

CPLR 302: Substitution of Personal Representative for Deceased After Initiation of Action Ruled Constitutional

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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 administrator, 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

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."

defendants appealed the order on the ground that it was unconstitutional to uphold jurisdiction over a non-resident executor, served without the state, who has not committed any acts or transacted any business in New York.

In affirming the order of the appellate division, the Court of Appeals noted the clear trend toward constitutional expansion of the concept of jurisdiction,⁴¹ and the express authorization of such out-of-state service upon non-resident executors contained in CPLR 302 and 313. Accordingly, there could no longer be any constitutional prohibition against the substitution procedure here employed.⁴²

CPLR 302(a)(1), CCA § 404(a): Long-arm statute found inapplicable in stock brokerage situation.

Broadly speaking, CPLR 302(a)(1) provides that the New York courts may exercise personal jurisdiction over any non-domiciliary, who in person or through an agent transacts any business within the state. Section 404 of the New York City Civil Court Act is the equivalent of CPLR 302, except that whereas 302 requires contact with the state, section 404 requires contact with the City of New York.⁴³

In *Hertz, Newmark & Warner v. Fischman*,⁴⁴ the defendant, a New Jersey domiciliary, bought and sold stock through plaintiff's Newark office. The Newark office, upon receipt of a buy or sell order, would contact the main office in New York City, which would then buy or sell the stock. In this instance, defendant issued a sell order to the Newark office, but upon completion of the sale in New York City, he refused to relinquish the certificate to plaintiff's agent in Newark. Plaintiff was required to purchase replacement shares, and sued to recover their cost. Defendant's motion to dismiss for lack of personal jurisdiction was granted. The court held that since plaintiff's acts within New York City did not arise from an exclusive agency with, or employment by, the defendant, its acts could not be attributed to him for the purpose of securing personal jurisdiction over the defendant pursuant to CCA § 404.⁴⁵

⁴¹ Citing, of course, *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957), and *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

⁴² *Rosenfeld v. Hotel Corp. of America*, 20 N.Y.2d 25, 228 N.E.2d 374, 281 N.Y.S.2d 308 (1967).

⁴³ 29A MCKINNEY'S N.Y.C. CIVIL COURT ACT § 404, commentary 103-04 (1963). "[I]f the subject matter is within the court's jurisdiction, and the contacts enumerated in CCA 404(a)(1-3) were with the city, the court may, by virtue of subdivision (b), send its summons as far as the supreme court summons might go if the action had been brought there."

⁴⁴ 53 Misc. 2d 418, 279 N.Y.S.2d 97 (N.Y.C. Civ. Ct. 1967).

⁴⁵ *Id.* at 420-21, 279 N.Y.S.2d at 99-100.