

CPLR 302(a): Allegations in Complaint Held Sufficient to Sustain Jurisdiction

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accepted as being unlawful, he should not be afforded the benefit of having a plaintiff's complaint dismissed for failure to plead special damages.

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

CPLR 302: British long-arm statute given local effect.

Defendant, a New York corporation, appointed plaintiff its exclusive concessionaire in the United Kingdom to sell defendant's product under a contract which stipulated that it was to be governed by the laws of England. In an action for breach of contract, brought in Great Britain, the defendant was personally served in New York pursuant to the British long-arm statute.⁴⁸ Upon defendant's failure to appear, a default judgment was rendered against him. In *Plugmay Ltd. v. National Dynamics Corp.*,⁴⁹ plaintiff brought suit in New York on the English judgment. In rejecting the defendant's contention that the British court had no jurisdiction over it, the New York court, although not bound to do so,⁵⁰ upheld the British judgment. The court noted that CPLR 302 makes a nonresident of New York subject to its jurisdiction when a "single act" takes place in this state, and added that "if the facts were the reverse, this court would have taken jurisdiction of the English defendant by extraterritorial service We can do no less now in affording the English court reciprocal acquisition of jurisdiction over the defendant here. It has the support of our present public policy."⁵¹

CPLR 302(a): Allegations in complaint held sufficient to sustain jurisdiction.

*Saratoga Harness Racing Ass'n v. Moss*⁵² involved an action for damages resulting from an illegal boycott of horse races conducted by the plaintiff, and a tortious interference with the plaintiff's contracts with certain owners and trainers of horses. The tort was alleged to have been committed in New York by the defendants who were non-domiciliaries. The court sustained jurisdiction over the defendants under CPLR 302(a)(2) since the allegations in the complaint stated a valid cause of action and a basis for in personam jurisdiction.

⁴⁸ Supreme Court of Judicature, Order 11, rule 1(f)iii, (g).

⁴⁹ 48 Misc. 2d 913, 266 N.Y.S.2d 240 (N.Y.C. Civ. Ct. 1966).

⁵⁰ It should be noted that principles of comity, and not full faith and credit, apply to judgments of the courts of foreign countries. Thus, our courts are not *bound* to give effect to such judgments, but *may* do so in their discretion.

⁵¹ *Plugmay Ltd. v. National Dynamics Corp.*, 48 Misc. 2d 913, 917, 266 N.Y.S.2d 240, 244-45 (N.Y.C. Civ. Ct. 1966).

⁵² 49 Misc. 2d 855, 268 N.Y.S.2d 619 (Sup. Ct. Saratoga County 1966).

It appears, however, that prior to the court's decision, it neglected to require a hearing to establish the truthfulness of the plaintiff's allegations. It would appear that such a hearing should be held in order to protect nonresident defendants over whom New York seeks to assert personal jurisdiction. In this way, a nonresident defendant would not be forced, by virtue of a mere allegation, to defend an action for which there is no jurisdictional basis.

A better statement of the law is found in *Buckley v. Redi-Bolt, Inc.*,⁵³ and *Vernon v. Rock-Ledge House, Inc.*⁵⁴ In *Buckley*, the plaintiff brought an action for damages for personal injuries sustained in the collapse of a ski lift. The plaintiff alleged that the accident was caused by certain "defective bolts" which were manufactured by defendant, a foreign corporation, and sold by it in New York. The court determined that the defendant had in fact employed a salesman in New York, and had solicited business here by means of catalogs and advertisements. The court concluded, therefore, that the defendant had "transacted business"⁵⁵ in New York and was subject to personal jurisdiction. In answer to the defendant's contention that the plaintiff did not show that his cause of action arose from any purposeful activity engaged in by the defendant in New York, the court stated that in deciding the question of jurisdiction "it is not required . . . to establish defendant's responsibility by the same degree of proof required upon the trial of the action. . . . Enough has been shown to indicate the existence of a controversy which, if resolved in plaintiff's favor . . . would warrant the assumption of jurisdiction under CPLR 302(a)(1)."⁵⁶

In *Vernon*, the plaintiff, a minority stockholder in defendant Rock-Ledge House, a New York corporation, sued for an accounting of funds paid by it to defendant Rutgers Construction Company, a New Jersey corporation. The action was based on an alleged waste of corporate assets, and jurisdiction over defendant Rutgers was sought by means of CPLR 302. The court entertained jurisdiction since it was determined by a special referee that payments had been made by Rock-Ledge to Rutgers. These acts were held to be sufficient to satisfy both CPLR 302(a)(1) and (2) since the alleged wasting of corporate assets was not only a tort but also a transaction of business in New York by defendant Rutgers.

The court was careful to note that the present disposition was solely with regard to the question of jurisdiction. Thus it held that where it is necessary that the determination of jurisdiction

⁵³ 49 Misc. 2d 864, 268 N.Y.S.2d 653 (Sup. Ct. Rensselaer County 1966).

⁵⁴ 49 Misc. 2d 98, 266 N.Y.S.2d 556 (Sup. Ct. N.Y. County 1966).

⁵⁵ CPLR 302(a)(1).

⁵⁶ *Buckley v. Redi-Bolt, Inc.*, 49 Misc. 2d 864, 268 N.Y.S.2d 653, 657-58 (Sup. Ct. Rensselaer County 1966).

include an inquiry into the merits,⁵⁷ this inquiry is limited to whether the alleged acts, out of which the cause of action has arisen, have been committed, and may not include a determination of whether those acts were wrongful.

CPLR 302(a)(1): Constitutional limit not reached.

While New York's long-arm statute, CPLR 302, has greatly increased the power of New York courts to exercise in personam jurisdiction over non-domiciliaries, a question has arisen as to whether CPLR 302 has gone as far as is constitutionally permissible.

CPLR 302(a)(1) gives personal jurisdiction over non-domiciliaries who have "transacted business" in New York, out of which transaction a cause of action has arisen. The courts have been liberal in applying this section in commercial cases.⁵⁸ This is contrasted with the restricted application of CPLR 302(a)(2) in tort cases.⁵⁹ A recent case, however, gives some indication that CPLR 302(a)(1) does *not* reach the permissible limit of in personam jurisdiction.

In *Kramer v. Vogl*,⁶⁰ plaintiff sought fraud damages. The defendants, Austrian firms, had contracted to give the plaintiff the exclusive right⁶¹ to sell the defendants' product in the United States. The contract was consummated in Paris and a letter confirming the exclusive sales agreement was sent to the plaintiff's office in New York. The defendants did not engage in sales, pro-

⁵⁷ Since jurisdiction under CPLR 302 depends upon the commission of certain acts within New York by the non-domiciliary defendant, a court deciding the issue of jurisdiction must make determinations on the merits, *i.e.*, whether the defendant transacted business in New York (CPLR 302(a)(1)), or committed a tortious act within the state (CPLR 302(a)(2)), or owned or possessed property in New York out of which the action arose (CPLR 302(a)(3)). Any determination on the merits made by a court concerned solely with jurisdiction, however, is not binding on the court trying the merits. *E.g.*, *Vernon v. Rock-Ledge House, Inc.*, 49 Misc. 2d 98, 266 N.Y.S.2d 556 (Sup. Ct. N.Y. County 1966); *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

⁵⁸ *E.g.*, *Lewin v. Boch Laundry Mach. Co.*, 16 N.Y.2d 1070, 213 N.E.2d 686, 266 N.Y.S.2d 391 (1966); *Johnson v. Equitable Life Assur. Soc'y*, 16 N.Y.2d 1067, 213 N.E.2d 466, 266 N.Y.S.2d 138 (1966); *Singer v. Walker*, 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8, *cert. denied*, 382 U.S. 905 (1965).

⁵⁹ Since the decision of *Feathers v. McLucas*, there has been no doubt that CPLR 302(a)(2), dealing with the commission of a "tortious act," does not approach the constitutional limit. In that case, the Court of Appeals held that the language of that subsection clearly precluded its applicability to any case wherein the act which produced the injury in New York was committed outside the state. *Feathers v. McLucas*, 15 N.Y.2d 443, 460, 209 N.E.2d 68, 77, 261 N.Y.S.2d 8, 21 (1965).

⁶⁰ 17 N.Y.2d 27, 215 N.E.2d 159, 267 N.Y.S.2d 900 (1966).

⁶¹ An exception was made in the contract for one named customer. *Id.* at 29-30, 215 N.E.2d at 160, 267 N.Y.S.2d at 902.