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CPLR 302 Being Liberally Construed to Expand Jurisdictional Bases in Actions Against Non-Domiciliaries

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commenced within six years after the accrual of the cause of action, the defense of the statute of limitations was an effective bar.

The holding in the instant case recognizes that service upon one partner is effective only as against the partner personally served and the jointly held partnership property. In order to hold an individual partner personally liable, service must be made *on him*. Since the defendant here had not been personally served in the first action, the judgment entered therein could only affect the value of his partnership interest, not his personal assets. The twenty-year period of limitations applicable to a money judgment³⁰ was not discussed, apparently because the court felt that it did not apply, no personal judgment against the individual defendant having been obtained.

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

CPLR 302 being liberally construed to expand jurisdictional bases in actions against non-domiciliaries.

Section 301³¹ of the CPLR has retained the bases of jurisdiction which existed under the CPA and former case law. By the enactment of the "longarm" statute, section 302,³² the legislature has greatly broadened the state's bases of in personam jurisdiction.

Before the enactment of section 302(a)(1), a foreign corporation could not be considered "present" for jurisdictional purposes unless it had systematic and regular contacts with New York, *i.e.*, the corporation had to be doing business here.³³ As Judge Cardozo stated: "if it is here, not occasionally or casually, but with a fair measure of permanence and continuity, then . . . it is within the jurisdiction of our courts."³⁴

In 1945, the Supreme Court of the United States relaxed the former demands of due process and went beyond the "presence" test, holding that due process requires only that the defendant have

³⁰ CPLR 211(b).

³¹ CPLR 301. A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.

³² CPLR 302(a): "A court may exercise personal jurisdiction over any non-domiciliary . . . as to a cause of action arising from any of the acts enumerated in this section . . . if, in person or through an agent, he:

1. transacts any business within the state; or
2. commits a tortious act within the state . . . or
3. owns, uses or possesses any real property situated within the state."

³³ See, *e.g.*, *Miller v. Surf Properties, Inc.*, 4 N.Y.2d 475, 151 N.E.2d 874, 176 N.Y.S.2d 318 (1958); *Elish v. St. Louis Southwestern Ry.*, 305 N.Y. 267, 112 N.E.2d 842 (1953); *Sterling Novelty Corp. v. Frank & Hirsch Distrib. Co.*, 299 N.Y. 208, 86 N.E.2d 564 (1949).

³⁴ *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 267, 115 N.E. 915, 917 (1917).

certain "minimum contacts" with the state.³⁵ But it required statutes to take advantage of that holding, and New York did not immediately enact such statutes. Thus, until 1963, the state's bases for in personam jurisdiction rested on grounds narrower than those permitted by the Constitution. To broaden the scope of the state's jurisdiction over non-domiciliaries, section 302 was enacted.³⁶

Prior to the effective date of the CPLR, it was not certain whether CPLR 302 would carry jurisdiction over non-residents to the full length permitted by due process.³⁷ The bulk of cases, however, indicate that section 302 is being liberally construed and extended toward, if not to, the constitutional limit.³⁸

Section 302(a)(1) — The "Transaction of Business."

It should be remembered at the outset that when a foreign corporation is doing business in New York, it may be sued on any cause of action, regardless of whether the cause of action arose from the New York business.³⁹ One who does business is deemed "present" and thereby impliedly consents to be sued. A non-resident who merely "transacts" business, however, is not "present" and can be held in personam only on a cause of action arising out of that transaction of business. The 302(a)(1) criterion requires considerably less for "a transaction" of business than prior law's presence doctrine requires for "the doing" of business. In the recent case of *Brunette Sunapee Corp. v. Zeolux Corp.*,⁴⁰ the court dismissed an action for breach of warranty and negligence against an Illinois defendant, since none of the elements of plaintiff's cause of action arose out of the transaction of business in New York. Plaintiff contended that Norge Sales, a wholly owned subsidiary of the defendant corporation, was transacting business in New York; that Norge and defendant were one and the same and, therefore, that defendant was within section 302. Assuming the truth of this allegation, the court held that since the products were manufactured in Illinois by defendant, purchased in Massachusetts from a Massachusetts corporation, and thereafter installed in New Hampshire where they failed to operate, there was no transaction of business in New York from which the cause of action arose.⁴¹ Section 302

³⁵ *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

³⁶ See 1958 N.Y. LEG. DOC. NO. 13, SECOND PRELIMINARY REPORT OF THE ADVISORY COMMITTEE ON PRACTICE AND PROCEDURE 39.

³⁷ 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 302.01 (1963).

³⁸ See cases discussed *infra*. See also *Patrick Ellam, Inc. v. Nieves*, 41 Misc. 2d 186, 245 N.Y.S.2d 545 (Sup. Ct. 1963); *Steele v. DeLeeuw*, 40 Misc. 2d 807, 244 N.Y.S.2d 97 (Sup. Ct. 1963).

³⁹ *Tauza v. Susquehanna Coal Co.*, *supra* note 34, at 268-69, 115 N.E. at 918.

⁴⁰ 228 F. Supp. 805 (S.D.N.Y. 1964).

⁴¹ *Id.* at 806.