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## CPLR 302(a)(3): Ownership, Use or Possession of Real Property

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ducting activities within the forum State, thus invoking the benefits and protections of its laws."<sup>74</sup>

Hence, the position taken that there is a needless distinction drawn between tort and tortious act in the instant cases does open the door to the further problem of drawing the line between the situations where CPLR 302(a)(2) can be constitutionally applied and those wherein its application would be unconstitutional.

The fact that such a problem would face the courts, however, should not act as a deterrent to proper construction of the statute, but rather, should serve as a stimulus towards meeting the problem created when combining the due process requirements of "minimum contacts" with the expanded jurisdictional bases now being utilized.

*CPLR 302(a)(3): Ownership, use or possession of real property.*

*Tebedo v. Nye*,<sup>75</sup> one of the infrequent decisions construing CPLR 302(a)(3), involved a cause of action for failure to convey real property. Defendant Nye, after agreeing to sell the disputed land to the plaintiffs and accepting the consideration, conveyed the entire parcel to defendant McLaughlin. McLaughlin, allegedly with knowledge of a prior agreement to convey to the plaintiffs, conveyed the realty to a third party. Subsequently, McLaughlin established residence in Florida where he was served personally under CPLR 302(a)(3). The court held that irrespective of the fact that the defendant McLaughlin no longer had any interest in the land, nor owned any other real estate in New York, jurisdiction would nonetheless be sustained on the basis of "the relationship existing between the defendant and the realty out of which the cause of action arose at the time the cause of action arose."<sup>76</sup>

*CPLR 305(b): Amendment.*

CPLR 305(b), as originally enacted, provided that for purposes of a default judgment it would not be necessary to serve a complaint with the summons if (1) the claim was for a sum certain, and (2) a notice stating this sum was served with the summons. The CPLR 305(b) notice would take the place of the complaint for default purposes. In 1965, this was amended to provide for the expanded use of such notice, *i.e.*, a statement of the nature of the action and the relief demanded in monetary as well as non-monetary actions. There is some disagreement as

<sup>74</sup> *Ibid.*

<sup>75</sup> 45 Misc. 2d 222, 256 N.Y.S.2d 235 (Sup. Ct. Onondaga County 1965).

<sup>76</sup> *Id.* at 223, 256 N.Y.S.2d at 236.