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## Section 302(a)(1)--The "Transaction of Business"

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certain "minimum contacts" with the state.<sup>35</sup> 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.<sup>36</sup>

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.<sup>37</sup> The bulk of cases, however, indicate that section 302 is being liberally construed and extended toward, if not to, the constitutional limit.<sup>38</sup>

*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.<sup>39</sup> 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.*,<sup>40</sup> 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.<sup>41</sup> Section 302

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

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

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

<sup>38</sup> 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).

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

<sup>40</sup> 228 F. Supp. 805 (S.D.N.Y. 1964).

<sup>41</sup> *Id.* at 806.

(a)(1) and the requirements of due process under which it functions require New York contacts and there were no such contacts in the case.

*Activity in furtherance of contract deemed transaction of business.*

There is no set rule to determine whether the act or acts of defendant constitute a transaction of business. Thus, the court must judge each case in the light of its own peculiar circumstances.

The case of *Iroquois Gas Corp. v. Collins*<sup>42</sup> was an action for breach of contract wherein plaintiff alleged that the contract was executed in New York and was to be performed here. Defendant, a resident of Texas, denied the existence of a contract and moved to dismiss on the ground that he was not subject to the court's jurisdiction. The undisputed facts indicated that defendant was low bidder on plaintiff's proposed pipe line crossing the Niagara River. On two separate occasions, defendant's agents spent several days in New York negotiating a contract to construct this pipe line, surveying the construction site and engaging in other activities with reference to the alleged contract. The supreme court held that the activity in furtherance of the contract by the non-resident's agents constituted a "transaction of business and established the necessary minimum contacts."<sup>43</sup>

It had been held prior to the *Iroquois* case that a cause of action arising out of a contract entered into in New York constituted a transaction of business.<sup>44</sup> The court in the instant case, however, takes an even more liberal approach since it was not definitely established whether there was in fact a contract. The activities were sufficient in themselves, and apparently the court found it of little consequence that the contract had not been proved. It was enough that "defendant . . . availed himself of the privileges of conducting business activity within the state, thus invoking the benefit and protection of its law."<sup>45</sup> Sufficient basis was established for jurisdictional purposes; if there was in fact no contract, defendant could establish that later in a hearing on the merits.

The court was influenced in this case by *Kropp Forge Co. v. Jawitz*,<sup>46</sup> wherein the Illinois appellate court sustained in personam jurisdiction over a non-resident defendant on facts very similar to those presented in the instant case. In *Kropp*, the defendant also denied the existence of a contract but had visited plaintiff's premises

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<sup>42</sup> 42 Misc. 2d 632, 248 N.Y.S.2d 494 (Sup. Ct. 1964).

<sup>43</sup> *Id.* at 635, 248 N.Y.S.2d at 497.

<sup>44</sup> Patrick Ellam, Inc. v. Nieves, *supra* note 38; Steele v. DeLeeuw, *supra* note 38.

<sup>45</sup> *Iroquois Gas Corp. v. Collins*, 42 Misc. 2d 632, 635, 248 N.Y.S.2d 494, 497 (Sup. Ct. 1964).

<sup>46</sup> 37 Ill. App. 2d 475, 186 N.E.2d 76 (1962).