

CPLR 302(a)(1): Long Distance Telephone Calls into New York Are Not Acts Within the State

St. John's Law Review

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CPLR 302(a)(1): *Long distance telephone calls into New York are not acts within the state.*

CPLR 302(a)(1) creates an extremely fluid jurisdictional standard. However, from the myriad cases that have interpreted the phrase "transacts any business," the minimum requirement of a "purposeful act" in New York may be distilled.⁸

In *Carrolton Associates v. Abrams*,⁹ plaintiff-landlords, alleging an oral contract, sought to recover rent, taxes and ground rents from defendants, who were trustees for concessionaires. The alleged contract was negotiated and executed in New York, and as to those defendants who personally participated in these transactions, jurisdiction was found. Jurisdiction was also sought over a defendant who, although not present in New York, participated in the transactions by long distance telephone. Since the defendant was at no time present in New York, jurisdiction over him was denied.

ARTICLE 4 — SPECIAL PROCEEDINGS

CPLR 402: *All papers available on return date may be considered in judging sufficiency of petition.*

CPLR 402 states that in a special proceeding "[t]here shall be a petition, which shall comply with the requirements for a complaint in an action. . . ." Like a pleading, intended for use in an action, a petition must be "sufficiently particular to give the court and parties notice of the transactions, [or] occurrences . . . intended to be proved."¹⁰ Such particularity may be attained by considering documents which supplement the formal petition itself.

The case of *Reich v. Power*¹¹ involved a proceeding pursuant to the Election Law to direct the holding of a new Democratic Party Primary Election for the office of Member of Assembly. The Supreme Court, Queens County, dismissed the petition for legal insufficiency. The appellate division reversed, holding that the original petition, when considered along with a work sheet subsequently served and a 25 page affidavit which special term should have considered as proper supplements, was clearly sufficient in law.

A special proceeding is intended to provide a speedy resolution of issues. For example, affidavits are served with the petition so that when no trial is necessary, a case may be summarily deter-

⁸ See, e.g., *McKee Elec. Co. v. Rauland-Borg Corp.*, 20 N.Y.2d 377, 229 N.E.2d 604, 283 N.Y.S.2d 34 (1967).

⁹ 57 Misc. 2d 617, 293 N.Y.S.2d 159 (Sup. Ct. N.Y. County 1968).

¹⁰ CPLR 3013.

¹¹ 30 App. Div. 2d 925, 294 N.Y.S.2d 346 (2d Dep't 1968).