizelos* does not specifically identify the statute it is invoking to supply jurisdictional basis. In view of the confusion created, it would be helpful to watch for further developments in the *Venizelos* case.

<sup>4</sup> 58 Misc. 2d 340, 295 N.Y.S.2d 350 (Sup. Ct. Bronx County 1968).

<sup>5</sup> The "purposeful act" criteria was first promulgated in *Hanson v. Denkla*, 357 U.S. 235 (1958). It was applied to 302 in *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965) and re-applied in *McKee Elec. Co. v. Rauland-Borg Corp.*, 20 N.Y.2d 377, 382, 229 N.E.2d 604, 607, 283 N.Y.S.2d 34, 37 (1967).

<sup>6</sup> See, e.g., *Kochenthal v. Kochenthal*, 28 App. Div. 2d 117, 282 N.Y.S.2d 36 (2d Dep't 1967).

<sup>7</sup> 30 App. Div. 2d 856, 293 N.Y.S.2d 20 (2d Dep't 1968). See *The Quarterly Survey of New York Practice*, 43 ST. JOHN'S L. REV. 498, 503 (1969).