

CPLR 302(a)(1): Limited Partner Held Subject to Personal Jurisdiction on Basis of His Endorsement Outside New York of a Note for Benefit of New York Partnership

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1966) "CPLR 302(a)(1): Limited Partner Held Subject to Personal Jurisdiction on Basis of His Endorsement Outside New York of a Note for Benefit of New York Partnership," *St. John's Law Review*: Vol. 40 : No. 2 , Article 15.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol40/iss2/15>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

CPLR 302 is somewhat equivocal. In such a situation, however, since the language does not compel it, and since the CPLR is intended to be construed liberally,¹⁷ there appears to be no valid reason why the courts should hold that a "gap" exists which would enable a defendant to evade the jurisdiction of New York.

CPLR 302(a)(1): Limited partner held subject to personal jurisdiction on basis of his endorsement outside New York of a note for benefit of the New York partnership.

In order to exercise jurisdiction over a non-domiciliary, the requirements of the CPLR and of federal "due process" must be satisfied. Under CPLR 302(a)(1), jurisdiction is asserted over a non-domiciliary who "transacts any business" in New York and is sued in connection with that business. In *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*,¹⁸ the Court of Appeals stated that the test for jurisdiction under CPLR 302(a)(1) is whether the non-domiciliary has "engaged in some purposeful activity in this state in connection with the matter in suit."¹⁹ The United States Supreme Court, in comparison, has stated that "due process" requires for valid in personam jurisdiction "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws."²⁰ The similarity of the two tests indicates that the Court of Appeals has interpreted the intent of the New York legislature, by its enactment of 302, as utilizing its full constitutional power in exercising jurisdiction over non-domiciliaries who have business contacts with this state.

The full extent to which this jurisdiction will extend has not, as yet, been ascertained. Its comprehensiveness, however, is indicated by the recent appellate division case of *Banco Espanol de Credito v. DuPont*,²¹ wherein the defendant, having only minimal contacts with New York, was held subject to New York's jurisdiction. In this case, a suit on a promissory note, the non-domiciliary defendant's only contact with New York was his status as an accommodation endorser on the promissory note of a Delaware corporation for the purpose of giving a New York partnership, in which he was a limited partner, the benefit of his credit.

Justice Steuer voiced a strong dissent to the majority's holding that the defendant was subject to in personam jurisdiction under

¹⁷ CPLR 104.

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

¹⁹ *Id.* at 457, 209 N.E.2d at 75, 261 N.Y.S.2d at 18.

²⁰ *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); see *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

²¹ 24 App. Div. 2d 445, 261 N.Y.S.2d 233 (1st Dep't 1965) (memorandum opinion).

CPLR 302(a)(1). He stated that neither the note nor the endorsement had any substantial contact with New York—the note was executed, delivered and endorsed outside New York. The dissent further maintained that the fact that defendant was a limited partner in the New York partnership was immaterial since this was no more a basis for jurisdiction than would be the fact that a non-domiciliary defendant owned stock in a New York corporation.

The dissent's comparison of a limited partner to a shareholder is quite appropriate since both are mere investors who have limited liability and who do not partake in the management of the business.²² It is submitted, therefore, that Justice Steuer was correct in his view that the mere fact that one is a limited partner would be insufficient as a basis for jurisdiction over a non-domiciliary. It is also submitted that he is correct in his assertion that a simple endorsement of a promissory note outside of New York would not effect in personam jurisdiction. In such a case it is difficult to imagine what business the non-domiciliary transacted in New York.

What the dissent appears to overlook, however, is that a much stronger basis for jurisdiction exists when, as in the instant case, the defendant is *both* a limited partner in the New York partnership *and* the endorser of a note for the benefit of the partnership. As indicated by the Court of Appeals in the *Longines* case, it is not any one factor which determines whether the defendant has transacted any business in New York within the meaning of 302 (a)(1). Rather, it is the totality of the defendant's contacts with New York in connection with the matter in suit.²³

In the instant case, the majority would probably have held the same way if the defendant had been a shareholder in a New York corporation and had endorsed a note for the benefit of the corporation. In such a situation, as in the instant case, the defendant would be an investor in a New York business who was promoting, at least indirectly, his own financial interests by extending to the business the benefit of his credit. The result reached in the instant case appears to satisfy both federal due process requirements and the jurisdictional test approved by the Court of Appeals since it may reasonably be said that the defendant has engaged in purposeful activity in New York and has been sued in connection with this activity.

²² See Nadler, *The Limited Partnership Under the Uniform Limited Partnership Act*, 65 *COM. L.J.* 71 (1960) for a good analysis of the basic tenets of the limited partner and his similarity to a corporation shareholder.

²³ *Longines-Wittnauer Watch Co. v. Barnes & Reinecke Inc.*, 15 *N.Y.2d* 443, 458, 209 *N.E.2d* 68, 76, 261 *N.Y.S.2d* 8, 19 (1965).