SPCA of Upstate New York, Inc. v. American Working Collie Association: The New York Court of Appeals Clarifies the Reach of Long-Arm Jurisdiction as to Defamation Claims Where Jurisdiction is to Be Based on Transacting Business in the State

On February 9, 2012, the New York Court of Appeals held in *SPCA of Upstate New York, Inc.* v. *American Working Collie Association*, that the New York Supreme Court's Appellate Division properly dismissed plaintiffs' defamation claim against out-of-state defendants for lack of personal jurisdiction under C.P.L.R. § 302(a)(1), a provision of New York's long-arm statute. The main issue was whether defendants had purposefully transacted business within New York, and if so, whether a proper nexus existed between the business transaction and the alleged defamation. In a 4-3 decision, the Court held that defendants' contacts in New York did not constitute "purposeful activities" that were "sufficiently related" to the alleged defamation that would justify extending jurisdiction. In reaching this decision, the Court of Appeals majority confirmed an earlier observation of the Second Circuit that "New York courts construe 'transacts any business within the state' more narrowly in defamation cases than they do in the context of other sorts of litigation."

I. Background and Procedural History

Plaintiff SPCA of Upstate New York ("SPCA") is a non-profit corporation in New York which provides local shelter and adoption services for abused animals. SPCA's executive director, plaintiff Cathy Cloutier, is a New York resident. Defendant American Working Collie Association ("AWCA"), is an Ohio non-profit corporation dedicated to protecting the welfare of collies, a breed of dogs. The AWCA has members throughout the United States, twelve of whom were New York residents at the time of the events herein. AWCA has no offices or employees in New York. AWCA's president, defendant Jean Levitt, is a resident of Vermont.

In October 2007, several abused dogs were rescued from a New York residence and placed in SPCA's shelter. Shortly thereafter, defendant AWCA's Levitt phoned plaintiff SPCA's Cloutier and offered AWCA's assistance with the rescued dogs which AWCA provided to SPCA in the form of donated money, goods, and volunteers until approximately January 2008. On January 13, 2008 — one week after Levitt returned to Vermont after visiting the SPCA shelter in New York to check on the condition of the dogs — Levitt posted the first of several writings on AWCA's website addressing the condition of the dogs and the allegedly poor care being provided to them by SPCA.

In January 2009, plaintiffs commenced a defamation action in New York Supreme Court based on defendants' website posts about plaintiffs' alleged treatment of the dogs. Defendants filed a motion to dismiss for lack of personal jurisdiction. The Supreme Court denied the motion on the ground that personal jurisdiction existed under C.P.L.R. § 302(a)(1).[1] Defendants appealed. The Appellate Division reversed the decision after finding that defendants' contacts with the State of New York were not as significant as the "few" cases finding long-arm jurisdiction when defamation was asserted.[2] Notably, the Appellate Division stated that although defendants' contacts "could support . . . jurisdiction [under § 302(a)(1)] for causes of action other than defamation," extending jurisdiction under the facts in this case would be inconsistent with New York's "narrow approach" to long-arm jurisdiction in defamation lawsuits.[3]

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[1] Under C.P.L.R. § 302(a)(1), "jurisdiction over a nondomiciliary exists where (i) a defendant transacted business within the state and (ii) the cause of action arose from the transaction of business." *Johnson* v. *Ward*, 5 N.Y.3d 515, 519 (2005).

[2] *SPCA of Upstate N.Y., Inc.* v. *Am. Working Collie Assoc.*, 74 A.D.3d 1464, 1466 (3d Dep't 2010).

[3] *Id.*

II. The New York Court of Appeals' Decision

On appeal, the Court affirmed the Appellate Division's holding in a 4-3 vote.[4] The Court began its analysis by reviewing Section 302 — the statutory basis for obtaining long-arm jurisdiction over non-domiciliary defendants in New York State courts. Specifically, the Court explained that while Sections 302(a)(2) and (3) provide long-arm jurisdiction with respect to torts committed in the State or outside the State by non-domiciliaries which causes injury within the State, those sections contain an express exception to extending jurisdiction on such basis in tortious conduct cases where the tort in question is defamation. No such restriction as to defamation claims appears in the section allowing claims to be asserted against non-domiciliaries who "transact business within [New York]" under Section 302(a)(1).[5] The Court noted with approval, however, the observation of the U.S. Court of Appeals for the Second Circuit that "New York courts construe 'transacts any business within the state' more narrowly in defamation cases than they do in the context of other sorts of litigations."[6]

The Court explained that Section 302 manifested a legislative "intention to treat the tort of defamation differently from other causes of action." It added that that legislative determination required the courts "to make certain that domiciliaries are not haled into court in a manner that potentially chills free speech without an appropriate showing that they purposefully transacted business here and that the proper nexus exists between the transaction and the defamatory statements at issue."[7]

The Court assessed whether defendants AWCA and Levitt had transacted business in New York under Section 302(a)(1) by applying a two-part test to the facts of the case. First, the Court looked at defendants' contacts with the State to determine if defendants had engaged in "purposeful activities" within the State that would justify subjecting defendants to the jurisdiction of New York courts.[8] On this issue, the Court held that defendants' activities in New York were "quite limited" in the context of its defamation-focused analysis. It identified, but held inadequate to support jurisdiction, the following occurrences during the relevant time period: (1) Levitt initiated three phone calls from Vermont to Coultier (who was located in New York) about providing assistance to SPCA, and visited SPCA's facility twice; (2) defendants donated over $1000 to SPCA, and at least one check was mailed into New York; (3) defendants purchased collars and leashes for the rescued dogs and made arrangements to deliver the items to SPCA in New York; and (4) for eight weekends, the AWCA sent its members to volunteer at SPCA where they assisted in caring for the dogs.[9]

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[4] *SPCA of Upstate N.Y., Inc.* v. *Am. Working Collie Assoc.*, No. 00857, slip. op. at 1 (N.Y. Feb. 9, 2012) (hereinafter "Slip Opinion").

[5] Slip Opinion at 4; *see* C.P.L.R. § 302(a)(1) ("[A] court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent, transacts any business within the state or contracts anywhere to supply goods or services in the state.").

[6] Slip Opinion at 7-8 (quoting *Best Van Lines, Inc.* v. *Walker*, 490 F.3d 239, 248 (2d Cir. 2007)).

[7] Slip Opinion at 8. The New York Court of Appeals focused on the intentions of the legislature as manifested in the language of (a)(2) and (a)(3) themselves. It therefore did not have occasion to consider the policy implications here of a separate line of authority in its own decisions recognizing special solicitude for free speech reflected in the New York Constitution, a protection broader in some respects than that afforded under the First Amendment to the U.S. Constitution. "[P]rotection afforded by the guarantees of free press and speech in the New York Constitution is often broader than the minimum required by the Federal Constitution." *Immuno AG* v. *Moor-Jankowski*, 77 N.Y.2d 235, 249 (1991).

[8] Slip Opinion at 5.

[9] *Id.* at 2, 3 and 6.

The Court also held that defendants' activities in New York did not "constitute purposeful activities related to the asserted cause of action" that would justify extending jurisdiction.[10] Stated differently, the Court did not believe there was a substantial relationship between the allegedly defamatory statements concerning how SPCA was caring for the dogs and defendants' New York activities.[11] The Court emphasized that Levitt posted the comments on AWCA's website while in Vermont and that the comments were not directed specifically to New York readers, as anyone with access to a computer and the internet could have read Levitt's posts. The Court found it significant that although Levitt had traveled to New York, she had not traveled for the purpose of conducting research, gathering information, or otherwise generating materials in order to publish statements about SPCA on AWCA's website.[12] Given the Court's conclusion that there was no "articulable nexus" between defendants' business transactions (i.e., assisting SPCA with caring for the rescued dogs) in New York and the alleged defamation, personal jurisdiction was not established under § 302(a)(1).[13]

III. The Dissenting Opinion

In the dissent, Judge Pigott noted that Section 302(a)(1) is a "single act statute," whereby proof of one transaction in New York is sufficient to invoke jurisdiction — even if the defendant never enters the State — so long as the defendant's activities are purposeful and the claim asserted is substantially related to the transaction.[14] The dissent concluded that AWCA and Levitt engaged in a significant number of purposeful activities in New York, particularly in light of the money, goods, and services provided to SPCA.[15] Furthermore, Judge Pigott described the majority's free speech concern as "illusory" when applied to the facts in this case:

> There is a clear distinction between a situation where the only act which occurred in New York was the mere utterance of the libelous material, and on the other hand a situation where purposeful business transactions have taken place in New York giving rise to the cause of action.[16]

IV. Significance of the Decision

The decision from the New York Court of Appeals makes clear that the special free speech concerns that animated the bar on extending long-arm reach over defamation claims directly via the tort provisions of C.P.L.R.

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[10] *Id.* at 6-7.

[11] *Id.* at 7.

[12] *Id.* The Court of Appeals drew an explicit contrast with the facts in earlier appellate division decisions where jurisdiction had been sustained over defamation claims based on the transaction of business. It referred to *Legros* v. *Irving*, 38 A.D.2d 53, 56 (1st Dep't 1971), where the book containing the alleged defamatory statement was "researched and printed in New York, and where the publishing contract was negotiated and executed in" New York. (Slip Opinion at 5-6); It also referred to *Montgomery* v. *Minarcin,* 263 A.D.2d 665, 667-68 (3d Dep't 1999) (allegedly defamatory broadcast "written, produced and broadcast within New York" sufficient to constitute transaction of business within the State) (Slip Opinion at 6).

[13] *Id.* at 5-7.

[14] *Id.*, Dissent at 1.

[15] *Id.* at 3.

[16] *Id.* at 4 (quoting *Legros*, 38 A.D.2d at 55).

§ 302(a)(2) and (a)(3) also affect the reach of the "transacts any business" section of 302(a)(1) when applied in an effort to provide long-arm jurisdiction over defamation claims. The holding would suggest that where jurisdiction over a defamation claim is to be premised on the transaction of business within the State, the in-State activity and its nexus to the claim will need to be more significant than with respect to non-defamation claims.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; Dean Ringel at 212.701.3521 or dringel@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Nicole Falls at 212.701.3115 or nfalls@cahill.com.