

Court Denies State Has Jurisdiction in Pipe Import Case

By WILLIAM JABINE

A Long Island (N. Y.) country club bought a quantity of pipe from an Ohio corporation which it claimed proved to be defective. The club then began an action against the salesman with whom it had dealt. And, an indemnity company attempted to bring in the Ohio company as a defendant. The manufacturer moved to dismiss

the complaint brought against it pursuant to New York's *Civil Practice Law and Rules* (hereafter CPLR) on the grounds that CPLR did not give New York jurisdiction over it. The motion was argued in the New York Supreme Court, Special Term, Nassau County.

The facts of the case may be stated as follows. In January, 1962 a resident of Massachusetts telephoned an order for a quantity of pipe to an Ohio company for which he was a salesman. The company sent an answer by telephone to the Massachusetts man accepting the telephone order "subject to signed order confirmation."

Later in January, 1962, a New Hampshire resident mailed an order to the Massachusetts salesman and included a complete list of pipe and fittings to be delivered to the site of a country club on Long Island.

Order Executed

On January 25, 1962 the company in Ohio executed confirmation of the order. The prices and description of the pipe were then stated in full by the company. The confirmation also stated that the pipe was sold to the New Hampshire resident for delivery to the club in New York.

In the lawsuit by the plaintiff (the New York country club) against the salesman, the Travelers Indemnity Co. joined the club as a third-party plaintiff in seeking to have the Ohio company named a defendant on the grounds that the company's materials delivered to New York were defective and in violation of a company warranty that the New Hampshire resident claimed was made verbally in New York.

In answer to the argument that the contract was made in New York, thus giving the New York courts jurisdiction, the court had this to say: "The contract herein was executed on January 25, 1962 in Ohio and not in New York. The terms of the contract are complete in every detail and any alleged conversation about an oral warranty" given earlier . . . "would be merged in the contract. Any attempt to offer parol evidence to establish a warranty would violate the parol evidence rule. (Citation) Furthermore the alleged warranty is so briefly and nebulously stated as to mean nothing."

No Merit to Argument

Having thus emphatically disposed of the contention that the New York courts could assume jurisdiction because the contract was made in that state, the court proceeded to discuss the indemnity company's argument that New York had jurisdiction under CPLR, because the Ohio company transacted business in New York, and had committed a tortious act within the state. The court found no merit to this argument, pointing out that the New York statute had not gone so far as to confer jurisdiction under such circumstances.

On these two points the court said: "The third-party plaintiff's contention is that the company committed a tortious act in New York and thus succumbed to the New York jurisdiction pursuant to CPLR Sec. 302 (a), subd. 2. There was no allegation of a tort or of any physical harm to person or property, and this contention, if adopted, would make every breach of contract, regardless of any physical harm, a tortious act. Further discussion is unnecessary to show that this contention strains the language of CPLR

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Sec. 302 (a), subd. 2."

The court held that New York did not have jurisdiction "over the company by reason of CPLR Sec. 302 (a), subd. 1, which requires that it transact business in the state for jurisdiction. The contract was executed in Ohio not in New York, and the . . . company did nothing in New York except to deliver the materials involved. It had no offices, representatives, salesmen, listings or property in New York."

The court concluded its opinion by holding that the company did not come within the jurisdiction of the N. Y. courts and that therefore the complaint against it should be dismissed. "Let us assume *arguendo*, that in enacting CPLR Sec. 302 (a), subs. 1, 2, New York intended to go to the outer limits of its permitted jurisdiction or that judicial interpretation of 'transacts any business' may be stretched to include the single conversation in New York in December, 1961, prior to the written Ohio contract herein, and also to include the delivery of pipe into New

York pursuant to the Ohio contract.

Such an attempt would violate the requirement of minimum contacts for a non-domiciliary person. The company committed no act from which it can be said it purposely availed itself of the privilege of conducting activities in New York, thus invoking the benefits and protections of New York law. (Citation) Furthermore the . . . company contacts in New York were so slim and tenuous that any attempt to exercise jurisdiction over the . . . company would violate the due process concept of fair play and substantial justice." (Old Westbury G & CC, Inc. v. Mitchell, 254 N. Y. S. 2nd 679)

The court made it clear that a company located in another state must make substantial contacts and perform clearly discernible acts within the borders of New York before that state can take jurisdiction. The question of whether or not the pipe was defective and the extent to which it was warranted by the manufacturer will have to be decided by the Ohio or federal courts.