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CPLR 301: "Doing Business" in New York

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claim against the Board of Education, was told that no notice of claim was necessary until he had recovered from all the injuries sustained. Such inquiry was made well within the ninety-day filing period but the misrepresentation effectively precluded plaintiff from filing a timely notice of claim.[31] There are statutory provisions allowing filing of a late notice of claim. A request to file a late notice, however, must be made within one year after the accrual of the cause.[32]

The court treated the plaintiff's cause not as one requesting a mere extension to file a notice of claim, but rather considered the fraud practiced on the plaintiff as a separate wrong for which the defendant was responsible. Thus, the court allowed the plaintiff to file a late notice of claim solely on the basis of the defendant's fraud. The plaintiff must still establish the fraud cause of action, but once he is successful the damages may be calculated with regard to the original wrong for which the fraudulent misrepresentations precluded recompense. Since fraud was a separate and distinct tort under these circumstances, the holding is consistent with the current trend of the New York courts.[33]

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

CPLR 301: "Doing business" in New York.

Although a foreign corporation not subject to the court's jurisdiction under the "long-arm" statute (CPLR 302) must be "doing business" or "present" in order to be subject to in personam jurisdiction in New York,[34] it appears that the "presence" requirement of prior case law, which served as a means for determining whether a corporation was "doing business," has been somewhat relaxed. By this it is not meant that "presence" has been abandoned as a standard, but rather that a liberal construction has been given to its meaning.

Significant among the cases heralding this trend is *Bryant v. Finnish Nat'l Airline*.[35] There, the plaintiff, a New York resident, was injured at a Paris airport as a result of the defendant's alleged negligence. The defendant, an unregistered foreign corporation, had no officer or director in the United States and used no Amer-

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[31] N.Y. MUNIC. LAW § 50-e(5).

[32] *Ibid.*

[33] DeVito v. New York Cent. Sys., 22 App. Div. 2d 600, 257 N.Y.S.2d 895 (1st Dep't 1965); Brick v. Cohn-Hall-Marx Co., 276 N.Y. 259, 11 N.E.2d 902 (1937).

[34] Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917).

[35] 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965).

ican airspace or airport. The sum of the defendant's New York activities consisted of the work of seven employees in a New York office who accepted reservations from travel agencies for Finnair flights in Europe, a New York bank account for salaries and expenses and occasional advertising and publicity. The Court of Appeals reversed the appellate division's holding that the defendant was not doing business in New York[36] and held that the test for "doing business" is a "simple pragmatic one" which is satisfied when the sum of the defendant's activities in this state is evaluated.[37] In so holding, the Court repeatedly alluded to the fact that a permanent New York office was the base of the defendant's activities. This was deemed necessary to satisfy the requirement that there be continuity of action from a permanent locale.[38] In the light of modern corporate activities, the liberal trend of the courts in the "doing business" area appears to be quite satisfactory.

CPLR 301: Subsidiary deemed agent for service of process.

In *Taca Int'l Airlines v. Rolls-Royce of England, Ltd.*,[39] the defendant-parent corporation owned all the stock of Rolls-Royce of Canada, Ltd., which in turn owned the stock of Rolls-Royce, Inc., a Delaware corporation authorized to do business in New York. The Delaware subsidiary sold only the products of the parent, and its officers were from either the Canadian or the English corporations. There were several common directors, the policies of the Delaware corporation were formulated by the executives of all three companies and the net income of the Delaware corporation appeared on the balance sheet of the defendant. The Court held that the parent was doing business through the subsidiary and hence the latter was not an independent entity but rather a mere department of the parent. Though it be true that as a matter of form the subsidiary appears to be an independent concern, if, in reality, it is merely the agent of the parent, form "is merely a veil which the court may cast aside to bring to light the true picture."[40] Such was the case in *Taca* and, under these circumstances, service upon the subsidiary will bind the parent.

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[36] Bryant v. Finnish Nat'l Airline, 22 App. Div. 2d 16, 253 N.Y.S.2d 215 (1st Dep't 1964).

[37] Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 432, 208 N.E.2d 439, 441-42, 260 N.Y.S.2d 625, 628-29 (1965).

[38] Sterling Novelty Corp. v. Frank & Hirsch Distrib. Co., 299 N.Y. 208, 210, 86 N.E.2d 564, 565 (1948).

[39] 15 N.Y.2d 97, 204 N.E.2d 329, 256 N.Y.S.2d 129 (1965).

[40] Goodman v. Pan Am. World Airways, 1 Misc. 2d 959, 962, 148 N.Y.S.2d 353, 357 (Sup. Ct.), *aff'd*, 2 App. Div. 2d 707, 153 N.Y.S.2d 600 (2d Dep't 1956).