

## CPLR 302 Applies Where Plaintiff Is Agent Transacting Defendant's Business

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*CPLR 302 applies where plaintiff is agent transacting defendant's business.*

In the last issue of the *Survey*, it was contended that where X hires Y to perform services for him in New York, CPLR 302 did not prohibit Y from maintaining an action against X in New York as to a cause of action arising out of those services.<sup>39</sup>

This view finds support in *J.K. Rosenberg, Inc. v. Greenfield*,<sup>40</sup> decided under Section 404 of the New York City Civil Court Act (CCA § 404). CCA § 404 is CPLR 302 tailored to fit the jurisdiction of the Civil Court. A Pennsylvania defendant engaged the services of the plaintiff to act as his resident buyer in New York. Plaintiff, pursuant to this agreement, transacted business for defendant in New York City. The court held that plaintiff could invoke the provisions of CCA § 404(a)(1) to obtain jurisdiction as to a cause of action arising out of the business transacted pursuant to such contract.<sup>41</sup> Thus, when the agent transacting defendant's business in New York is the plaintiff himself, lack of physical activities by the defendant will not bar the action under CPLR 302.

*Foreign executor held in personam under CPLR 302(a)(1) and (a)(2).*

*Nexsen v. Ira Haupt & Co.*,<sup>42</sup> was an action by a limited partner against a New Jersey executor whose decedent had been a general partner in the firm of Ira Haupt & Co. Plaintiff sought to recover his capital contribution, an accounting, and damages for conversion. Jurisdiction over the defendant executor under CPLR 302(a)(1) and (a)(2) was based on the original partnership agreement entered into in New York and on two subsequent transactions of the partnership whereby it turned over its operations and assets to the New York Stock Exchange.

The court stated that the word "executor" in CPLR 302(a) "means the executor of a foreign or non-domiciliary estate, and includes an executor who on behalf of his estate or whose decedent during life transacts any business within the state, or . . .

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<sup>39</sup> *The Biannual Survey of New York Practice*, 39 ST. JOHN'S L. REV. 178, 191 (1964).

<sup>40</sup> 44 Misc. 2d 600, 254 N.Y.S.2d 357 (Sup. Ct. 1964).

<sup>41</sup> *Contra*, *Orton v. Woods Oil & Gas Co.*, 249 F.2d 198 (7th Cir. 1957). Plaintiffs, a lawyer and an engineer, performed services in Illinois for defendant. Neither defendant nor his employees had ever been physically present there. Held: services performed by plaintiffs, absent anything else, were insufficient to subject defendant in personam under Section 17 of the Illinois Civil Practice Act.

<sup>42</sup> 44 Misc. 2d 629, 254 N.Y.S.2d 637 (Sup. Ct. 1964).