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CPLR 301: Doing Business Doctrine Liberalized

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Recently, the Court of Appeals, in *Romano v. Romano*,[33] held that the three year period of limitation of CPLR 214(7) was, indeed, a condition precedent. As a result of this decision, it may safely be surmised that CPLR 203(f), the alternative discovery section, which apparently functions only where the statutory period is considered a statute of limitations, is inapplicable to an action brought to annul a marriage on the ground of fraud.[34]

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

CPLR 301: Doing business doctrine liberalized.

In *Frummer v. Hilton Hotels International, Inc.*,[35] the plaintiff, a New York resident, sued three defendants: Hilton Hotels Limited [Hilton (U.K.)], a British Corporation; Hilton Hotels International; and Hilton Hotels Corporation. The last two were Delaware corporations doing business in New York. The suit arose from personal injuries sustained by plaintiff at Hilton's (U.K.) hotel in England.

Hilton (U.K.), the lessee and operator of the hotel, moved to dismiss plaintiff's complaint for personal injuries on the ground that the court lacked personal jurisdiction over the defendant. The Court of Appeals, affirming a denial of the motion, found that Hilton (U.K.), though it had no New York office, bank account or telephone number, had certain minimum contacts with the State sufficient to confer jurisdiction upon the New York courts. The Court found that the Hilton Reservation Service, a separate corporation doing business in New York, did all the business which Hilton (U.K.) would have done had it been represented in New York by its own officials.[36] The common ownership of Hilton (U.K.) and the Reservation Service gave rise to an inference of broad agency powers on the part of the Reservation Service. This justified a conclusion that Hilton (U.K.) was "present" within the meaning of CPLR 301.

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[33] 19 N.Y.2d 444, 227 N.E.2d 389, 280 N.Y.S.2d 570 (1967) (affirming the appellate division, fourth department).

[34] 7B MCKINNEY'S CPLR 214(7), supp. commentary 56 (1966).

[35] 19 N.Y.2d 533, 227 N.E.2d 851, 281 N.Y.S.2d 41 (1967).

[36] According to the majority, the Service did publicity and public relations work for Hilton (U.K.) and other Hilton Hotels. It also accepted and confirmed room reservations for the various Hilton Hotels. The dissent apparently believed that the Service only "'confirm[s] availabilities' at various hotels (not merely Hilton Hotels) 'based on forecasts supplied by the hotels.'" Frummer v. Hilton Hotels International, Inc., 19 N.Y.2d 533, 541, 227 N.E.2d 851, 856, 281 N.Y.S.2d 41, 48 (1967). *Compare* Miller v. Surf Properties, Inc., 4 N.Y.2d 475, 151 N.E.2d 874, 176 N.Y.S.2d 318 (1958).

A rigorous dissent stated that the majority extended personal jurisdiction over the foreign corporation "simply because of its relationship with subsidiary or affiliated corporations of a parent corporation."[37] It was argued that the refusal to recognize the distinctions between validly organized and separately managed corporations could generally discourage the investment of risk capital and might lead to reciprocal treatment of American corporations in foreign countries when jurisdictional questions such as that facing the Court in the instant case arose. In sum, the dissent warned, the effect of such an extension of the "doing business" rule on the "flexibility and promotion of world-wide business enterprises would be drastic and unhealthy."[38]

Upon examination of the salient facts of the instant case, *i.e.*, that the Reservation Service and Hilton (U.K.) were separate and distinct corporate entities; that the Hilton complex was not used to defraud, deceive or mislead those who dealt with it; and that the Reservation Service was not the exclusive agent of Hilton (U.K.), one must conclude that the result in the *Frummer* case represents the most liberal rendering of the doing business doctrine ever drawn by New York's highest court.

CPLR 302: Substitution of personal representative for deceased after initiation of action ruled constitutional.

CPLR 302 recites that the courts of New York may exercise personal jurisdiction over any non-domiciliary or his executor or administrator as to a cause of action arising from any of the enumerated acts in the same manner as if he were a domiciliary. CPLR 313 provides that an individual subject to the jurisdiction of the New York courts under CPLR 301 or CPLR 302, or his executor or adminstrator, may be served with summons without the state in the same manner as service is made within the state.

In *Rosenfeld v. Hotel Corporation of America*,[39] the decedent, a Massachusetts resident, was validly served with process during his lifetime. He died before the cause of action was tried. Subsequent to a stay of the proceedings, the plaintiffs moved to have the decedent's non-resident executors substituted pursuant to CPLR 1015(a).[40] Substitution was ordered and the executors were personally served in Massachusetts pursuant to CPLR 313. The

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[37] Frummer v. Hilton Hotels International, Inc., 19 N.Y.2d 533, 540, 227 N.E.2d 851, 855, 281 N.Y.S.2d 41, 46 (1967).

[38] *Id.* at 543, 227 N.E.2d at 858, 281 N.Y.S.2d at 50.

[39] 20 N.Y.2d 25, 228 N.E.2d 374, 281 N.Y.S.2d 308 (1967).

[40] This section provides: "If a party dies and the claim for or against him is not thereby extinguished the court shall order substitution of the proper parties."