

CPLR 302(a)(1): New York Default Judgment Collaterally Attacked in New Jersey

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local retailer could foresee New York consequences due to a defect in the tire. The Conference concluded that New York would have *power* under the federal constitution to exercise personal jurisdiction over the retailer, but, as a matter of policy, it would be undesirable to do so.²⁵ Yet, if the retailer were a large corporation with extensive contacts in New York, or did extensive business in interstate commerce, the Conference believed that it would be fair (and constitutional) to exercise jurisdiction.

It would seem that in the case of the local Nebraska retailer, the court could not exercise jurisdiction because of a lack of "minimum contacts," *as that term has been earlier defined*. The additional factor that the retailer was doing business in interstate or international commerce (CPLR 302(a)(3)(ii)) would not seem to change the situation.

However, neither the CPLR Committee of the Judicial Conference, the Conference itself, nor the legislature was unaware of these problems of potential unconstitutionality. But the absence of clear United States Supreme Court guidelines made it necessary—in view of the general legislative intent to expand jurisdictional bases in the amended 302—to step forward with an approach which would realize the intent while at the same time would honor constitutional requirements whose limits have yet to be authoritatively defined. The dividing line is hazy, for which reason the amendment may in certain cases go beyond it, and thus fail of its purpose. But it will fail only in the individual case. CPLR 10004 will see to it that it does not fail in its entirety. The amendment is, in short, an invitation to the courts to press the long-arm tort sphere to whatever limits they think the United States Supreme Court will accept.

CPLR 302(a)(1): New York default judgment collaterally attacked in New Jersey.

In *J. W. Sparks & Co. v. Gallos*,²⁶ a New York stock brokerage firm brought an action in New Jersey to enforce a New York default judgment. The defendant collaterally attacked the jurisdiction of the New York court. Jurisdiction over the defendant in the original action had been acquired under Section 404, the long-arm provision of the New York City Civil Court Act.²⁷

This case is one of the first recorded decisions of a foreign forum faced with a default judgment under New York's long-arm statute. The Supreme Court of New Jersey held that although

²⁵ *Id.* at 136.

²⁶ 47 N.J. 295, 220 A.2d 673 (1966).

²⁷ This section is the New York City Civil Court Act's counterpart of CPLR 302.

New York *could* have constitutionally exercised jurisdiction in the instant case,²⁸ whether or not the facts presented were encompassed by its long-arm statute should be determined by the New York courts.²⁹ In view of its holding, the New Jersey court requested the New York courts to re-open the prior default judgment. The New York court in rendering the default judgment had not discussed the jurisdictional question in the case. In addition, there was no prior controlling decision in New York on a similar factual situation. However, the New Jersey court stated that if the New York courts declined to re-open the judgment, the plaintiff could enforce the judgment within the New Jersey courts without a further discussion of the jurisdictional question.

The instant case illustrates the role which a foreign tribunal may play in the interpretation of New York's long-arm statutes. In all actions seeking to enforce default judgments in the defendant's home state, the foreign court will have to decide whether there was a valid exercise of jurisdiction by the New York court. The instant case indicates that, as long as an exercise of jurisdiction is constitutional, a foreign court will affirm the jurisdiction of a New York court if, *in the foreign court's opinion*, the facts could be encompassed by the New York statute. It should be noted that this case involved the defendant's purchase of stock in a New Jersey branch office of a New York brokerage firm. The practical effect of this application of CPLR 302 is to subject all purchasers of stock dealing through a New York brokerage firm to in personam jurisdiction in this state.

CPLR 302(a)(2): Omissions outside New York not a tortious act within the state.

In *Platt Corp. v. Platt*,³⁰ plaintiff brought an action in tort against a non-domiciliary director of a New York corporation, basing jurisdiction on CPLR 302(a)(2). It was alleged that the defendant remained in Florida and caused plaintiff corporation injury by his failure to attend board meetings in New York, and his failure to perform in New York any of his other duties as a director. The Court of Appeals, in reversing the appellate division, held that CPLR 302(a)(2) could not be used as a basis for jurisdiction since this section requires that a tortious act be *committed within the state*.

²⁸ For cases establishing the permissible constitutional limits of long-arm statutes see, *e.g.*, *Hanson v. Denckla*, 357 U.S. 235 (1958); *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

²⁹ The New York courts have held that CPLR 302(a) has not extended New York's jurisdiction to the constitutional limit. *A. Millner Co. v. Noudar, LDA*, 24 App. Div. 2d 326, 266 N.Y.S.2d 289 (1st Dep't 1966).

³⁰ 17 N.Y.2d 234, 217 N.E.2d 134, 270 N.Y.S.2d 408 (1966).