

Tests for Jurisdiction

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Feathers than in *Gray*, the *Singer* case goes even further than *Feathers*. Although both cases involved a defective instrumentality which found its way into New York, the *Singer* case involved no injury in New York. What was important in *Singer* was that plaintiff came into possession of the hammer while it was still in circulation in New York. This, for the court, was an "essential nexus to sustain jurisdiction."⁷¹ The tortious act was held to have continued so long as the defective hammer circulated in New York. Once the user came into possession of the product in New York, it was immaterial where he took it. However, the court further indicated that if plaintiff had been given the hammer in Connecticut rather than in New York, the cause of action would have had no relation to the tortious act committed in New York, namely, the circulation of the defective hammer. The court made note of the fact that defendant had made various transactions of business in New York, for example, sending salesmen and catalogues into the state, but this was not the deciding factor in the case. The court indicated that due process considerations would be more restrictive if the case involved a "transaction of business" question (CPLR 302(a)(1)), but that when a dangerous instrumentality is involved (producing a tortious act under CPLR 302(a)(2)) the responsibility should be greater.

In the *Feathers* case, defendant's sole contact with the state was the entry into the borders of New York of its cargo pressure tank. Defendant apparently had never engaged in any business activity in New York. Nevertheless, the court sustained jurisdiction, stating that "jurisdiction of a State may be extended over a foreign corporation where 'single or occasional acts . . . because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit' on causes of action arising therefrom."⁷²

Tests for jurisdiction.

When a non-domiciliary knows or ought to know that his product will find its way into New York, he should be compelled to answer here for any damage caused by his negligent act in the manufacture of that product.⁷³ However, the nature of the product is an important factor. It is questionable whether the courts would, or could entertain jurisdiction if the product happens to be defective yarn,⁷⁴ which is not inherently dangerous, as

⁷¹ *Singer v. Walker*, *supra* note 67, at 290, 250 N.Y.S.2d at 221.

⁷² *Feathers v. McLucas*, *supra* note 69, at 560, 251 N.Y.S.2d at 551; see *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945).

⁷³ *Lewin v. Bock Laundry Mach. Co.*, *supra* note 66; *Fornabao v. Swissair Transp. Co.*, *supra* note 66.

⁷⁴ *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F.2d 502 (4th Cir. 1956).

opposed to a hammer or a tank loaded with gas, which would be dangerous to life and property if negligently manufactured. Another consideration is whether the defendant is obtaining the benefit and protection of the state's laws.⁷⁵ For example, non-resident motorist statutes have been upheld on the ground that one who enjoys the benefits of the state's highways should be compelled to answer for his negligent act in operating such a dangerous instrumentality as an automobile in that state.⁷⁶ The "balance of convenience" test is another factor to be weighed carefully. If several plaintiffs have a cause of action against a non-resident corporation, it may be less inconvenient for the corporation to defend in a jurisdiction foreign to it than to force individual plaintiffs to pursue defendant in a jurisdiction where the corporation is present.⁷⁷ But if, on all of the facts, the burden placed on the defendant would be disproportionate to the convenience afforded the plaintiff, defendant should not be subjected to jurisdiction in the forum state.

Complaint must allege a cause of action arising from the acts enumerated in section 302.

*Lebensfeld v. Tuch*⁷⁸ was an action by plaintiffs to rescind a sale of assets and recover them from a non-resident defendant as constructive trustee thereof. The defendant, Weisz, was personally served in California pursuant to section 302(a)(2). He was charged with receiving assets from defendant Tuch, knowing that Tuch had defrauded plaintiff of these assets in New York. The complaint did not allege that Tuch acted as the agent of Weisz. The court dismissed the action against Weisz on the ground that "if at the time of service, no cause of action based on an act specified in CPLR 302 was asserted against Weisz, no personal jurisdiction of Weisz was obtained."⁷⁹

The court further stated that since it had no jurisdiction in the first place, it could not grant leave to amend the complaint because it was defective when it was made. Here summons and complaint were served together. The court indicated that it might have allowed the amendment had the summons been served alone, because the action would not have been, in effect, contaminated in such instance by a complaint which did not on its face show jurisdiction under CPLR 302. That aspect of the court's holding seems unduly technical. While it is salutary to allege in the complaint the ground of jurisdiction relied upon under CPLR 302,

⁷⁵ *International Shoe Co. v. Washington*, *supra* note 72, at 319.

⁷⁶ *Hess v. Pawloski*, 274 U.S. 352 (1927).

⁷⁷ *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957).

⁷⁸ 43 Misc. 2d 919, 252 N.Y.S.2d 594 (Sup. Ct. 1964).

⁷⁹ *Id.* at 921, 252 N.Y.S.2d at 596.