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CPLR 302(a)(1): The "Transaction of Business"

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The minimum contacts theory enunciated in the leading Supreme Court cases does not stand for the proposition that a state may exercise in personam jurisdiction over a non-resident defendant indiscriminately on the ground that defendant has had contact with the state at some time or another. Rather, it is contended that *International Shoe* stands for the proposition that "solicitation plus" is enough only in so far as the obligation arises out of that activity. The exercise of the privilege of conducting activities within the state "may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state," [27] the defendant may be held in personam without any violation of due process. It is within this limited area of activity that CPLR 302 has its effect.

The recent case of *Bryant v. Finnish Nat'l Airline* [28] is an illustration of the fact that the "doing business" (presence) test has not been altered in New York by the broadening of jurisdiction under the "longarm" statute (CPLR 302). In that case, plaintiff, a New York resident, was injured at an airport in Paris, France, allegedly as the result of defendant's negligence. The defendant, Finnair, was a corporation organized under the laws of Finland and not registered in the United States. Service was made upon the manager of Finnair's New York office. This office was staffed by three full time and four part time employees, none of whom was an officer of Finnair. All of defendant's flights originated and terminated outside the United States. The New York office sold no tickets, nor could it bind defendant by contract. Finnair's New York office maintained a bank account which averaged less than $2,000 and was used primarily to pay salaries and rent. Aside from advertising and publicity work, it appeared that the principal function of the New York office was to receive from travel agencies reservations for travel on Finnair in Europe. This information was transmitted thereafter to the defendant in Europe. The court reaffirmed the "presence" test holding that these activities were incidental and that they did not constitute "doing business" in New York.[29] The court stated that CPLR 302 did not apply because the cause of action did not originate from the business transacted in New York.

CPLR 302(a)(1): The "transaction of business."

CPLR 302(a)(1) requires a relationship between the transaction and the cause of action in order to be effective. Two recent cases demonstrate the need for this relationship.

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[27] International Shoe Co. v. Washington, *supra* note 20, at 319; see Hanson v. Denckla, 357 U.S. 235, 253 (1958).

[28] 22 App. Div. 2d 16, 253 N.Y.S.2d 215 (1st Dep't 1964).

[29] *Id.* at 22, 253 N.Y.S.2d at 221-22.

In *Greenberg v. R.S.P. Realty Corp.*,[30] the defendant operated a resort and hotel in New Jersey. It maintained a telephone listing in New York through which a party in New York could be directly connected with the defendant in New Jersey. Plaintiff utilized this telephone number to make reservations at the hotel, and during her stay there, was injured through defendant's alleged negligence. Special term denied defendant's motion to dismiss on the ground that defendant's activities amounted to "transacting business" and that such transaction resulted in a relationship between the parties out of which the cause of action arose.[31] The appellate division reversed, holding that since the reservation, regarded as a contract, was made in New Jersey, and since there was no proof of physical activity by defendant's agents or employees within New York, defendant did not have the "minimum contacts" with New York required for in personam jurisdiction.[32]

The Court of Appeals for the Second Circuit reached a similar result in *Gelfand v. Tanner Motor Tours, Ltd.*[33] In that case, New York plaintiffs purchased tickets for an extended tour through a travel agency located within the state. Two tickets from Las Vegas to Grand Canyon on defendant's bus line were among those purchased. While on this journey, the bus crashed causing injury to the plaintiffs. They sought damages for negligence and breach of contract of safe carriage. Plaintiffs alleged jurisdiction under CPLR 301 and 302. With respect to the "doing business" issue (CPLR 301), the case was remanded to determine whether defendant had an agent doing business in New York. If so, it would be immaterial that the cause of action arose outside New York at least for jurisdictional purposes. The court, however, held CPLR 302 inapplicable. Assuming that the sale of tickets by defendants through the travel agency was a "transaction of business" within New York, plaintiffs' cause of action in tort did not arise from that sale. The duty of care owed by defendant did not arise until the plaintiffs boarded the bus in Las Vegas.[34]

In holding that the "transactions of business" did not give rise to the injuries complained of, both the *Greenberg* and the *Gelfand* cases would appear to be sound and in harmony with

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[30] 22 App. Div. 2d 690, 253 N.Y.S.2d 344 (2d Dep't 1964).

[31] Greenberg v. R.S.P. Realty Corp., 43 Misc. 2d 182, 185, 250 N.Y.S.2d 460, 464 (Sup. Ct. 1964).

[32] Greenberg v. R.S.P. Realty Corp., 22 App. Div. 2d 690, 253 N.Y.S.2d 344 (2d Dep't 1964).

[33] 339 F.2d 317 (2d Cir. 1964).

[34] *Id.* at 321-22.

other cases involving the single act statutes.[35] To hold otherwise might well violate due process.[36]

Assuming arguendo that the contract in the *Greenberg* case was made in New York between plaintiff and defendant's agents, it is submitted, nevertheless, that New York could not have entertained jurisdiction under CPLR 302. At first impression, the appellate division's decision in *Singer v. Walker*[37] might not seem consistent with *Greenberg,* but *Singer* is easily distinguishable. Although, in both cases the injury occurred outside the state, in *Singer* there was an act done in New York (namely the circulation of a dangerous instrumentality) which had a causal relation to the injury. The fact that the plaintiff came into contact with the instrumentality in New York was an essential nexus to sustain jurisdiction. The court stated that if the plaintiff had not come into contact with the instrumentality in New York, the cause of action would not have arisen from any act done by defendant in New York.[38] In *Greenberg,* however, even if the contract had been made in New York, there was no act performed which would provide the nexus essential for the assumption of jurisdiction. The making of the contract in New York would be merely incidental to the tort which occurred in New Jersey.

It is not suggested that the cause of action arising out of the transaction of business cannot be a tort or that the cause of action must arise out of a wrongful act done by the defendant in New York, but rather, that the cause of action must not be merely *incidental* to the business transacted. It is one thing to say that defendant and plaintiff made a contract in New York which was breached by defendant in New Jersey, and quite another thing to say that having made a contract in New York, defendant negligently injured plaintiff in New Jersey. In the first case, the cause of action is directly related to the transaction. In the second case, it is incidental thereto.

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[35] See generally Brunette Sunapee Corp. v. Zeolux Corp., 228 F. Supp. 805 (S.D.N.Y. 1964); Morgan v. Heckle, 171 F. Supp. 482 (E.D. Ill. 1959); Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 21 App. Div. 2d 474, 251 N.Y.S.2d 740 (1st Dep't 1964); Perlmutter v. Standard Roofing & Tinsmith Supply Co., 43 Misc. 2d 885, 252 N.Y.S.2d 583 (Sup. Ct. 1964); Grobark v. Addo Mach. Co., 16 Ill. 2d 426, 158 N.E.2d 73 (1959); Saletko v. Willys Motors, Inc., 36 Ill. App. 2d 7, 183 N.E.2d 569 (1962).

[36] See Hanson v. Denckla, *supra* note 27.

[37] 21 App. Div. 2d 285, 250 N.Y.S.2d 216 (1st Dep't 1964).

[38] *Id.* at 289-91, 250 N.Y.S.2d at 221. See *The Biannual Survey of New York Practice,* 39 ST. JOHN'S L. REV. 178, 193 (1964), for a thorough discussion of the *Singer* case.