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Prior to the Court of Appeals' decision in *Longines-Wittnauer Co. v. Barnes Reinecke, Inc.*,[41] the lower courts were not unanimous in holding that a New York contract is not an essential element of a cause of action based upon CPLR 302(a)(1).[42] The defendant in *Longines*, after preliminary negotiations in New York, executed a contract in Illinois for the sale of its machines. Officers and engineers of the defendant twice entered New York and, subsequently, its engineers worked at the plaintiff's New York plant readying the machines. A supplementary agreement, increasing the price, was also executed in this state. In refuting the defendant's contention that the contract had to be made in New York to sustain jurisdiction under CPLR 302(a)(1), the Court held that "even though the last act marking the formal execution of the contract may not have occurred within New York, the statutory test may be satisfied by a showing of other purposeful acts performed by the appellant in the State in relation to the contract, albeit preliminary or subsequent to its execution." [43]

Thus, the answer to the question of whether jurisdiction can be asserted under CPLR 302(a)(1) involves not merely the place where the contract was executed, but rather "turns on the totality of the defendant's activities within the forum." [44] Provided that the cause of action arises out of business activities in New York,[45] the minimum contacts necessary to satisfy due process requirements will be met.[46]

In *Schneider v. J. & C. Carpet Co.*,[47] the plaintiff, who acted as defendant's sales agent in New York, commenced an action for breach of a contract of employment. The defendant, a Georgia corporation, had utilized the plaintiff's services to increase the company's sales volume in the New York area. The appellate division held that this was clearly a proper situation for the application of CPLR 302(a)(1), since the plaintiff's activities in this state as the defendant's agent must be attributed to the

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[41] 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965).

[42] *E.g.*, Irgang v. Pelton & Crane Co., 42 Misc. 2d 70, 73, 247 N.Y.S.2d 743, 748 (Sup. Ct. 1964) (contract made in New York necessary to satisfy CPLR 302(a)(1)); Iroquois Gas Corp. v. Collins, 42 Misc. 2d 632, 248 N.Y.S.2d 494 (Sup. Ct. 1964) (contract executed outside New York held immaterial).

[43] Longines-Wittnauer Co. v. Barnes Reinecke, Inc., 15 N.Y.2d 443, 457, 209 N.E.2d 68, 75, 261 N.Y.S.2d 8, 18 (1965).

[44] *Id.* at 457 n.5, 209 N.E.2d at 75 n.5, 261 N.Y.S.2d at 18 n.5.

[45] CPLR 302(a)(1).

[46] Curran v. Rouse Transp. Corp., 42 Misc. 2d 1055, 1057-58, 249 N.Y.S.2d 718, 720-21 (Sup. Ct. 1964).

[47] 23 App. Div. 2d 103, 258 N.Y.S.2d 717 (1st Dep't 1965).

defendant and since the cause of action arose from the performance of these activities in furtherance of the employment contract. As was stressed in previous issues of the *Survey,* CPLR 302 offers no objection to the assertion of jurisdiction in such a situation.[48]

In its discussion of minimum contacts, however, the court stated that this question need only be answered when attempting to satisfy the test for "doing business" under CPLR 301.[49] Such language should not be strictly construed by the practitioner. The Supreme Court of the United States has not abrogated the "minimum contacts" test of *International Shoe Co. v. Washington,*[50] and it would seem obvious, therefore, that this requirement would subsist under CPLR 302(a)(1).

CPLR 302(a)(2): Tortious act distinguished from resultant injury.

The Court of Appeals, in two recent cases, has either settled permanently the application of CPLR 302(a)(2) or has paved the way for decisive legislative activity on a paragraph which is perhaps the most important section in the CPLR.

In *Feathers v. McLucas,*[51] the defendant was a Kansas corporation engaged in the manufacture of pressure tanks. A Missouri corporation purchased one of these tanks and mounted it on a wheel base. The completed assembly was thereafter sold to a Pennsylvania corporation engaged in interstate commerce. While passing through New York en route from Pennsylvania to Vermont, the tank exploded, causing injury to the plaintiffs. In sustaining jurisdiction, the appellate division stated that "the legislature did not intend to separate foreign wrongful acts from resulting forum consequences."[52] Thus, the negligent act of manufacture could be said to have been committed in this state. The Court of Appeals, emphasizing the distinction between tort and tortious act, reversed, holding that CPLR 302(a)(2) is directed only at "a tortious act committed [by a nondomiciliary] in this state."[53] On this basis, the Court concluded that the defendant's

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[48] See *The Biannual Survey of New York Practice,* 39 ST. JOHN'S L. REV. 178, 191 (1964).

[49] Schneider v. J. & C. Carpet Co., 23 App. Div. 2d 103, 104-05, 258 N.Y.S.2d 717, 718 (1st Dep't 1965).

[50] 326 U.S. 310 (1945); see Angelilli Const. Co. v. Sullivan & Son, Inc., 45 Misc. 2d 171, 172-73, 256 N.Y.S.2d 189, 191 (Sup. Ct. 1964), wherein it was stated that CPLR 302 "defines a class of 'minimum contacts' upon which the courts of New York can obtain personal jurisdiction over non-resident parties within the expanded area permitted . . . in *International Shoe* . . . ."

[51] 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965).

[52] 21 App. Div. 2d 558, 559, 251 N.Y.S.2d 548, 550 (3d Dep't 1964).

[53] Feathers v. McLucas, 15 N.Y.2d 443, 464, 209 N.E.2d 68, 80, 261 N.Y.S.2d 8, 24 (1965).